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Missouri Sports Law

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MISSOURI SPORTS LAW

ADAM EPSTEIN*

ABSTRACT

The purpose of this paper is to present a brief perspective and overview on how individuals and sports teams associated with the state of Missouri have had an impact on sports law in general. This includes a discussion of prominent cases involving fantasy sports statistics, the Kansas City Royals mascot Sluggerrr, the unfortunate death of University of Missouri football player Aaron O'Neal, and the 2011 litigation between the National Football League and the players' union, the NFLPA. This presentation-turned-article synthesizes Missouri-related cases and decisions, demonstrating that the legal issues are quite broad and varied in this area of the law. Some represent significant state and federal sports law cases including those that have been initiated in or traveled through Missouri via the Eighth Circuit Court of Appeals. Other examples did not lead to litigation but certainly demonstrate legal issues and have a legal flavor thereby generating discussion and debate in sports law circles. With several professional sports teams and major college universities within the state, the impact on the sports industry from this state is significant and addressed where appropriate.

I. INTRODUCTION

According to the most recent census, the state of Missouri, also known as "The Show Me State," ranks eighteenth in terms of population in the United States.¹ Missouri's impact on sports law has

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1. See Eric Ostermeier, *Missouri's Population Trends Over the Last 100 Years*, SMART POLITICS (Mar. 2, 2011), <http://blog.lib.umn.edu/cspg/smartpolitics/>

been moderate, though its impact on the sports industry remains significant.² The purpose of this paper is to present a brief perspective and overview on how individuals and teams associated with the state of Missouri have had an impact on sports law in general. First, and more as a matter of trivia, many are unaware that the state of Missouri hosted the 1904 Summer Olympics in St. Louis, which was the first time the Olympic Games were hosted in the United States.³ Indeed, at one time the national headquarters for the NCAA was located in Kansas City, Missouri (1952), although it has since moved to Indianapolis, Indiana (1999), where it presently resides.⁴

Professional sports teams in Missouri are abundant and members of the Big Four sports leagues include the NHL's St. Louis Blues, MLB's St. Louis Cardinals and Kansas City Royals, and the NFL's St. Louis Rams and Kansas City Chiefs, among others.⁵

2011/03/missouris_population_trends_ov.php (explaining over past 100 years, Missouri has fallen from seventh most populous state to eighteenth). It is also worth noting that there are sixty-seven accredited, degree-granting, postsecondary institutions in Missouri, including thirteen public universities, thirty-nine private four-year institutions, and thirteen community colleges. See *List of Colleges and Universities in Missouri (MO)*, COLLEGESTATS.ORG, <http://collegestats.org/colleges/missouri> (last visited Mar. 23, 2012) (listing accredited colleges and universities residing in Missouri).

2. See Eric Fisher & Terry Lefton, *K.C. Delivers for League, Fans, Sponsors*, SPORTS BUS. J. (July 16, 2012), <http://www.sportsbusinessdaily.com/Journal/Issues/2012/07/16/Events-and-Attractions/MLB-All-Star.aspx> (noting that "Kansas City, MLB's third-smallest market," produced sizeable television ratings gains in 2012 over previous year's All-Star Games in Phoenix (2011) and Anaheim (2010)).

3. See *St Louis 1904*, OLYMPIC.ORG, <http://www.olympic.org/st-louis-1904-summer-olympics> (last visited Mar. 3, 2013) (providing pertinent facts about St. Louis Olympic Games, including opening and closing date, medalists, and pictures).

4. See ADAM EPSTEIN, SPORTS LAW 19 (2013) (explaining NCAA still outsources drug testing to National Center for Drug Free Sport in Kansas City and conducts approximately 13,000 tests per year); see also *National Center for Drug Free Sport*, DRUG FREE SPORT, <http://www.drugfreesport.com/index.asp> (last visited Mar. 3, 2013) (holding themselves to be "premier provider of drug testing services, drug screening policies, and drug education programs in sport" with headquarters in Kansas City).

5. See EPSTEIN, *supra* note 4, at 4 (explaining phrase "Big Four" is associated with four major sports leagues in United States including National Football League (NFL), Major League Baseball (MLB), National Basketball Association (NBA), and National Hockey League (NHL)); see also Greg Caggiano, *Turnin' Back the NHL Clock: Kansas City Scouts*, BLEACHER REPORT (June 25, 2008), <http://bleacherreport.com/articles/32553-turnin-back-the-nhl-clock-kansas-city-scouts> (noting that Kansas City Scouts was professional ice hockey team in NHL from 1974–76, then relocated to Denver and became Colorado Rockies (later New Jersey Devils when they moved again in 1982)); see also James Dornbrook, *Kansas City Command Bows Out; New Team Forms in New League*, KANSAS CITY BUS. J. (Aug. 23, 2012, 11:05 AM), <http://www.bizjournals.com/kansascity/news/2012/08/23/kansas-city-command-bows-out-new-team.html?page=all> (listing Missouri's multiple professional sports teams). Missouri has had a host of other professional sports teams, including the Major League Soccer (MLS) team Sporting Kansas City (formerly the Kansas City

There once was an NBA team in Missouri—the Kansas City Kings—but the organization moved to Sacramento in 1985 and is now known as the Sacramento Kings.⁶ This article synthesizes Missouri-related cases and decisions, demonstrating that the legal issues are quite broad and varied in this area of the law. Some represent significant state and federal sports law cases, including those that have been initiated in or traveled through Missouri via the Eighth Circuit Court of Appeals.⁷ Other examples did not lead to litigation but certainly have a legal flavor and a discussion is warranted in sports law circles.⁸

A. Fantasy Sports

In *C.B.C. Distrib. & Mktg., Inc. v. Major League Baseball Advanced Media, L.P.*,⁹ Major League Baseball Advanced Media (MLBAM), the marketing arm for MLB, claimed that it owned the name and statistics which are used in fantasy sports, much to the chagrin of die-hard fantasy sports addicts.¹⁰ MLBAM claimed that if a company such as C.B.C. Distribution and Marketing (CBC), based in St. Louis, wanted to use MLB statistics for fantasy sports, the company would have to pay to obtain a license to use them from MLBAM. CBC countered that these statistics were public information and a matter of public domain, and that using the statistics did not constitute an infringement on the MLB players' right of publicity, also

Wizards), Major Indoor Soccer League teams St. Louis Steamers and Kansas City Comets, and the Arena Football League (AFL) team Kansas City Command (formerly Kansas City Brigade), which folded in late 2012.

6. See Frank Fleming, *Kansas City Kings*, SPORTS ENCYCLOPEDIA (June 12, 2011), <http://www.sportscyclopedia.com/nba/kcomaha/kckings.html> (detailing history of NBA team Kansas City Kings).

7. See *U.S. Court of Appeals for the Eighth Circuit*, U.S. COURT OF APPEALS FOR THE EIGHTH CIRCUIT, <http://www.ca8.uscourts.gov> (last visited Mar. 3, 2013) (providing information about Eighth Circuit, which is comprised of Arkansas, Iowa, Minnesota, Missouri, Nebraska, North Dakota, and South Dakota).

8. See *Victory Through Jesus Sports Ministry Found. v. Lee's Summit R-7 Sch. Dist.*, 2010 U.S. Dist. LEXIS 54388, at *26-27 (W.D. Mo. June 3, 2010), *aff'd* 640 F.3d 329 (8th Cir. 2011) (recounting such example from 2010 case in which federal district court in Missouri held that local school district's decision to stop distributing flyers to parents through local schools, including flyer for summer soccer camp called *Victory Through Jesus*, was reasonable and did not violate First Amendment or Equal Protection Clause (Fourteenth Amendment) of Constitution since distribution was non-public forum).

