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A Re-Examination of the Convergence of Antitrust Law and Professional Sports Leagues

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Symposium Articles
**Stitching Together the Past,
Present, and Future of Antitrust Law
in Professional Sports with an American
Needle: Where Do Professional Sports
Leagues Stand After *American Needle v.
National Football League*?**

INTRODUCTION: A RE-EXAMINATION OF THE
CONVERGENCE OF ANTITRUST LAW AND
PROFESSIONAL SPORTS LEAGUES

For nearly a century, federal courts have struggled to apply antitrust law to professional sports organizations. In 1922, the United States Supreme Court's refusal to apply the Sherman Antitrust Act to Major League Baseball in *Federal Baseball v. National League* sparked debate about the proper application of federal antitrust law to professional sports leagues. Continued refusal to subject Major League Baseball to antitrust law indicates that the Court, at one time, considered professional sports leagues worthy of an exception to the law. Recently, however, the Supreme Court chose not to grant the National Football League ("NFL") single entity status in *American Needle v. NFL*.

Over the past ninety years, professional sports leagues and teams have grown in popularity and flourished economically. Sports leagues have become more intricate business enterprises that now engage in complex transactions including cooperative broadcast contacting and revenue sharing. Today, professional sports leagues present a unique business model in which individually owned teams are forced to cooperate to further the interests of their leagues.

This year's annual Villanova Sports & Entertainment Law Journal Symposium, hosted at Villanova University School of Law on January 29, 2011, addressed the fundamental legal and economic arguments surrounding the business of professional sports and the purposes of antitrust legislation. The Symposium consisted of two panels of experts in Sports and Antitrust Law. The speakers provided thoughtful insight into the business dealings of professional sports teams and the economic rationales underlying antitrust law.

The first panel, entitled “Past and Present: A Discussion of the History of Antitrust Law in Sports and the American Needle Case,” examined the historical relationship between federal antitrust regulations and professional sports leagues. Speakers included Clark C. Griffith, practicing attorney and arbitrator, Commissioner of the Northern League and a former owner of the Minnesota Twins; Marc Edelman, Assistant Professor of Law at Barry University Dwayne O. Andreas School of Law; Christopher L. Sagers, Associate Professor of Law at Cleveland State University Marshall College of Law; and Meir Feder, partner at Jones Day, who successfully represented American Needle against the NFL. Mitch Nathanson, Associate Professor of Legal Writing at Villanova University School of Law, served as moderator for the panel.

The second panel, entitled “Future: The Effects and Aftermath of the American Needle Decision,” addressed the future of antitrust immunity and single entity status for professional sports leagues. Speakers included Gary R. Roberts, Dean and Gerald L. Bepko Professor of Law at the Indiana University School of Law—Indianapolis; David G. Feher, partner at Dewey & LeBoeuf LLC, who serves as outside counsel for the National Football League Players’ Association and National Basketball Players’ Association; and Gregory J. Werden, Senior Economic Counsel in the Antitrust Division of the United States Department of Justice. Robert T. Miller, Associate Professor of Law at the Villanova University School of Law, served as moderator for the panel.

The first few articles, written by three Symposium participants, address various aspects of the panel topics. First, Chris Sagers analyzes origins and application of the single entity distinction before and after *Copperweld v. Independence Tube*. Second, Gregory Werden analyzes the Supreme Court’s decision in *American Needle* and suggests an alternative argument to define future actions by professional sports leagues as “core activity” exceptions to the ancillary restraints doctrine as created in *Texaco Inc. v. Dagher*. Lastly, Meir Feder analyzes and refutes lingering arguments for sports league single entity immunity, concluding that *American Needle* requires agreements among separately owned sports teams to be judged by their competitive effects.

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