INSOLVENT PROFESSIONAL SPORTS TEAMS: A HISTORICAL CASE STUDY

by
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The U.S. professional sports industry has recently witnessed a series of high-profile bankruptcy proceedings involving teams from both Major League Baseball ("MLB") and the National Hockey League ("NHL"). In some cases—most notably those involving MLB's Los Angeles Dodgers and the NHL's Phoenix Coyotes—these proceedings raised difficult issues regarding the proper balance for bankruptcy courts to strike between the authority of a professional sports league to control the disposition of its financially struggling franchise's assets and the rights of the debtor team to maximize the value of its property. However, these cases did not mark the first time that a court was called upon to balance the interests of a professional sports league and one of its insolvent teams.

Drawing upon original court records and contemporaneous newspaper accounts, this Article documents the history of two long-forgotten disputes in 1915 for the control of a pair of insolvent franchises in the Federal League of Professional Base Ball Clubs (specifically, the Kansas City Packers and the Indianapolis Hoosiers). In the process, the Article contends that despite the passage of time—and the different factual and procedural postures of the respective cases—courts both then and now have adopted similar approaches to managing litigation between professional sports leagues and their insolvent franchises. Moreover, the Article discusses how the history of these 1915 disputes helps explain why U.S. professional sports leagues have traditionally disfavored public franchise ownership.

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Introduction

The U.S. professional sports industry has recently witnessed a series of high-profile bankruptcy proceedings involving teams from both Major League Baseball ("MLB") and the National Hockey League ("NHL").[1] Over the past five years the Chicago Cubs,[2] Texas Rangers,[3] and Los Angeles Dodgers of MLB,[4] as well as the Phoenix Coyotes[5] and Dallas Stars[6] of the NHL, have each entered the bankruptcy process, primarily to help facilitate the sale of the franchise to a new ownership group.[7] In some cases—most notably the Coyotes and Dodgers proceedings—these bankruptcies were opposed by the teams' respective league, thus raising difficult issues regarding the proper balance to strike between the authority of a professional sports league to control the disposition of its struggling franchises' assets versus the rights of the debtor team to maximize the value of its property.[8]

These recent bankruptcies do not mark the first time that a court was called upon to balance the rights of a professional sports league and an insolvent team. Nearly 100 years ago, a fledgling professional baseball league and two of its franchises engaged in what were, at the time, high profile disputes for control of the teams. Although largely forgotten to-

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[1] *See, e.g.*, Kevin R. Schulz, *Bankruptcy of a Professional Sports Franchise and the Implications for the Franchise and Its Players*, 8 DePaul J. Sports L. & Contemp. Probs. 143, 143 (2012) ("A number of professional sports teams have filed for bankruptcy in recent years in connection with the sale or potential sale of the franchise.").

[2] *See* Richard Sandomir, *Bankruptcy Judge Gives O.K. to Sale of the Cubs*, N.Y. Times, Sept. 25, 2009, at B12, *available at* http://www.nytimes.com/2009/09/25/sports/baseball/25bats.html.

[3] *In re* Texas Rangers Baseball Partners, 431 B.R. 706 (Bankr. N.D. Tex. 2010); *In re* Texas Rangers Baseball Partners, 434 B.R. 393 (Bankr. N.D. Tex. 2010).

[4] *In re* Los Angeles Dodgers LLC, 457 B.R. 308 (Bankr. D. Del. 2011).

[5] *In re* Dewey Ranch Hockey, LLC, 406 B.R. 30 (Bankr. D. Ariz. 2009); *In re* Dewey Ranch Hockey, LLC, 414 B.R. 577 (Bankr. D. Ariz. 2009).

[6] *In re* Dallas Stars, L.P., No. 11-12935, 2011 WL 5829885 (Bankr. D. Del. Nov. 18, 2011).

[7] *See* Schulz, *supra* note 1, at 143 (noting that the Cubs, Rangers, Coyotes, and Stars all filed for bankruptcy in connection with the sale of the franchise).

[8] *See infra* notes 222–54 and accompanying text.

day, in 1915 both the Kansas City Packers and the Indianapolis Hoosiers of the Federal League of Professional Base Ball Clubs ("Federal League")—a short-lived rival to the American and National Leagues—were effectively insolvent as the upcoming season approached. As a result, the Federal League attempted to first transfer the Packers, and then the Hoosiers, to new, better capitalized owners over the objection of both franchises' existing shareholders, who ultimately resisted these efforts with varying degrees of success.[9]

Specifically, the Kansas City Packers filed suit in Illinois state court seeking an injunction to prevent the league from selling its franchise to a new ownership group.[10] The Federal League defended its actions by arguing that it had the authority to seize the team under its constitution due to the franchise's insolvency.[11] Although the court indicated that it would place considerable weight on the Federal League's constitution and bylaws, it nevertheless avoided having to resolve the dispute itself by successfully encouraging a settlement between the parties. Following the settlement of the Kansas City suit—under which the Federal League agreed to drop its plans to transfer the team to new owners—the league turned its attention to the Indianapolis club. Although the Hoosiers' owners also threatened legal action—with one investor actually going so far as to briefly file suit to protect his investment—the team's shareholders ultimately agreed to sell the club to the league to relieve their mounting debt.[12]

Drawing upon both original court records and contemporaneous newspaper accounts, this Article documents the history of both disputes by first briefly introducing the Federal League of Professional Base Ball Clubs, and second providing a detailed account of the legal battles for control of the league's Kansas City Packers and Indianapolis Hoosiers franchises. Finally, the Article compares these litigations to the more recent disputed professional sports team bankruptcies, in the process revealing that despite the passage of time—and the different factual and procedural postures of the respective cases—courts have adopted similar approaches to managing litigation between a professional sports league and one of its insolvent franchises. In particular, both then and now, courts have generally granted some level of deference to the league's internal rules, while at the same time encouraging the parties to amicably settle the dispute. Along the way, the Article will also discuss how the Kansas City and Indianapolis franchises' organizational structures—both were corporations with numerous local shareholders—contributed to their financial struggles, helping to explain why U.S. professional sports

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[9] *See infra* Parts II.B and II.C.