9. 443 F. Supp. 2d 1077 (E.D. Mo. 2006) (ruling in favor of C.B.C. and fantasy sport players).

10. See *id.* at 1107 (granting CBC's motion for summary judgment and entering injunction to prevent MLBPA and MLBAM from interfering with CBC's using players' names and playing records on its website and in its fantasy baseball games).

known as the tort of commercial misappropriation. In 2007, the Eighth Circuit Court of Appeals held that the First Amendment (i.e., free speech) right to use this information outweighed any state rights involving rights of publicity.¹¹ Thus, names and statistics are not commercially protectable and remain part of the public domain, at least for now, and much to the pleasure of fantasy sports players and addicts.¹²

B. Tony Twist

In another intellectual property rights case, *Doe v. McFarlane*,¹³ a jury verdict of \$15 million against a comic book creator was affirmed, holding that the use of the plaintiff's name for a character in a comic book series was not entitled to First Amendment protection because it was for the purpose of selling comic books and not as an expressive comment about the plaintiff.¹⁴ Defendant Todd McFarlane created a popular comic book called *Spawn* that featured a villain and fictional Mafia boss named Antonio Twistelli.¹⁵ McFarlane admitted he named his character after the plaintiff, a former professional hockey player with the St. Louis Blues, who also was known as a hockey enforcer.¹⁶

The history of the case is quite convoluted. After a trial, a jury awarded \$24.5 million to Twist in 2000. However, the trial court

11. See *id.*; see also *C.B.C. Distribution & Mktg., Inc. v. Major League Baseball Advanced Media, L.P.*, 505 F.3d 818, 824 (8th Cir. 2007) (recognizing that CBC, which uses trade name CDM Fantasy Sports, is corporation whose primary offices are located in St. Louis, Missouri, and markets, distributes, and sells fantasy sports products, including fantasy baseball games, accessible over Internet). It should be noted that MLBAM had counterclaimed, alleging that CBC's use of Players' Rights and Trademarks violated the federal Lanham Act, Missouri state trademark law, state unfair competition laws, and state false advertising laws. See *C.B.C. Distribution & Mktg., Inc.*, 505 F.3d at 820.

12. See, e.g., David G. Roberts, Jr., *The Right of Publicity and Fantasy Sports: Why the C.B.C. Distribution Court Got It Wrong*, 58 CASE W. RES. L. REV. 223, 230 (2007) (suggesting that not only did CBC court generally misapply appropriate prima facie legal analysis to right of publicity claim, but that court simply did not understand intricacies and true purpose of fantasy sports games); see also Risa J. Weaver, *Online Fantasy Sports Litigation and the Need for a Federal Right of Publicity Statute*, 2010 DUKE L. & TECH. REV. 2, 35 (2010) (offering that "federal statute could alleviate problems that arise from disparate treatment states give to right of publicity.").

13. 207 S.W.3d 52 (Mo. Ct. App. 2006), *aff'd in part and rev'd in part* by *Doe v. TCI Cablevision*, 110 S.W.3d 363 (Mo. 2003).

14. See *id.* at 60, 62 (discussing why precedent in *Doe* binds court to decline First Amendment protection).

15. See Diane Leenheer Zimmerman, *Money as a Thumb on the Constitutional Scale: Weighing Speech against Publicity Rights*, 50 B.C. L. REV. 1503, 1507 (2009) (noting that case pushed Todd McFarlane Productions, Inc. into bankruptcy).

16. See *Doe*, 110 S.W.3d at 367 (reprinting McFarlane's character description of Twist in *Spawn* comic).

entered a judgment notwithstanding the verdict. After a second trial, a jury awarded \$15 million to Twist in 2004. The appellate court affirmed and concluded that McFarlane's use merited no First Amendment protection because the use of Twist's name was predominantly commercial rather than expressive or literary since the primary purpose was to sell comic books.¹⁷

Twist presented evidence that McFarlane intended to create the impression that Twist was associated with McFarlane's comic book, marketed comic books to hockey fans, and induced readers to purchase the comic book in order to see hockey players' names.¹⁸ The circuitous case (and the verdict) was upheld in 2006 after two appeals.¹⁹ In 2007, Twist and McFarlane settled the lawsuit out of court for \$5 million.²⁰ Todd McFarlane Productions, Inc. emerged from bankruptcy in May 2012.²¹

C. Sluggerrr

In a traditional sports torts case, in 2010 the Kansas City Royals and its team mascot Sluggerrr were sued by spectator John Coomer (Overland Park, Kansas) who claimed that he was hit in the eye with a hot dog thrown by the mascot from behind its back at Kauffman Stadium.²² In his complaint, Coomer characterized the mascot as an "agent, servant and/or employee" of the Royals who threw the

17. *See id.* at 365 (outlining procedural history of litigation between Twist and comic book parties); *see also* Melissa Desormeaux, *When Your Rights Depend on Your Paycheck: The Scary Ways Courts are Deciding Right of Publicity Cases*, 12 TUL. J. TECH. & INTELL. PROP. 277, 284 (2009) (noting that Missouri Supreme Court used "'pre-dominant purpose test" to balance First Amendment with publicity rights).

18. *See Doe*, 110 S.W.3d at 371 ("Twist contends, and this Court again agrees, that the evidence admitted at trial was sufficient to establish respondents' intent to gain a commercial advantage by using Twist's name to attract consumer attention to *Spawn* comic books and related products.").

19. *See Doe*, 207 S.W.3d at 76 (discussing how court found no error in previous cases and chose to uphold verdict).

20. *See* Brigid Alverson & JK Parkin, *Todd McFarlane Productions Emerges from Bankruptcy*, COMIC BOOK RESOURCES (May 2, 2012), <http://robot6.comicbookresources.com/2012/05/comics-a-m-todd-mcfarlane-productions-emerges-from-bankruptcy/> (discussing settlement subsequent to \$15 million verdict in favor of Twist).

21. *See id.* ("Todd McFarlane Productions has emerged from bankruptcy after more than seven years, having paid more than \$2.2 million to creditors").

22. *See Man Sues Royals for Sluggerrr Causing Eye Damage with Hot Dog*, KCTV5 (Feb. 23, 2010), <http://www.kctv5.com/story/14780073/man-sues-royals-for-sluggerrr-causing-eye-damage-with-hot-dog-2-23-2010> ("A man has sued the Kansas City Royals for \$25,000 after he claims a hot dog thrown from Royals mascot Sluggerrr caused severe eye damage.").

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hot dog recklessly.²³ As a result of the Sluggerrr's toss, Coomer claimed that the hot dog hit him in the eye and detached his retina.²⁴ Coomer demanded compensatory damages, alleging negligence and battery.²⁵ A jury, however, ruled in favor of Sluggerrr (and the Kansas City Royals) in 2011.²⁶ Accordingly, Coomer was disappointed with the decision.²⁷

D. Handwerker

In *Handwerker v. T.K.D. Kid, Inc.*,²⁸ plaintiff Karen Handwerker appealed the trial court's grant of summary judgment in favor of defendant, T.K.D. Kid, Inc., in a lawsuit for damages for bodily injury which occurred as part of a women's self-defense seminar in which she was subjected to a simulated attack.²⁹ The trial court granted summary judgment for T.K.D. because Handwerker had signed a waiver containing an exculpatory clause in favor of T.K.D., but the appellate court reversed and remanded. The waiver contained the following clause:

I, [plaintiff] understand that there is a risk in participating in above seminar and that I will assume all risks and liabilities in attending said seminar. The sponsor, any

23. See Petition (TF) at 2, *Coomer v. K.C. Royals Baseball Corp.*, No. 1016-CV04073 (Mo. Cir. Feb. 8, 2010), available at <http://kevinunderhill.typepad.com/Documents/Pleadings/Sluggerrr.pdf> (last visited Jan. 21, 2013) (detailing Coomer's complaint against Royals).