[10] *See infra* notes 90–99 and accompanying text.

[11] *See infra* notes 108–14 and accompanying text.

[12] *See infra* Part II.C.

leagues have traditionally disfavored public ownership of their franchises.[13]

I. The Federal League of Professional Base Ball Clubs

The Federal League was formed as a six-team circuit in 1913 with franchises located in Chicago, Cleveland, Pittsburgh, Indianapolis, St. Louis, and Covington, Kentucky (a suburb of Cincinnati, Ohio).[14] The league did not compete directly with the two established major leagues—the American League and National League—for talent in its inaugural season, but instead primarily targeted local semi-professional players and minor league journeymen, while signing the occasional aging, former major league star as a club manager to boost local ticket sales.[15] This formula successfully enabled most of the Federal League's teams to stay afloat financially in 1913, with the sole exception being the Covington franchise, which had to be transferred to Kansas City, Missouri in June.[16] Emboldened by their initial success, the Federal League's owners began planning a more ambitious campaign for the 1914 season, announcing their intent to compete head-to-head with the two major leagues.[17]

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[13] *See infra* Part III.B.

[14] Daniel R. Levitt, The Battle that Forged Modern Baseball: The Federal League Challenge and Its Legacy 37–38 (2012) ("On March 8, 1913, in Indianapolis, Powers officially incorporated his new organization, which he named the Federal League."); Robert Peyton Wiggins, The Federal League of Base Ball Clubs: The History of an Outlaw Major League, 1914–1915 10 (2009) ("The six cities represented were Chicago, Pittsburgh, Cleveland, St. Louis, Indianapolis, and Cincinnati."); *see also* Jonathan C. Tyras, Comment, *Players Versus Owners: Collective Bargaining and Antitrust After* Brown v. Pro Football, Inc., 1 U. Pa. J. Lab. & Emp. L. 297, 303 n.42 (1998) ("The Federal League started in 1913 as a minor league.").

[15] *See* Levitt, *supra* note 14, at 38 (noting that the Federal League teams mostly "signed top local semi-pro players, mixing in some . . . journeyman Minor League veterans"); Wiggins, *supra* note 14, at 10–11 (noting that "former Pirates pitching star Charles 'Deacon' Phillippe would manage the club in Pittsburgh," while "Cy Young, baseball's most famous pitcher, agreed to manage the Cleveland club"); *see also* Ted Curtis, *In the Best Interests of the Game: The Authority of the Commissioner of Major League Baseball*, 5 Seton Hall J. Sport L. 5, 6 n.3 (1995) ("The Federal League began in six cities, making no pretensions to major league status and respecting the contracts of major league players."); Robert P. Woods, Jr., Comment, *The Development of Baseball's Antitrust Exemption*, 5 Duq. Bus. L.J. 61, 70 (2003) ("Established in 1913, the Federal League began operation as a 'minor league' . . . .").

[16] *See* Wiggins, *supra* note 14, at 17 ("[T]he Covington Federal League Club announced on June 23, 1913, that it would leave town because of low attendance. On June 26, the League voted . . . to transfer the Covington club to Kansas City, Missouri.").

[17] *See* Levitt, *supra* note 14, at 45 (quoting St. Louis Federal League team president Edward Steininger as asserting, "We are going to invade the majors and we will take some of their players, too."); *see also* James R. Devine, *The Racial Re-integration of Major League Baseball: A Business Rather than Moral Decision; Why Motive Matters*, 11

In preparation for its direct challenge to the American and National Leagues, the Federal League restructured its organization and ownership ahead of the 1914 season. First, the owners hired James A. Gilmore—a Chicago business executive—to serve as the circuit's new president in August 1913.[18] The league then admitted two new franchises, placing teams in Baltimore and Buffalo, respectively.[19] Finally, the Federals fortified their ownership ranks by recruiting wealthy Chicago restaurateur Charles Weeghman to take over the Windy City's franchise,[20] while transferring the Cleveland club to Brooklyn under the ownership of New York baking magnates Robert and George Ward.[21]

With an expanded, national circuit of well-financed franchises in place, the Federal League set out to aggressively recruit current major league players throughout the rest of the 1913–14 off-season.[22] The Federals believed they could lawfully sign players away from their current major league teams due to two alleged infirmities in the existing standard player contract.[23] First, every major league player's contract at the

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SETON HALL J. SPORT L. 1, 9 n.41 (2001) ("[T]he Federal League . . . classified itself a major league in 1914.").

[18] *See* WIGGINS, *supra* note 14, at 22 (noting that Gilmore was previously the president of a ventilator manufacturing company); John T. Wolohan, *The Curt Flood Act of 1998 and Major League Baseball's Federal Antitrust Exemption*, 9 MARQ. SPORTS L.J. 347, 352 n.26 (1999) ("Under the leadership of James Gilmore, the Federal League proclaimed itself a third major league in 1914.").

[19] *See* LEVITT, *supra* note 14, at 45 (noting that Baltimore and Buffalo were admitted to the Federal League in November 1913).

[20] *See* WIGGINS, *supra* note 14, at 26 (stating that "Gilmore went about wooing wealthy businessmen to join" the Federal League, including "Charles Weeghman, proprietor of a string of Chicago lunchrooms").