24. See *id.* (alleging extent of Coomer's eye injury).

25. See *id.* at 3-4 (stating claims for negligence under doctrine of *respondent superior* for failing to train employees in safe hot dog throwing methods and for battery for intentionally throwing hot dog).

26. See *Jury Rules for Royals in Hurling Hot Dog Lawsuit*, ASSOCIATED PRESS, Mar. 9, 2011, available at <http://www.morningsun.net/newsnow/x698037912/Jury-rules-for-Royals-in-hurled-hot-dog-lawsuit> (noting that "Royals argued that Coomer, a longtime Kansas City fan who . . . attended 175 games, was sitting six rows behind the third-base dugout and should have taken more responsibility for his personal protection."). Byron Shores "played the role of Sluggerrr from February 1996 to October 2009," traveled across the country teaching mascot classes, wore the Truman Tiger costume for the University of Missouri, and was even named Big 8 Mascot of the Year. See *id.* (emphasizing extensive experience of mascot). However, the trial court's judgment was recently reversed and remanded for further proceedings. See *Coomer v. K.C. Royals Baseball Corp.*, 2013 WL 150838 (Mo. Ct. App. Jan. 15, 2013) (reversing and remanding trial court's judgment in favor of K.C. Royals based on, among other things, errors made in instructing jury on assumption of risk).

27. See *id.* (reporting that Coomer stated he was "hugely disappointed" by jury's decision).

28. 924 S.W.2d 621 (Mo. Ct. App. 1996).

29. See *id.* at 622 (holding that exculpatory clauses that do not use terms "negligence" or "fault" or their equivalents are ambiguous).

companies, corporations or employees and/or management of sponsor, companies or corporation promoting this seminar, as well as staff members or instructors of Amanat's Self-Defense System shall not be held responsible in the event of any injury incurred in the course of this seminar. I also acknowledge that I have read this agreement in its [sic] entirety, and that I understand the terms of this agreement and have received a copy for my records.³⁰

The court held that because the exculpatory clause signed by plaintiff did not employ the terms "negligence" or "fault" or their equivalents, a clear and unmistakable waiver had not occurred.³¹

E. Maldonado

In another sports torts case, 2003's *Maldonado v. Gateway Hotel Holdings, L.L.C.*, the Missouri Court of Appeals affirmed the trial court's award of \$13.7 million in compensatory damages to Mexican boxer Fernando Ibarra Maldonado against the Regal Riverfront Hotel owner and the match's promoter, Doug Hartmann Productions, L.L.C.³² The hotel was found negligent for failing to have medical monitoring and an ambulance present at the hotel during the 1999 boxing match, an unthinkable omission by today's standards.³³ The court noted that under the inherently dangerous ac-

30. *Id.*

31. *See id.* (citing *Alack v. Vic Tanny Int'l of Missouri, Inc.*, 923 S.W.2d 330, 337-38 (Mo. 1996)) (stating "[t]he words 'negligence' or 'fault' or their equivalents must be used conspicuously so that a clear and unmistakable waiver and shifting of risk occurs. There must be no doubt that a reasonable person agreeing to an exculpatory clause actually understands what future claims he or she is waiving.").

32. *See Maldonado v. Gateway Hotel Holdings, L.L.C.*, 154 S.W.3d 303 (Mo. Ct. App. 2003), *aff'd* 154 S.W.3d 303, 306 (Mo. Ct. App. 2005) (noting that contract entered between Gateway and Hartmann required Hartmann to secure \$5,000,000 in indemnity insurance and to "provide a doctor at ringside and an ambulance on stand-by at the hotel on the night of the event"). The Regal Riverfront Hotel is currently known as the Millennium Hotel and is located in downtown St. Louis. *See Regal Riverfront becomes Millennium Hotel-St. Louis*, ST. LOUIS BUS. J. (Apr. 9, 2001, 8:38 AM), <http://www.bizjournals.com/stlouis/stories/2001/04/09/daily2.html> (describing change in hotel's name after it was acquired by Millennium Hotels and Resorts in 1999).

33. *See, e.g.*, Adam Epstein, *Body Blow: Boxer Chases Ambulance and Wins Judgment*, 22 ENT. & SPORTS LAW. 12 (2004) (providing commentary on impact of *Maldonado v. Gateway Hotel Holdings, L.L.C.*). *But see* *Gateway Hotel Holdings, Inc. v. Lexington Ins. Co.*, 275 S.W.3d 268, 273 (Mo. Ct. App. 2008) (affirming exclusion clause in general insurance policy, stating that "this insurance does not apply to 'bodily injury' to any person while practicing for or participating in any sports or athletic contest or exhibition that you sponsor," and thus denying Gateway plain-

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tivity exception to landowner liability, a landowner hiring an independent contractor to perform an inherently dangerous activity has a “nondelegable duty to take special precautions to prevent injury from the activity.”³⁴

F. O’Neal

Although it did not establish legal precedent per se, the death of University of Missouri (UM) football player Aaron O’Neal on July 12, 2005 at age 19 garnered national attention and generated discussion over the potential liability for institutions when a student-athlete has the hereditary sickle cell trait in which sickle-shaped blood cells carry less oxygen and can clog blood vessels that flow to the heart and elsewhere.³⁵ O’Neal died after participating in a hot and humid pre-season training session even though some coaches and training staff members were present.³⁶ Unfortunately, the University of Missouri was apparently unaware of his congenital trait.³⁷ After O’Neal’s parents filed a wrongful death suit against UM, UM and the O’Neals reached a \$2 million settlement.³⁸ Other college football players around the country had also died under similar circumstances.³⁹ Partially as a result of O’Neal’s death, in

tiffs’ and Liberty Mutual plaintiffs’ reimbursement for defense costs); see also Kaitlyn Anne Wild ed., *Recent Developments in Sports Law*, 19 MARQ. SPORTS L. REV. 437, 557 (2009) (providing summary of facts and court’s holding in *Gateway Hotel Holdings, Inc. v. Lexington Ins. Co.*).

34. See *Maldonado*, 154 S.W.3d at 307 (quoting *Hatch v. V.P. Fair Found., Inc.*, 990 S.W.2d 126, 134 (Mo. Ct. App. 1999)) (explaining application of inherently dangerous activity exception to landowner liability).

35. See *Mizzou Settles Suit in ‘05 Player Death*, ASSOCIATED PRESS, Mar. 10, 2009, available at <http://sports.espn.go.com/ncf/news/story?id=3968448> [hereinafter *Mizzou Settles*] (noting that O’Neal was St. Louis native and reserve linebacker); see also *Sickle Cell Anemia*, NAT’L INST. OF HEALTH (Feb. 7, 2012), <http://www.ncbi.nlm.nih.gov/pubmedhealth/PMH0001554/> (explaining sickle-cell anemia as disorder in which sickle-shaped blood cells carry less oxygen than regular blood cells and clog blood vessels flowing from heart to elsewhere).

36. See *Mizzou Settles*, *supra* note 35 (noting that NCAA rules prohibit head coaches and their assistants from attending such workouts, which are normally led by strength and conditioning coaches and monitored by trainers).

37. See Dave Matter, *Schools Worry Over Sickle Cell Dangers*, COLUMBIA DAILY TRIB. (June 11, 2009), <http://www.columbiatribune.com/news/2009/jun/11/schools-worry-over-sickle-cell-dangers/> (pointing out that county medical examiner cited lymphocytic meningitis as official cause of death though subsequent medical opinions disagreed with that determination).

38. See *id.* (suggesting that initial estimate of O’Neal’s cause of death was unlikely after posthumous sickle cell diagnosis).

39. See *id.* (noting that study obtained by CBSSports.com determined exertional sickling to be leading cause of death for NCAA football players that decade, including Central Florida receiver Ereck Plancher and North Carolina A&T offensive lineman Chad Wiley).

2007 the National Athletic Trainers' Association (NATA) recommended that college teams screen athletes for the inherited blood disorder.⁴⁰

G. TEAM America

Sports agents suing their clients (or each other) over claims related to defamatory statements, violations of no compete clauses, or tampering by other agents are relatively rare, though the frequency of such suits has increased in recent years.⁴¹ In *Total Economic Athletic Management of America, Inc. v. Pickens*,⁴² a breach of contract case, the Missouri Court of Appeals upheld a \$20,000 verdict for a sports agency (d/b/a Team America) against a former student-athlete Bruce Pickens (University of Nebraska) for wrongful termination of the agency agreement despite the agent's violation of NCAA extra benefit rules.⁴³ The sports agent, Howard Misle, signed a contract with the football player to act as his agent during contract negotiations with the NFL, but Pickens hired a different agent to represent him during the actual negotiations.⁴⁴ The agent sued for breach of contract, and the trial court awarded the agency damages that were upheld on appeal.⁴⁵

H. Pottgen

In *Pottgen v. Missouri State High School Activities Association*,⁴⁶ Edward Leo Pottgen wanted to participate on his school baseball team.⁴⁷ However, Pottgen had been held back for two years in ele-

40. See *Mizzou Settles*, *supra* note 35 (noting some trainers mistake sickle-cell injury for heat exhaustion, muscle cramps, or heart problems).

41. See generally Adam Epstein & Bridget Niland, *Sports Agent Litigation and the Regulatory Environment*, 11 ATLANTIC L.J. 36 (2009) (reviewing general regulatory environment of sports agency and focusing on NCAA-professional league conflicts over athletes still eligible for collegiate participation).

42. 898 S.W.2d 98 (Mo. Ct. App. 1995).

43. See *id.* at 101 (affirming lower court judgment in favor of Team America in anticipatory breach of contract lawsuit). Pickens was drafted third overall in the 1991 NFL draft by the Atlanta Falcons. See *id.* at 103 (noting order in which Pickens was selected during 1991 NFL draft).

44. See *id.* (explaining that Pickens promised to return car and other monetary gifts to Misle after choosing Tom Condon, former Kansas City Chief based in Kansas City, as agent). Misle, a certified NFLPA contract advisor, also owned other businesses, including a car dealership in Lincoln, Nebraska. See *id.* at 102 (describing Misle's other business ventures).

45. See *id.* at 101 (upholding \$20,000 judgment for Team America on appeal). The commission was based on a four percent fee. See *id.* at 108 (calculating expected damages of \$108,000 at rate of four percent commission).

46. 103 F.3d 720 (8th Cir. 1997).

47. See *id.* at 722 (summarizing facts of case).

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mentary school due to a learning disability, which caused him to exceed the maximum age limitation on high school athletic participation.⁴⁸ Courts in Missouri have supported the principle of maximum age rules for participation in high school sports.⁴⁹ Accordingly, the Eighth Circuit Court of Appeals found that the age 19 requirement was essential and agreed with the MSHSAA (which had lost at the district court level) that a waiver of this age requirement “would constitute a fundamental alteration in the nature of the baseball program.”⁵⁰ The court concluded that the age 19 rule did not violate either the Americans with Disabilities Act (ADA) or section 504 of the Rehabilitation Act.⁵¹ More recently, the discussion of the appropriateness of age 19 rules reached the national level in its focus on a Michigan high school student with Down syndrome, whose ability to play sports was also limited by the age ceiling.⁵²

I. Curt Flood

It might be sacrilege to fail to mention the curious case of Curt Flood when discussing Missouri sports law-related decisions. Curt Flood filed a lawsuit with support of Marvin Miller, a former economist with the United Auto Workers (UAW), against MLB challenging the legitimacy of MLB’s reserve clause.⁵³ The reserve clause, a provision in MLB contracts, had been interpreted to mean that once a player signed a professional contract, the MLB team owned the player’s rights in that league for the remainder of their career, unless he was traded.⁵⁴

48. *See id.* (describing how Pottgen came to exceed maximum age limitation on high school athletic participation).

49. *See* EPSTEIN, *supra* note 4, at 253-55 (explaining maximum age rules for participation in high school sports).

50. *See id.* Like most states, Missouri courts have had to intervene in athletic eligibility issues and disputes covering a wide variety of sorts other than disabilities. *See, e.g.,* Letendre v. Missouri State High Sch. Activities Ass’n, 86 S.W.3d 63 (Mo. Ct. App. 2002) (upholding MSHSAA bylaw which prohibited students, in this case 15-year-old female swimmer, from competing on both school and non-school team in same sport during school team’s season).

51. *See* EPSTEIN, *supra* note 4, at 253-55 (concluding that age 19 rule does not violate law).

52. *See* Joshua R. Miller, *Michigan High Schooler with Down Syndrome Gets New Shot at Playing Hoops*, FOX NEWS (May 8, 2012), <http://www.foxnews.com/us/2012/05/08/michigan-high-schools-to-vote-on-challenge-to-age-limit-rule-by-student-with/> (discussing situation involving Eric Dompierre, “19-year-old junior at Ishpeming High School”).

53. *See* EPSTEIN, *supra* note 4, at 350-51 (describing lawsuit).

54. *See id.* (defining “reserve clause”).

Flood, the all-star outfielder, played for the St. Louis Cardinals but refused to accept a trade to the Philadelphia Phillies in 1969, stating:

After twelve years in the major leagues, I do not feel I am a piece of property to be bought and sold irrespective of my wishes. I believe that any system which produces that result violates my basic rights as a citizen and is inconsistent with the laws of the United States and of the several States. It is my desire to play baseball in 1970, and I am capable of playing.

I have received a contract offer from the Philadelphia club, but I believe I have the right to consider offers from other clubs before making any decision. I, therefore, request that you make known to all Major League clubs my feelings in this matter, and advise them of my availability for the 1970 season.⁵⁵

Flood sued MLB and Commissioner Bowie Kuhn in order to become a free agent, arguing that the reserve clause was an unreasonable restraint of trade under the Sherman Act. Flood asserted that a reasonable interpretation of the reserve clause might be that of a one-shot deal, which would give a team the ability to renew a player's contract for only one year not to be built on top of a previous extension. Flood sat out the 1970 season and was traded to the Washington Senators the next year. His career ended when he retired after playing only 13 games for the Senators in 1971.⁵⁶

In 1972 the Supreme Court of the United States, in a 5-3 decision, acknowledged that MLB's antitrust exemption found in the infamous 1922 *Federal Baseball* decision was an anomaly, but it insisted that it was up to Congress to change this antitrust exemption not the Supreme Court.⁵⁷ However, arbitrator Peter Seitz changed

55. Letter from Curt Flood, Player, Major League Baseball, to Bowie K. Kuhn, Commissioner, MAJOR LEAGUE BASEBALL (Dec. 24, 1969), *available at* <http://www.stlcardinalbaseball.com/curt-flood> (providing letter from Curt Flood explaining why he refused to accept trade to Philadelphia Phillies).