[21] *See id.* at 53–55 (discussing the Ward brothers' bakery business, their subsequent acquisition of the Cleveland franchise, and its transfer to Brooklyn); *see also* David L. Snyder, *Anatomy of an Aberration: An Examination of the Attempts to Apply Antitrust Law to Major League Baseball Through* Flood v. Kuhn *(1972)*, 4 DEPAUL J. SPORTS L. & CONTEMP. PROBS. 177, 182–83 (2008) (noting that the Federal League was "funded by a number of wealthy businessmen").

[22] *See* Devine, *supra* note 17, at 9 n.41 ("Like its predecessors, the Federal League sought to sign major league players to its rosters, thereby legitimating its claim to major league status."); Edmund P. Edmonds, *Over Forty Years in the On-Deck Circle: Congress and the Baseball Antitrust Exemption*, 19 T. MARSHALL L. REV. 627, 630 (1994) ("The Federal League aggressively sought to sign American and National League players and minor league players with reserve clauses."); Snyder, *supra* note 21, at 183 ("[T]he Federal League began to compete with the Major Leagues for the best professional players."); Woods, *supra* note 15, at 71 ("Prior to the start of the 1914 season, the Federal League announced its intentions to . . . directly compete with the National and American Leagues as 'a third major league.'").

[23] *See Federal Wiggles Like a Live One*, SPORTING NEWS, Oct. 23, 1913, at 3 ("The Federals claim the reserve clause is illegal, and has no standing in law, and assume the attitude that they can employ whom they please providing he is not under lawful contract to some of the majors."); *see also* Jennifer M. Recht, Note, *Performance Enhancement: What the Israel Baseball League Can Learn from the Agreement Between Major League Baseball and Japan*, 32 SUFFOLK TRANSNAT'L L. REV. 191, 199 (2008) ("[T]he

time included the so-called "reserve clause," a provision granting the team the right to automatically renew the player's contract for the following season.[24] Because the major league rules required that the player's renewed contract itself include a reserve clause, teams thus controlled their players' services for the entirety of their careers.[25] Meanwhile, the standard player contract at the time also included what was known as the ten-day release clause, a provision entitling teams to terminate their players' contracts with just ten-days' notice for any reason at all.[26] Taken together, the Federals believed these two provisions rendered the major league players' contracts legally unenforceable due to a lack of mutuality, insofar as players were potentially bound for life to their teams, while the teams were obligated to their players for no more than ten days.[27]

Offering large salaries and more favorable contract terms,[28] the Federal League was successfully able to sign approximately 50 major

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Federal League . . . successfully raided players from MLB rosters by not recognizing the MLB's reserve clause.").

[24] *See* Am. League Baseball Club of Chi. v. Chase, 149 N.Y.S. 6, 9 (N.Y. Sup. Ct. 1914) (noting that every major league playing contract at the time was required to include the reserve clause). Specifically, clause ten of the standard player contract provided that the player "agrees and obligates himself to contract with and continue in the service of [the team] for the succeeding season at a salary to be determined by the parties." NATHANIEL GROW, BASEBALL ON TRIAL: THE ORIGIN OF BASEBALL'S ANTITRUST EXEMPTION 8 (2014) (quoting MLB's 1913 standard player contract).

[25] *See* Daniel S. York, Note, *The Professional Sports Community Protection Act: Congress' Best Response to* Raiders*?*, 38 HASTINGS L.J. 345, 353 n.48 (1987) ("The reserve clause served to bind every player to his club indefinitely, because the clause was renewed simply by renewing the contract for the succeeding season."); *see also* Ed Edmonds, *Arthur Soden's Legacy: The Origins and Early History of Baseball's Reserve System*, 5 ALB. GOV'T L. REV. 38 (2012) (documenting the history of the reserve clause).

[26] *See* G. EDWARD WHITE, CREATING THE NATIONAL PASTIME: BASEBALL TRANSFORMS ITSELF 1903–1953, at 49 (1996) ("The ten-day clause allowed a team to dismiss a player on ten days notice . . . . No reasons needed to be given; the only requirement was ten days notice."); Jack F. Williams & Jack A. Chambless, *Title VII and the Reserve Clause: A Statistical Analysis of Salary Discrimination in Major League Baseball*, 52 U. MIAMI L. REV. 461, 473 (1998) (noting that under the standard major league playing contract "a team could release a player at any time with only ten days' notice"). Specifically, clause eight of the standard player contract stated, "[t]he club may, at any time . . . give [the player] . . . ten days' written notice to end and determine all its liabilities and obligations" under the agreement. GROW, *supra* note 24, at 8 (quoting MLB's 1913 standard player contract).

[27] *See Federal Wiggles Like a Live One*, *supra* note 23, at 3 ("The Federals claim the reserve clause is illegal, and has no standing in law, and assume the attitude that they can employ whom they please providing he is not under lawful contract to some of the majors."); *see also* WHITE, *supra* note 26, at 49 (noting that "the coupling of the reserve clause with the 'ten-day clause,' . . . most acutely raised the spectres of unconscionability and lack of mutuality.").

[28] *See* Woods, *supra* note 15, at 71 ("[T]he Federal League offered . . . an annual five-percent salary raise, and free agency after ten years to any player who switched leagues.").

league players for the 1914 season.[29] The most notable of these players was undoubtedly future Hall of Fame shortstop Joe Tinker of the famous "Tinker to Evers to Chance" double-play combination for the Chicago Cubs in the early 1900s, who signed with the Chicago Federal League team (the "ChiFeds") in December 1913.[30] The American and National Leagues aggressively fought back, however, persuading a number of players who had initially jumped to the Federal League to return in exchange for significant raises,[31] while threatening to blacklist those who did not rejoin their major league clubs.[32] The feud between the leagues ultimately resulted in the filing of 13 different lawsuits in 1914, as both sides sought injunctions to prevent their players from jumping back and forth between the leagues.[33]

For example, the most noteworthy of the initial cases between the leagues involved Bill Killefer, a catcher who had originally signed with the ChiFeds in January 1914,[34] only to re-sign with the Philadelphia Phillies two weeks later.[35] In response, the Federal League vowed that it

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[29] The number of major league players signed by the Federal League remains the subject of considerable disagreement, but the best estimate appears to be that reached by Daniel Levitt. *See* LEVITT, *supra* note 14, at 112 (reporting that of the 186 players in the Federal League for 1914, "fifty came from the Major Leagues"). *But see* Joshua P. Jones, Note, *A Congressional Swing and Miss: The Curt Flood Act, Player Control, and the National Pastime*, 33 GA. L. REV. 639, 645 (1999) ("Between 1913 and 1915 as many as 239 major leaguers defected to the Federal League . . . ."); Tyras, *supra* note 14, at 303 n.42 ("After one season, the Federal League began 'offering big money to big-league stars. . . . Eighty-one former major leaguers . . . [and] eighteen men actually under contract' were lured to the new league.") (alterations in original) (quoting GEOFFREY C. WARD & KEN BURNS, BASEBALL: AN ILLUSTRATED HISTORY 121 (1994)).

[30] *See* WIGGINS, *supra* note 14, at 28–31 (discussing Tinker's history and signing with the Federal League).

[31] *See* LEVITT, *supra* note 14, at 92 (stating that the major leagues "immediately contacted" any player signing with the Federal League "and usually offered significant salary increases to return").

[32] *See* Stephen F. Ross, *Monopoly Sports Leagues*, 73 MINN. L. REV. 643, 718 (1989) ("The incumbent leagues responded by threatening to blacklist any players jumping to the Federal League."); Kathleen L. Turland, Note, *Major League Baseball and Antitrust: Bottom of the Ninth, Bases Loaded, Two Outs, Full Count and Congress Takes a Swing*, 45 SYRACUSE L. REV. 1329, 1332 n.11 (1995) ("[T]he National and American Leagues threaten[ed] to blacklist any player who played for a Federal League team.").

[33] GROW, *supra* note 24, at 2 (noting that "thirteen different lawsuits were filed in 1914, with both organized baseball and the Federals seeking injunctions to prevent their players from jumping back and forth between the leagues"); *see also* James R. Devine, *Curt Flood and a Triumph of the Show Me Spirit*, 77 MO. L. REV. 9, 30–32 (2012) (discussing some of the 1914 Federal League-related litigation).

[34] *See* LEVITT, *supra* note 14, at 62 (noting that Chicago announced the signing of Killefer on January 9, 1914).

[35] *See id.* at 92 (stating that "[l]ess than two weeks after his announced signing with the Chifeds, Killefer re-signed for three years with the Phillies" after Philadelphia agreed to more than double his salary).

would sue Killefer to prevent him from returning to the major leagues.[36] The suit was eventually filed on March 20, 1914,[37] with the Federals requesting that Killefer be enjoined from returning to Philadelphia in light of the contract he signed with the ChiFeds.[38] In response, Killefer argued that the Federals were not entitled to injunctive relief because they had themselves acted inequitably by recruiting him even though they knew he was bound to the Phillies under the reserve clause.[39] Killefer's argument ultimately carried the day. Even though the court acknowledged that his 1913 contract was unenforceable for a lack of mutuality,[40] it nevertheless refused to issue an injunction due to the Federal League's unclean hands,[41] a decision eventually affirmed by the Sixth Circuit Court of Appeals.[42]

Despite losing the *Killefer* case, the Federal League nevertheless continued to recruit major league players throughout the 1914 season with modest success. For example, the Federals successfully persuaded star first baseman Hal Chase to defect from the Chicago White Sox in June 1914, following a salary dispute between the player and his former team.[43] The White Sox tried to block Chase's defection, seeking an injunction in New York state court preventing Chase from playing for the

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[36] *See Federals Ready to Sue*, N.Y. TIMES, Feb. 9, 1914, at 8 (reporting that the Federal League announced it would begin legal action against Killefer within ten days).

[37] *See Federal Goes into Court for Killifer*, N.Y. TIMES, Mar. 21, 1914, at 11 (reporting same).

[38] Complaint at 2–3, 6–7, Weegham v. Killefer, 215 F. 168 (W.D. Mich. 1914) (No. 1789), *aff'd sub nom.* Weeghman v. Killifer, 215 F. 289 (6th Cir. 1914).

[39] Answer of William M. Killefer Jr. ¶¶ 3(c), 12, *Killefer*, 215 F. 168 (No. 1789).

[40] *Killefer*, 215 F. at 170 ("The 1913 contract between these defendants, relative to the reservation of the defendant Killefer for the season of 1914, is . . . wholly uncertain and indefinite with respect to salary and also with respect to terms and conditions of the proposed employment. It is nothing more than a contract to enter into a contract, in the future, if the parties can then agree to contract. Although it is founded upon sufficient consideration, it lacks mutuality . . . .").