56. *See Curt Flood*, STL CARDINAL BASEBALL, <http://www.stlcardinalbaseball.com/curt-flood> (last visited Jan. 29, 2013) (describing Flood's negative reaction to reserve clause).

57. *See Flood v. Kuhn*, 407 U.S. 258, 282 (1972) (referencing *Federal Baseball Club of Baltimore, Inc. v. Nat'l League of Prof'l Baseball Clubs*, 259 U.S. 200 (1922)); *see also* Adam Epstein, *An Exploration of Interesting Clauses in Sports*, 21 J. LEGAL ASPECTS OF SPORT 5, 7-10 (2011) (examining anomalous Supreme Court decision). *But see* Nathaniel Grow, *In Defense of Baseball's Antitrust Exemption*, 49 AM. BUS. L.J. 211, 273 (2012) (offering that even though decision may be anomaly, that net effect of exemption is procompetitive and that Congress has used threats of

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the landscape of MLB and U.S. sports with his arbitration decision in 1975.⁵⁸ Players Andy Messersmith (Los Angeles Dodgers) and Dave McNally (Montreal Expos) challenged the reserve clause after Flood's unsuccessful legal battle. Seitz ruled in December 1975 that baseball's reserve clause granted a team only one additional year of service from a player, putting an end to perpetual renewal right the MLB clubs had claimed for so long. Seitz's decision was appealed to the Eighth Circuit Court of Appeals unsuccessfully.⁵⁹ Free agency began in MLB in 1976 and worked its way to all the other Big Four leagues soon thereafter.⁶⁰

J. NFL Cases: Labor Law and Franchise Relocation

There is a long, storied history of sports law cases involving the Eighth Circuit Court of Appeals focusing primarily on labor relations in professional football.⁶¹ Prominent football figures includ-

removing exemption in order to "extract a variety of valuable concessions from baseball.")

58. See EPSTEIN, *supra* note 4, at 351 (recounting Seitz's arbitration decision that considerably altered sports in America). Mr. Epstein writes that The Curt Flood Act of 1998, 15 U.S.C. § 26b (2011), though generally not the landmark law that was hoped for, was an attempt by Congress to override legislatively the antitrust ruling in the *Federal Baseball* case. See *id.* This Act gave MLB players, like their NBA and NFL counterparts, the right to sue the league under antitrust laws provided they first decertify as a union. See *id.* Still, the Act is limited to certain activities of baseball and has little effect on prior court decisions. See *id.* For example, it does not apply to minor leagues franchise relocation, club ownership, the relationship between the Commissioner and the owners, the relationship with umpires, and others. See *id.*

59. See *Kansas City Royals Baseball Corp. v. Major League Baseball Players Ass'n*, 409 F. Supp. 233, 261 (W.D. Mo. 1976), *aff'd*, 532 F.2d 615 (8th Cir. 1976). Messersmith courted an offer from the Kansas City Royals after becoming a free agent from the Los Angeles Dodgers, but his price tag was too high. See *id.* at 235-36. The Royals then brought the lawsuit defending the reserve system. See *id.*

60. See EPSTEIN, *supra* note 4, at 351 (noting advent of free agency); see also Jerry Crasnick, *Donald Fehr Comfortable in his New Role*, ESPN (Mar. 23, 2012), http://espn.go.com/nhl/story/_/id/7714142/nhlpa-donald-fehr-brings-invaluable-experience-bargaining-table (stating that during Fehr's tenure with MLBPA, average player salary rose from \$289,000 to \$3.24 million, and players won \$280 million collusion judgment in late 1980s). It is worth noting that Donald Fehr was a labor lawyer from Prairie Village, a suburb of Kansas City, Missouri. He assisted the MLBPA in the case. In 1977, Marvin Miller hired Fehr as the MLBPA general counsel. Fehr later served as the executive director of the MLBPA from 1986-2009 and is currently the executive director of the NHLPA. See Kurt Helin, *Some Agents Pushing Donald Fehr to Take over NBA Players Union*, NBC SPORTS (Feb. 15, 2013, 4:35 PM), <http://probasketballtalk.nbcsports.com/2013/02/05/report-some-agents-pushing-donald-fehr-to-take-over-nba-players-union/> (noting Fehr's bargaining success).

61. See, e.g., *Nat'l Football League Players Ass'n v. NLRB*, 503 F.2d 12, 17 (8th Cir. 1974) ("[B]y unilaterally promulgating and implementing a rule providing for an automatic fine to be levied against any player who leaves the bench area while a fight or an altercation is in progress on the football field, [employers] have en-

ing John Mackey, Freeman McNeil, Marvin Powell, and Reggie White have been the named plaintiffs in numerous class action lawsuits which have traveled through St. Louis.⁶² More often than not, the subject matter emanates from appeals from the U.S. District Court in Minneapolis, which appears to be the center of the NFL labor-relations universe.⁶³ Even in 2012, litigation related to decades-old matters weaved its way into the federal judicial system, which runs through the Eighth Circuit.⁶⁴

The following represent summaries of these major NFL cases that have worked their way through the state of Missouri at the fed-

gated in unfair labor practices.”); *Mackey v. Nat'l Football League*, 543 F.2d 606 (8th Cir. 1976) (holding that Rozelle Rule was violation of antitrust law); *Powell v. Nat'l Football League*, 930 F.2d 1293, 1303-04 (8th Cir. 1989) (“[T]he non-statutory labor exemption protects agreements conceived in an ongoing collective bargaining relationship . . . beyond impasse.”); *White v. Nat'l Football League*, 41 F.3d 402 (8th Cir. 1994) (upholding district court’s certification of mandatory class represented by plaintiffs, approval of settlement agreement, and jurisdiction to enjoin related actions). *But see Nat'l Football League v. McBee & Bruno’s, Inc.*, 792 F.2d 726 (8th Cir. 1986) (upholding injunction for NFL and entering permanent injunction against defendants for violations of Copyright Act of 1976, 17 U.S.C. § 101 et seq., and Federal Communications Act, 47 U.S.C. § 705, where restaurant owners violated plaintiffs’ copyright and violated federal communications law by broadcasting games via satellite in blacked out areas); *see also White v. Nat'l Football League*, 585 F.3d 1129 (8th Cir. 2009) (acknowledging that quarterback Michael Vick was entitled to his roster bonuses, despite fact that he pleaded guilty to criminal charges and was suspended indefinitely by league commissioner, and noting that since entry of 1993 consent decree, district court has overseen enforcement of settlement in antitrust class action on numerous occasions, having resolved numerous disputes over terms of Stipulation and Settlement Agreement and collective bargaining agreement that govern player employment in NFL).

62. *See* Richard Sandomir, *Court in Minnesota has been a Home Field for a League’s Labor Disputes*, N.Y. TIMES, Mar. 12, 2011, at SP2, available at <http://www.nytimes.com/2011/03/13/sports/football/13judge.html?pagewanted=all> (noting that named plaintiffs most recently are quarterbacks Tom Brady, Peyton Manning, and Drew Brees).

63. *See* Jay Weiner, *How Minnesota Became the Center of the NFL Labor Universe*, MINNPOST (Mar. 2, 2011), <http://www.minnpost.com/politics-policy/2011/03/how-minnesota-became-center-nfl-labor-universe> (noting that often NFL cases appear in Judge David Doty’s fourteenth floor courtroom downtown, stemming from history of labor advice given to NFLPA by Minneapolis law firm Lindquist & Venum and having jurisdiction because there is NFL franchise in district, Minnesota Vikings, and also noting that lawyer for team owners was Paul Tagliabue, who eventually became NFL Commissioner); *see also Retirees’ Suit vs. NFLPA Dismissed*, ASSOCIATED PRESS, May 29, 2012, available at http://espn.go.com/nfl/story/_/id/7984929/judge-dismisses-retired-players-lawsuit-nflpa (noting that lawsuit filed against NFLPA by retirees was dismissed, yet NFLPA planned to appeal decision to Eighth Circuit Court of Appeals in St. Louis, as is customary).

64. *See* Michael McCann, *Proving That NFL Teams Agreed to a Secret Salary Cap Will Not Be Easy*, SI.COM (May 23, 2012), http://sportsillustrated.cnn.com/2012/writers/michael_mccann/05/23/nfl/index.html (addressing issue involving whether NFL and its teams “secretly impose[d] a salary cap of \$123 million in uncapped 2010 NFL season” and filing of case, *Reggie White, et al. v. NFL*).

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eral level which appear to focus on either player's rights or franchise relocation issues. Unlike professional baseball, as demonstrated by the Curt Flood case, the NFL is not exempt from federal antitrust laws.⁶⁵

II. PLAYER'S RIGHTS

A. Mackey and the Rozelle Rule

In *Mackey v. National Football League*,⁶⁶ future NFL Hall of Fame tight end and NFLPA president John Mackey and 35 other NFL players challenged NFL salaries and the free agency system in place at that time by bringing a class action lawsuit challenging restrictions on player movement.⁶⁷ The Rozelle Rule, named after NFL Commissioner Pete Rozelle, was considered by the players to be an unreasonable restraint of trade because there was no easy way to become a free agent. When a player's contract expired and he signed with a different club, the new club had to compensate the previous club with draft picks, current players, or a sum of money that was either agreed-upon or imposed by the Commissioner before a trade was effective. This, in effect, was professional football's version of baseball's reserve clause. The players claimed that the net effect of the Rozelle Rule was that it kept salaries low, although the NFL argued that it was the byproduct of arms-length collective bargaining in both 1968 and 1970, thereby falling under the non-statutory labor exemption.⁶⁸

The court concluded that in order for the non-statutory labor exemption to apply, collective bargaining resulting from good faith arm's length bargaining must have occurred (which in this case it held it did not). The Rozelle Rule was considered a per se violation at the circuit court level (i.e., a group boycott), but the Eighth Circuit Court of Appeals held that rule of reason analysis was more appropriate. It developed what is now known as the three-prong

65. See, e.g., *Radovich v. Nat'l Football League*, 352 U.S. 445 (1957) (reversing district court and Ninth Circuit Court of Appeals, both of which had held in favor of NFL lineman Bill Radovich, on grounds that *Federal Baseball* was controlling, though Supreme Court held that business of football is clearly engaged in interstate commerce, thereby falling under jurisdiction of federal antitrust laws).

66. 543 F.2d 606 (8th Cir. 1976).

67. See *id.* at 609 (stating that their complaint alleged that defendants' enforcement of Rozelle Rule constituted illegal combination and conspiracy in restraint of trade denying professional football players' right to freely contract for their services).

68. See *id.* at 612-13 (rejecting players' argument that only employee groups are entitled to labor exemption and that it could not be asserted by defendant employer group).

Mackey test, which has been adopted by the Sixth and Ninth Circuit Courts as well.⁶⁹ In the end, the Rozelle Rule, unilaterally created by the owners, was considered an unreasonable restraint of trade because the court determined that the rule was not agreed upon as a result of arm's length bargaining.⁷⁰

B. Powell: Expired CBA Extends Beyond Impasse

In *Powell v. National Football League*,⁷¹ a case emanating from Minnesota, Marvin Powell (New York Jets/Tampa Bay Buccaneers), along with eight other NFL players and the NFLPA, brought an antitrust action against the NFL claiming that the NFL violated antitrust law when it continued to enforce the terms of an expired CBA.⁷² The Eighth Circuit Court of Appeals concluded that the NFL and the players should continue to bargain or present their claims to the National Labor Relations Board (NLRB).⁷³ The court held that the non-statutory labor exemption extends beyond impasse, and therefore, the league was not in violation of antitrust law.⁷⁴ The effect was that unions were forced to decertify in order to gain leverage during the bargaining relationship.⁷⁵ The court concluded that the labor arena is intended to foster negotiated settlements rather than intervention by the courts.⁷⁶

69. *See id.* at 616 (describing bona fide arms-length requirement of bargaining resulting in CBA). That is, a CBA is only exempt from antitrust laws when the (1) restraint primarily affects the parties of the agreement; (2) provision is a mandatory subject of bargaining under the NLRA; and (3) restraint was a product of bona fide arms-length bargaining. *See id.* at 614 (providing principles governing proper accommodation of competing labor and antitrust interests).

70. *See id.* at 616 (finding that there was "substantial evidence to support the finding that there was no bona fide arm's-length bargaining over the Rozelle Rule preceding the execution of the 1968 and 1970 agreements."); *see also* EPSTEIN, *supra* note 4, at 352 (discussing location of national headquarters for NCAA and of NCAA drug testing). A new CBA was reached in 1977 which replaced the Rozelle Rule with a right of first refusal system in which the current club could match other offers. *See id.*

71. 678 F. Supp. 777 (D. Minn. 1988) (presenting action brought by professional football players' union against professional football league alleging certain violations of federal antitrust law).

72. *See generally id.* (holding labor exemptions continue to protect challenged restraints until both parties reach impasses regarding those issues); *see also* EPSTEIN, *supra* note 4, at 353 (introducing lawsuit brought by Marvin Powell, eight NFL players, and NFLPA claiming antitrust violations by NFL).

73. *See Powell v. Nat'l Football League*, 930 F.2d 1293, 1303 (8th Cir. 1988) (offering parties other recourses to relief).

74. *See id.* at 1303-04 (holding that NFL did not violate antitrust law).

75. *See id.* at 1309-10 (Lay, J., dissenting) (arguing that allowing non-statutory labor exemptions to extend beyond impasse would lead to unwanted effects).

76. *See id.* at 1303 (considering policy implications).

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C. McNeil and Unrestricted Free Agency

In *McNeil v. National Football League*,⁷⁷ Freeman McNeil (New York Jets) and seven others, as former members of a now decertified union, sued alleging that the NFL's Plan B free agency violated section 1 of the Sherman Act.⁷⁸ Plan B had been implemented in 1989 and allowed clubs to protect the rights to thirty-seven players from entering the free agent market.⁷⁹ The jury in this antitrust trial found that league compensation rules were more restrictive than reasonably necessary to achieve the objective of establishing or maintaining competitive balance in the NFL. This caused economic harm to the players. The decision led to the establishment of unrestricted free agency in the NFL.

D. White and the NFL Salary Cap

In the class action lawsuit *White v. National Football League*,⁸⁰ the claim by Reggie White (Philadelphia Eagles) led to the unrestricted free agency rights for players, but it also led to a league-wide hard salary cap.⁸¹ In February 1993, the League and a class of NFL players entered into a Stipulation and Settlement Agreement to resolve that litigation.⁸² The settlement agreement (the first CBA since the 1982 CBA expired in 1987) provided that the district court would retain jurisdiction over enforcement of the agreement, the same judge who oversaw the *McNeil* case, Judge David Doty, a President

77. 790 F. Supp. 871 (D. Minn. 1992).