[41] *Id.* at 172–73 ("Knowing that the defendant, Killefer, was under a moral, if not a legal, obligation to furnish his services to the Philadelphia Club for the season of 1914, [the Federal League] sent for him, and by offering him a longer term of employment and a much larger compensation induced him to repudiate his obligation to his employer. In so doing a willful wrong was done to the Philadelphia Club, which was none the less grievous and harmful because the injured party could not obtain legal redress [against Killefer] in and through the courts of the land."); *see also* James R. Devine, *Baseball's Labor Wars in Historical Context: The 1919 Chicago White Sox as a Case-Study in Owner–Player Relations*, 5 MARQ. SPORTS L.J. 1, 43–44 (1994) (discussing the *Killefer* case); Richard L. Irwin, *A Historical Review of Litigation in Baseball*, 1 MARQ. SPORTS L.J. 283, 289 (1991) (same); Casey Duncan, Note, *Stealing Signs: Is Professional Baseball's United States–Japanese Player Contract Agreement Enough to Avoid Another "Baseball War"?*, 13 MINN. J. GLOBAL TRADE 87, 105 (2004) (same).

[42] Weeghman v. Killifer, 215 F. 289 (6th Cir. 1914).

[43] *See* WIGGINS, *supra* note 14, at 129–30 (discussing Chase's departure from Chicago and his subsequent signing with the Federal League).

Buffalo Federals.[44] In his defense, Chase argued that the major leagues had illegally monopolized the professional baseball industry, inequitable conduct that he alleged disentitled them from receiving injunctive relief.[45] When the New York court issued its decision several weeks later it refused to grant an injunction, determining that Chase's prior contract with Chicago lacked mutuality and therefore was legally unenforceable.[46] With respect to Chase's antitrust claim, although the New York court determined that organized baseball was not subject to federal antitrust law—concluding that the sport was not commerce[47]—it nevertheless found that the major leagues had illegally monopolized the game under state common law.[48] Consequently, the two sides ultimately battled to a draw in their 1914 litigation, with the Federal League winning some of the lawsuits and the two major leagues winning others.[49]

By the end of 1914, the American, National, and Federal Leagues had each sustained significant financial losses, due not only to their considerable litigation-related expenses, but also the elevated salaries the

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[44] *See id.* at 130 (noting that the White Sox "secured a temporary injunction from Justice Pooley of the state supreme court restraining Chase from playing anywhere in the state of New York").

[45] *See Chase's Side of His Case*, N.Y. TIMES, July 2, 1914, at 10 (summarizing Chase's argument).

[46] American League Baseball Club of Chi. v. Chase, 149 N.Y.S. 6, 14 (N.Y. Sup. Ct. 1914) ("Can it fairly be claimed that there is mutuality in such a contract? The absolute lack of mutuality, both of obligation and of remedy, in this contract, would prevent a court of equity from making it the basis of equitable relief by injunction or otherwise. The negative covenant, under such circumstances, is without a consideration to support it, and is unenforceable by injunction.").

[47] *Id.* at 17 ("Baseball is an amusement, a sport, a game that comes clearly within the civil and criminal law of the state, and it is not a commodity or an article of merchandise subject to the regulation of Congress on the theory that it is interstate commerce.").

[48] *Id.* ("'Organized baseball' is now as complete a monopoly of the baseball business for profit as any monopoly can be made. It is in contravention of the common law, in that it invades the right to labor as a property right, in that it invades the right to contract as a property right, and in that it is a combination to restrain and control the exercise of a profession or calling."); *see also* Devine, *supra* note 41, at 44–48 (discussing the *Chase* case); Snyder, *supra* note 21, at 180–82 (same); Anthony Sica, Note, *Baseball's Antitrust Exemption: Out of the Pennant Race Since 1972*, 7 FORDHAM INTELL. PROP. MEDIA & ENT. L.J. 295, 316–18 (1996) (same).

[49] *See* GROW, *supra* note 24, at 61 (reporting that "the final tally for the 1914 court cases revealed that organized baseball and the Federals had battled to a draw, with the major leagues coming out on top in the *Killefer* and *Marsans* decisions, while the Federal League had ultimately won the *Chase* and *Chief Johnson* cases"). Like the *Chase* case, the Armando Marsans and George "Chief" Johnson litigations also involved players defecting to the Federal League in mid-season. *See* LEVITT, *supra* note 14, at 127–28 (discussing the *Marsans* case); WIGGINS, *supra* note 14, at 75–76 (discussing the *Johnson* case); *see also* Devine, *supra* note 33, at 31–32 (noting that the injunction against Marsans was eventually dismissed in 1915).

leagues had been forced to pay to retain their players.[50] As a result, both sides appeared amenable to a potential settlement of the dispute, engaging in sporadic settlement discussions during the fall of 1914; ultimately, however, the parties were unable to reach an agreement.[51] With no peaceful resolution in sight, the Federals instead opted to pursue a different course of action.

Specifically, on January 5, 1915, the Federal League filed a federal antitrust suit against the two major leagues in federal district court in Chicago.[52] The suit alleged that the American and National Leagues had illegally monopolized the professional baseball industry, and had entered into a conspiracy to destroy the Federal League.[53] The case was assigned to Judge Kenesaw Mountain Landis, a nationally recognized "trust-buster" following his imposition of a then-record verdict against the Standard Oil Company.[54] Landis, however, was also a well-known baseball fan,[55] and consequently was forced to "reconcile his love for baseball with his antitrust jurisprudence" when presiding over the Federal League's lawsuit.[56]

Beginning on January 20, 1915, Landis held a four-day hearing in the suit to consider the Federal League's request for a preliminary in-

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[50] *See* WILLIAM A. COOK, AUGUST "GARRY" HERRMANN: A BASEBALL BIOGRAPHY 195 (2008) (suggesting that the two major leagues spent over $25,000 on attorneys fees in 1914); WIGGINS, *supra* note 14, at 163–64 (noting that several Federal League teams were estimated to have lost anywhere from $60,000 to over $100,000 in 1914).

[51] *See* LEVITT, *supra* note 14, at 149–60 (summarizing 1914 settlement discussions between the Federal League and the two major leagues).

[52] Fed. League of Prof'l Baseball Clubs v. Nat'l League of Prof'l Baseball Clubs, Equity Case No. 373 (N.D. Il. filed Jan. 5, 1915); *see* Edmonds, *supra* note 22, at 630–31 ("[T]he Federal League filed an antitrust action in Chicago on January 5, 1915."); *see also* Devine, *supra* note 33, at 32–33 (discussing suit).

[53] *See* GROW, *supra* note 24, at 65 (noting that the Federals' "complaint asserted three primary legal claims against the major leagues: (i) that they had formed an illegal monopoly in violation of federal antitrust law, (ii) that their illegal monopoly also violated state antitrust law, and (iii) that they had conspired to injure or destroy the Federal League"); *see also* Snyder, *supra* note 21, at 183 ("In 1915, the Federal League filed suit under the Sherman Act to have the National Agreement between the National and American Leagues declared invalid and to have all Standard Player Contracts of Major League Baseball declared null and void.").

[54] *See* Thomas J. Ostertag, *Baseball's Antitrust Exemption: Its History and Continuing Importance*, 4 VA. SPORTS & ENT. L.J. 54, 55 (2004) ("The Federal League also filed an antitrust lawsuit against the National and American Leagues, which ended up before a young federal judge in Chicago named Kenesaw Mountain Landis."); Shayna M. Sigman, *The Jurisprudence of Judge Kenesaw Mountain Landis*, 15 MARQ. SPORTS L. REV. 277, 295 (2005) ("In the aftermath of *Standard Oil*, Landis gained a national reputation as a 'trust-buster.'").

[55] *See* J. G. TAYLOR SPINK, JUDGE LANDIS AND TWENTY-FIVE YEARS OF BASEBALL 18 (1947) (stating that Landis frequently attended baseball games and that "[e]ven after he became a federal judge, he remained a noisy, vociferous rooter" for the Chicago Cubs).

[56] Sigman, *supra* note 54, at 296.

junction.[57] The issue of jurisdiction took center stage during the hearing, with the parties disputing whether federal antitrust law applied to professional baseball, and thus whether a federal court could properly entertain the Federal League's lawsuit.[58] Judge Landis was expected to release his opinion shortly after the hearing,[59] but eventually withheld the decision for over a year in the hope that the parties would reach an amicable resolution out of court.[60]

As the parties awaited a decision from Judge Landis, the Federals began to prepare for the 1915 season by seeking additional investors for their league. In particular, Federal League president Jim Gilmore successfully persuaded Oklahoma oil tycoon Harry F. Sinclair to purchase a franchise in the circuit.[61] The Federals initially planned to sell Sinclair

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[57] *See* James Crusinberry, *Federal League Opens Court Battle Against O.B.*, CHI. DAILY TRIB., Jan. 21, 1915, at 9 (noting the opening of the hearing); *see also* Jason M. Pollack, Note, *Take My Arbitrator, Please: Commissioner "Best Interests" Disciplinary Authority in Professional Sports*, 67 FORDHAM L. REV. 1645, 1650–51 (1999) (discussing the Federal League's antitrust suit before Judge Landis).

[58] *See* Stanley T. Milliken, *Two Pitchers Let Go By Manager Griffith*, WASH. POST, Jan. 26, 1915, at 8 (noting that the jurisdiction issue appeared to be the biggest question in the case); *see also* GROW, *supra* note 24, at 77–92 (summarizing the proceedings before Judge Landis).

[59] *Baseball Fans Await Decision of Judge Landis*, CHRISTIAN SCI. MONITOR, Jan. 25, 1915, at 14 (reporting that Judge Landis was expected to release his decision in approximately three weeks' time).

[60] Following a settlement between the parties, Judge Landis eventually dismissed the matter in February 1916. In the process, he explained from the bench his reasoning for withholding a decision in the suit: "From a legal point of view, it would have been easily solved; but my acquaintance from watching the game as a spectator for 30 years convinced me that a decision, if not destructive, would have been injurious. Neither side would have walked from the court a victor, so I decided, not only from a judicial view, but on my own discretion, to postpone a decision" *Judge Landis Dismisses the Baseball Suit*, CHRISTIAN SCI. MONITOR, Feb. 7, 1916, at 16; *see also* Mitchell Nathanson, *The Sovereign Nation of Baseball: Why Federal Law Does Not Apply to "America's Game" and How It Got That Way*, 16 VILL. SPORTS & ENT. L.J. 49, 67–68 (2009) (stating that Landis "refused to rule on the Federal League's antitrust suit against the National and American leagues, choosing instead to wait out the Federal League until it had virtually exhausted itself out of existence"); Matthew J. Parlow, *Professional Sports League Commissioners' Authority and Collective Bargaining*, 11 TEX. REV. ENT. & SPORTS L. 179, 184 n.26 (2010) ("Due to Landis's efforts, the National League and Federal League negotiated a settlement in the case."); Michael W. Klein, Comment, *Rose Is in Red, Black Sox Are Blue: A Comparison of* Rose v. Giamatti *and the 1921 Black Sox Trial*, 13 HASTINGS COMM. & ENT. L.J. 551, 558 (1991) (stating "Landis withheld judgment" in the Federal League's antitrust suit in order "to force a settlement").