78. *See id.* at 876 (setting forth Count II of plaintiffs' amended complaint and stating that plaintiffs seek to bar such Plan B wage scales that would violate Sherman Act).

79. *See* Mitch Truelock, *Free Agency in the NFL: Evolution or Revolution?*, 47 SMU L. REV. 1917, 1938 (1994) (describing role of Plan B).

80. 822 F. Supp. 1389 (D. Minn. 1993), *motion for final approval of settlement granted*, 836 F. Supp. 1458 (D. Minn. 1993), *aff'd*, 41 F.3d 402 (8th Cir. 1994) (holding that class action certification was appropriate, that proposed settlement was fair, and that objections to settlement did not warrant its disapproval).

81. *See id.* at 1394 (resulting in league-wide salary cap for NFL); *see also generally* Alexander M. Bard, *Strength in Numbers: The Question of Decertification of Sports Unions in 2011 and the Benefit of Administrative Oversight*, 1 AM. U. LABOR & EMP. L.F. 347 (2011) (discussing collective bargaining and NLRA and uncertainties of decertification in professional sports, and supporting notion that NBPA should remain certified as exclusive bargaining agent, and that decertifying either union and attempting to individually bargain for contracts without CBA in place will ultimately hurt players as group).

82. *See id.* (discussing agreements entered into between both parties to stop litigation); *see also* Bard, *supra* note 81, at 361 (noting that *White* case was filed only two weeks after *Powell* case, and that NFL paid \$195 million to class of players and granted greater free agency to NFL players only after decertification of union).

Ronald Reagan appointee.⁸³ In fact, Judge Doty has maintained jurisdiction (i.e., judicial review) over NFL-NFLPA matters and disputes related to this settlement for almost twenty years since, ruling frequently in favor of the NFLPA (i.e., the players).⁸⁴

E. *Brady* and NFL Lockouts

Most recently in 2011, the Eighth Circuit's decision in *Brady v. NFL*, bringing the case before Judge Susan Richard Nelson at the United States District Court for the District of Minnesota, the players (led by quarterback Tom Brady of the New England Patriots) successfully enjoined the NFL from continuing its player lockout.⁸⁵ However, appealing her ruling, the NFL was successful in reinstating the lockout, as the Eighth Circuit Court of Appeals granted both temporary and permanent stays of the district court's ruling before finally upholding the lockout and remanding the case.⁸⁶

83. *See id.* (discussing details of settlement arrangement). The NFL and the NFLPA have extended and amended this agreement five times, most recently in March 2006. *See NFL Lockout*, ESPN (Dec. 5, 2012), http://espn.go.com/nfl/topics/_/page/nfl-labor-negotiations (discussing overall issue of NFL labor negotiations).

84. *See McCann*, *supra* note 64 (noting also, however, that with establishment of ten-year 2011 CBA, Judge Doty might no longer have jurisdiction over NFL-NFLPA matters); *see also* Jarrett Bell, *Timeline of NFL Labor Disputes*, USA TODAY (Mar. 12, 2011), available at http://www.usatoday.com/sports/football/nfl/2011-03-03-nfl-labor-disputes-timeline_N.htm (noting that in 2008, NFL and NFLPA actually agreed to their fifth extension of same White Settlement Agreement in vote of 30-2 by owners, but that in 2008 "owners vot[ed] unanimously to [] opt-out" of CBA, as per early opt-out clause, citing rising costs). Such CBA entered its final year in 2010 in what is known as "uncapped" year. *See id.* (discussing what it means to be uncapped for 2010 CBA).

85. *See Brady v. Nat'l Football League*, 779 F. Supp. 2d 992, 1003-04 (D. Minn. 2011) [hereinafter *Brady I*], *vacated*, 644 F.3d 661 (8th Cir. 2011) (granting NFL players' claim to enjoin NFL from continuing lockout).

86. *See id.* (granting NFLPA injunction blocking NFL from imposing lockout); *see also* *Brady v. Nat'l Football League*, 779 F. Supp. 1043 (D. Minn. 2011) [hereinafter *Brady II*] (denying NFL stay of injunction); *Brady v. Nat'l Football League*, 638 F.3d 1004 (8th Cir. 2011) [hereinafter *Brady III*] (dissolving Nelson's order and granting temporary stay); *Brady v. Nat'l Football League*, 640 F.3d 785, 788 (8th Cir. 2011) [hereinafter *Brady IV*] (granting permanent stay and noting that while imposing lockout, NFL filed complaint with National Labor Relations Board (NLRB) alleging that union decertification was "an unlawful subversion of the collective bargaining process."); *Brady v. Nat'l Football League*, 644 F.3d 661 (8th Cir. 2011) [hereinafter *Brady V*] (opting to terminate union's status as their collective bargaining agent just before collective bargaining agreement expired and order granting preliminary injunction was vacated and case was remanded); *see also* Gabriel Feldman, *Brady v. NFL and Anthony v. NBA: The Shifting Dynamics in Labor-Management Relations in Professional Sports*, 86 TUL. L. REV. 831, 854 (2012) (citing *Brady V*, 644 F.3d at 661; Complaint, *Anthony v. Nat'l Basketball Ass'n*, No. 11-05525 (N.D. Cal. Nov. 15, 2011)) (noting League's argument that owners are insulated from antitrust attack even after players disband union); Sarah S. Vance, *Competition On and Off the Field: An Analysis of the Role of Antitrust Law in the Continuing*

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This decision could be interpreted by other circuits as holding that lockouts are in fact legal, even in the face of decertified unions such as the NFLPA which disbanded (i.e. disclaimed) four hours before the CBA expired on March 12, 2011.⁸⁷

III. FRANCHISE RELOCATION ISSUES

A. St. Louis Rams

In *St. Louis Convention & Visitors Comm'n v. NFL*, the move of the St. Louis Cardinals football team to Phoenix, Arizona, in 1988 caused the Missouri state legislature, the city of St. Louis, and the county to find a replacement by the beginning of the 1995 season.⁸⁸ This resulted in the successful relocation of the Los Angeles Rams in 1995 to St. Louis. However, millions of dollars were spent in order to accomplish the relocation, and the St. Louis Convention and Visitors Center (CVC), the group designed to find a replacement team for the city, sued the National Football League and NFL member teams alleging that these expenditures were made necessary by actions of the NFL in violation of antitrust and tort law.⁸⁹

The St. Louis Rams agreed to pay the NFL fee of \$29 million for moving, of which the CVC would pay \$20 million. In the first year of play, the CVC was unable to meet its financial obligations. "The case was tried before a jury for over four weeks before it en-

Evolution of Professional Sports and Intercollegiate Athletics: Introduction, 86 TUL. L. REV. 823 (2012) (summarizing articles in symposium including Feldman's piece and others, including Michael H. LeRoy, *The Narcotic Effect of Antitrust Law in Professional Sports: How the Sherman Act Subverts Collective Bargaining*, 86 TUL. L. REV. 859 (2012)).

87. See Bard, *supra* note 81, at 367 (discussing how other circuits view opinion); see also Chris Deubert, Glenn M. Wong & John Howe, *All Four Quarters: A Retrospective and Analysis of the 2011 Collective Bargaining Process and Agreement in the National Football League*, 19 UCLA ENT. L. REV. 1 (2012) (examining history of labor negotiations in NFL, including Brady case and 2011 NFL CBA); Clark Griffith, *NFL Ruling Has Changed How Sports Labor Wars are Waged*, SPORTS BUS. J. (May 21, 2012), available at <http://www.sportsbusinessdaily.com/Journal/Issues/2012/05/21/Opinion/Clark-Griffith.aspx> (noting that federal appeals court found that Norris-LaGuardia Act, which states that courts cannot enjoin actions arising from labor matters, barred Nelson's injunction).