[61] *See* WIGGINS, *supra* note 14, at 186 (noting that Sinclair was the "founder and president of Sinclair Oil Company," and would become "one of the [Federal] league's chief magnates and investors in 1915"). Sinclair would later gain notoriety for his involvement in the Teapot Dome scandal, serving six months in prison after his oil company bribed Secretary of the Interior, Albert Fall, to obtain oil rights on government land in Wyoming. *See* Edward McGlynn Gaffney, Jr., *The Principled Resignation of Thomas More*, 31 LOY. L.A. L. REV. 63, 63 n.2 (1997) (reporting that

the league's struggling Kansas City franchise, on the understanding that the oil baron would then relocate the team to Newark, New Jersey.[62] As Gilmore and the rest of the Federal League would quickly discover, however, the Kansas City club's shareholders intended to vigorously challenge any such transfer in court.

II. The Federal League Insolvencies of 1915

A. The Prelude to Litigation

The Federal League's Kansas City Packers struggled both on the field and at the gate during the 1914 season, and as a result by September the team was unable to meet its payroll. Consequently, the Federal League's central office was forced to step in to pay Kansas City's players on behalf of the franchise.[63] That fall, Federal League president Jim Gilmore instructed the team's shareholders that they would have to raise $100,000 in new capital to retain the franchise for 1915.[64] Although the Packers' board of directors was confident it could attract enough new investors to raise the necessary funds, the team's fundraising efforts ultimately fell far short of the mark.[65] Consequently, the Federal League began exploring new ownership possibilities for the franchise.[66]

By early February, news reports emerged that the Packers would be sold to Harry Sinclair and his business partner Pat Powers, who intended to relocate the club to Newark.[67] Although Gilmore initially denied the reports,[68] he eventually admitted several days later that the team had been transferred "on account of inability [sic] of Kansas City people to

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"Sinclair spent six and one-half months in prison for contempt of court and contempt of the U.S. Senate"); Michael Edmund O'Neill, *The Fifth Amendment in Congress: Revisiting the Privilege Against Compelled Self-Incrimination*, 90 Geo. L.J. 2445, 2502 (2002) (discussing Sinclair's involvement in Teapot Dome).

[62] *See* Levitt, *supra* note 14, at 198–99 (describing the Federals' initial intent to transfer the Kansas City franchise to Sinclair).

[63] *See id.* at 198 (stating that the Federal League "had lent Kansas City $5,000 to meet payroll" in early September 1914).

[64] *See id.* (noting that "Gilmore, however had told [Kansas City executive Charles] Madison that if the stockholders raised $100,000 the franchise could be reinstated in Kansas City").

[65] *See* Aff. of James A. Gilmore at 10–11, Fed. Baseball Co. of Kan. City, Mo. v. Fed. League of Prof'l Base Ball Clubs, No. B. 8905 (Cook Cnty. Ill. Cir. Ct. Feb. 25, 1915) (stating that the Kansas City shareholder admitted before December 10, 1914, that their fundraising attempt had failed, and that they had abandoned the attempt).

[66] *See id.* at 11 (explaining that the Federal League "endeavored to find a purchaser for [the Kansas City] franchise" after the club's fundraising efforts had failed).

[67] *See Federal Franchise Is "Given" Newark*, Wash. Post, Feb. 5, 1915, at 8 (reporting that the Kansas City franchise will be sold and transferred to Newark).

[68] *It's Up to Kansas City*, Kan. City Star, Feb. 7, 1915, at 12A (quoting Gilmore as stating, "The stories that we have transferred the Kansas City franchise are pure bunk.").

raise sufficient funds to properly finance the Federal league."[69] In response, Kansas City's shareholders denied any knowledge of the sale,[70] contending that the time they had been allotted to raise additional funds had not yet expired.[71] Moreover, although Packers officials initially acknowledged that the league "probably has the authority to transfer the franchise without consulting officials of the local company,"[72] and that they had struggled to raise the necessary capital to fund the team for 1915,[73] they nevertheless declared that they would continue their fundraising efforts.[74]

Despite the Packers shareholders' stated desire to keep their team, Jim Gilmore publicly shot down any suggestion that the club would remain in Kansas City: "We gave the people of Kansas City the opportunity to save the team for their town, but they failed to give us sufficient guarantees in time . . . ."[75] Behind the scenes, though, Gilmore informed Packers officials that the league might be willing to transfer the similarly struggling Indianapolis Hoosiers to Newark instead.[76] Indeed, despite winning the Federal League championship in each of its first two years, Indianapolis had struggled to attract fans and as a result was reportedly facing a significant financial shortfall.[77] Consequently, Gilmore reportedly encouraged the Kansas City club to continue its fundraising efforts.[78]

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[69] *Newark or St. Paul to Get Kansas City Club in the Federal League*, ATLANTA CONST., Feb. 9, 1915, at 8 (quoting a telegram from Gilmore).

[70] *See Powers Admits Buying Kawfeds*, CHI. DAILY TRIB., Feb. 8, 1915, at 14 ("Officers and directors of the local [Kansas City] Federal league club tonight asserted they knew nothing of the transfer of the Kansas City franchise to Patrick T. Powers.").

[71] *Newark or St. Paul to Get Kansas City Club in the Federal League*, *supra* note 69, at 8 (reporting that Kansas City "[o]fficials contend that the time granted by the league for the raising of the necessary money has not yet expired").

[72] *Powers Admits Buying Kawfeds*, *supra* note 70, at 14 (quoting Kansas City team president Charles Baird).

[73] *See id.* (stating that Kansas City team president Charles Baird "admitted difficulty had been encountered in raising the fund of $100,000 necessary to maintain a club in Kansas City").

[74] *See Will Continue to Raise Funds to Retain Club*, CHRISTIAN SCI. MONITOR, Feb. 9, 1915, at 20 (reporting that the "directors of the Kansas City Federal league club . . . announced that subscriptions to a fund being raised to retain the franchise would not be discontinued").