88. See *St. Louis Convention & Visitors Comm'n v. Nat'l Football League*, 154 F.3d 851, 856 (8th Cir. 1998) (discussing trial regarding Cardinals' move from St. Louis to Arizona).

89. See Angela Scafuri, *National Football League Relocation Policies Do Not Create an Anticompetitive Environment—St. Louis Convention & Visitors Commission v. National Football League*, 154 F.3d 851 (8th Cir. 1998), 9 SETON HALL J. SPORTS L. 575-81 (1999) (discussing reasoning of case and noting, *inter alia*, that by allowing NFL to impose costly relocation fees, teams would be less likely to float from one city to another).

ded in a judgment in favor of the NFL.”⁹⁰ CVC argued the NFL violated antitrust laws because of its relocation rule which provided that three-fourths of the member clubs must approve any relocation before it could take place, thereby creating anticompetitive effects.⁹¹ Additionally, CVC’s claim of tortious interference with a contract was dismissed, since there was no evidence of intentional interference by the NFL.

On appeal, the Eighth Circuit stated “analysis of whether a restriction’s harm to competition outweighs any procompetitive effects is necessary if the anticompetitive impact of a restraint is less clear or the restraint is necessary for a product to exist at all.”⁹² To prevail, the court stated CVC had to prove “(1) there was an agreement among the league and member teams in restraint of trade; (2) it was injured as a direct and proximate result; and (3) its damages are capable of ascertainment and not speculative.”⁹³ The court found CVC failed to meet these elements. The appellate court also found that CVC failed to show that prior suppression of team movement and the anti-movement atmosphere “effectively prevented all other teams from dealing with CVC” on the lease.⁹⁴ Thus, the district court decision was upheld. Moreover, there was no proof of a violation of antitrust law or another conspiracy.⁹⁵ As a result of the decision, the NFL can impose costly relocation fees.

B. Sports Broadcasting Act of 1961

Although not directly related to any litigation, the Federal Sports Broadcasting Act of 1961 became an issue in 2005 when the NFL had to reschedule a Sunday game between the Kansas City

90. *See St. Louis Convention & Visitors Comm’n*, 154 F.3d at 853 (providing brief summary of case’s procedural history leading up to this appeal).

91. *See Scafuri*, *supra* note 89, at 577 (noting that Article 4.3 of Article IV of NFL’s Constitution, as amended in 1978, requires three-quarters approval rather than unanimous approval as it did prior to that).

92. *See St. Louis Convention & Visitors Comm’n*, 154 F.3d at 861 (noting that CVC must show alleged anticompetitive effect of rule outweighed its procompetitive features).

93. *See id.* (listing elements CVC needed to prove).

94. *See id.* at 862 (upholding ruling of trial court).

95. *Compare St. Louis Convention & Visitors Comm’n*, 154 F.3d at 851, with *L.A. Mem’l Coliseum Comm’n v. Nat’l Football League*, 726 F.2d 1381 (9th Cir. 1984) (describing Los Angeles Rams’ decision to relocate in 1978 from the L.A. Coliseum to new stadium in Anaheim). The NFL did not approve and the Los Angeles Memorial Coliseum Commission filed suit against the NFL for unlawful restraint of trade in violation of section 1 of the Sherman Act. *See id.* After an initial mistrial, the jury in the second trial ruled in favor of the Coliseum and awarded the plaintiffs \$50 million in damages holding that the NFL franchise relocation rules violated federal antitrust laws. *See id.*

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Chiefs and the Miami Dolphins. The game was rescheduled for Friday night because of Hurricane Wilma.⁹⁶ This federal law exempts professional football, basketball, baseball, and ice hockey from Section One of the Sherman Act.⁹⁷ The game was played and televised on October 21, 2005, via CBS television affiliates in Miami and Kansas City without a national telecast. Instead, a tape of the game was re-broadcast on the NFL's cable network on Sunday.⁹⁸ The impending hurricane created a storm under this Act because it allows the NFL to issue blackouts of games when local teams are being telecast and when there has not been a sellout at home. This blackout rule stipulates that games will not be broadcast in home markets (i.e., within a seventy-five-mile radius) unless they are sold out seventy-two hours in advance of the opening kickoff.⁹⁹ The league and the NFL Commissioner have complete control to extend or suspend the deadline. Supposedly, the NFL obtained a waiver from every high school and college within 75 miles of Miami and Kansas City to approve the Hurricane Wilma broadcast.

IV. CONCLUSION

The state of Missouri has had its share of sports law cases and issues. This makes sense particularly with the host of prominent professional and intercollegiate teams within its borders. This article summarized some of the more prominent cases, but others

96. See EPSTEIN, *supra* note 4, at 369-70 (explaining how postponement of game led to invocation of "blackout rule" under Federal Sports Broadcasting Act); see also Sports Broadcasting Act of 1961, 15 U.S.C. §§ 1291-95 (2006).

97. Sports Broadcasting Act of 1961, 15 U.S.C. §§ 1291 et seq. ("The antitrust laws, as defined in section 1 of the Act of October 15, 1914 . . . or in the Federal Trade Commission Act . . . shall not apply to any joint agreement by or among persons engaging in or conducting the organized professional team sports of football, baseball, basketball, or hockey, by which any league of clubs participating in professional football, baseball, basketball, or hockey contests sells or otherwise transfers all or any part of the rights of such league's member clubs in the sponsored telecasting of the games of football, baseball, basketball, or hockey, as the case may be, engaged in or conducted by such clubs.")

98. See EPSTEIN, *supra* note 4, at 370 (chronicling events leading up to invocation of "blackout rule" under Federal Trade Commission Act).

99. See Lacie L. Kaiser, *Revisiting the Sports Broadcasting Act of 1961: A Call for Equitable Antitrust Immunity from Section One of the Sherman Act for All Professional Sport Leagues*, 54 DEPAUL L. REV. 1237, 1246-47 (2005) (noting that only extraordinary conditions can apply for exclusion under "blackout rule"). "Section 1292 of the Sports Broadcasting Act of 1961 also states that 'black outs' of games in a 'home territory' are only allowed when the home team is playing a home game that particular day." *Id.* at 1247. Section 1293 restricts (i.e., prohibits) professional football from broadcasting games after six o'clock on Friday nights and all day Saturday from the second Friday in September to the second Saturday in December on stations within seventy-five miles of any college or high school football contest in order to protect intercollegiate and interscholastic football. See *id.*

worth exploring include the recent Sluggerrr mascot case involving the tossing of a hot dog into the stands, cases involving sports agent contracts and fee disputes, students with disabilities, various sports tort claims, intellectual property ownership, collective bargaining and labor law, and franchise relocation. The state of Missouri remains an active player in litigation and the development of case precedent related to sports and the law, though the Eighth Circuit Court of Appeals in St. Louis has had a significant and national impact on labor relations, particularly with professional football. Missouri's state cases mirror the national discussion in the general categories of tort law, contract law, and so on, representing a moderate impact in sports law. No doubt Missouri should continue to impact both sports law and the sports industry given the presence of Big Four sports franchises in St. Louis and Kansas City, at the confluence of the Missouri and Kansas Rivers, in the heartland of America.