[75] *Federal League Ball Club Lost to Kansas City*, CHRISTIAN SCI. MONITOR, Feb. 10, 1915, at 16.

[76] *See* Aff. of James A. Gilmore, *supra* note 65, at 16.

[77] *See* James Crusinberry, *New York May Get Indianapolis Federal Club*, CHI. DAILY TRIB., Feb. 13, 1915, at 9 ("Although the Hoofeds won the pennant last season, they failed to draw well and made no money . . . ."); *Indianapolis Wins Flag*, N.Y. TIMES, Oct. 8, 1914 ("By winning from St. Louis 4 to 0 today the [Hoosiers] for the second time in two years captured the Federal League pennant.").

[78] *Up to Kansas City Now*, KAN. CITY STAR, Feb. 12, 1915, at 10 (reporting that Gilmore told Kansas City team attorney C.C. Madison to "[k]eep right on taking subscriptions").

Gilmore changed his tune several days later, though. After receiving a positive report from the Hoosiers' team officials regarding the club's outlook for the upcoming season, he announced to the press that Indianapolis would retain its franchise.[79] Gilmore then reaffirmed that there was no hope for Kansas City to keep its team, contending that the franchise had been forfeited to the league months before.[80]

With the prospects for retaining their club in 1915 looking increasingly dire, Kansas City's stockholders met to discuss their options.[81] Following the meeting, the shareholders insisted that the proposed relocation of their team to Newark was unlawful and threatened to sue the league if it followed through on its plans.[82] In fact, the club's attorneys reportedly believed that the law was so strongly on their side that "they ha[d] a case the league [could] not beat."[83]

Before filing suit, however, the shareholders decided to make one last appeal to the league in the hope of amicably retaining their team. Several club officials traveled to Chicago to meet with Gilmore at the Federal League's headquarters on February 25, 1915, to discuss the franchise's future.[84] During a three-hour meeting that morning, Gilmore reportedly informed the Packers' representatives that there was no way they could save their team.[85] In response, the club's officials demanded an accounting of their debt to the league, only to be told by Gilmore that he would not accept their money at this point even if they could

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[79] *See Newark or the Bronx: Federals Undecided Where to Place Kansas City Team*, N.Y. TIMES, Feb. 16, 1915, at 10 (quoting Gilmore as stating "Indianapolis will stick in the league").

[80] *See* James Crusinberry, *Federal League to Rule Against 'Emery' Hurlers*, CHI. DAILY TRIB., Feb. 21, 1915, at 4 (quoting Gilmore as stating, "There is nothing to these reports from Kansas City that the fellows down there will keep the club. They forfeited their franchise long ago.").

[81] *See Has Gilmore the Power?*, KAN. CITY STAR, Feb. 18, 1915, at 8 (reporting that the team's "directors, stockholders and their attorneys" held a meeting that morning to consider their options).

[82] *See id.* (quoting an unnamed Kansas City shareholder as stating, "After consultation with their attorneys the officials and stockholders of the club believe that President Gilmore has acted beyond his rights in selling the franchise and regardless of any action or attempted action on Gilmore's part we believe that the franchise is still the property of the Federal baseball club of Kansas City. And furthermore, plans for definite action are under way.").

[83] *The Feds Pass New York*, KAN. CITY STAR, Feb. 25, 1915, at 8.

[84] *See Off to Buffalo Meeting*, KAN. CITY TIMES, Feb. 25, 1915, at 8 (reporting that D.J. Haff, a company director, and Solon T. Gilmore, a team attorney, traveled to Chicago to meet with Federal League president Jim Gilmore).

[85] *See* James Crusinberry, *Owners Sue to Keep Kawfeds*, CHI. DAILY TRIB., Feb. 26, 1915, at 9 (stating that during a "three hour conference" the Kansas City delegation was "told by Gilmore that it was too late and that there was no chance now for Kansas City to keep its franchise").

immediately repay their loans.[86] After subsequently conferring with the league's legal counsel, however, Gilmore modified his position by agreeing to accept the entire $38,000 allegedly owed by the team if the Packers' representatives could deliver it to him that day.[87] Unable to secure such an amount on short notice, the Kansas City delegation instead rushed to the courthouse to file suit against the Federal League.[88]

B. Federal Baseball Company of Kansas City, Missouri v. Federal League of Professional Base Ball Clubs[89]

Kansas City filed its complaint with Judge Jesse A. Baldwin of the Circuit Court of Cook County in Chicago, Illinois.[90] In the complaint, the Packers' shareholders argued that they had been awarded a permanent franchise in the Federal League,[91] a right that they insisted could only be forfeited through "a majority vote of [the Federal League's] Board of Managers, at a regularly called meeting."[92] Kansas City further maintained that the team had—with several minor exceptions—"fully kept and performed all of the conditions . . . imposed upon it by the terms of" its franchise agreement with the league.[93] In particular, the Packers admitted that the league office had loaned the team money late in the 1914 season, but argued that these loans had been fully repaid after the club allowed the league to keep the team's share of ticket revenues from its final road games played in Indianapolis and Chicago that year.[94] The complaint then asserted that the shareholders were "ready,

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[86] *See id.* (noting that Kansas City's officials "demanded a statement of their account" from Gilmore and "were told by the league president that he would not accept their money if they did offer to pay him").

[87] *See id.* (reporting that Gilmore "talked by long distance to Attorney Gates of Indianapolis, counsel for the league," and then said that if Kansas City's officials could bring him approximately $38,000 in cash "he would let the men know what he would do with it").

[88] *See id.* (noting that Kansas City's officials "rushed to Judge Baldwin's court" after meeting with Gilmore "and secured a temporary injunction").

[89] No. B. 8905 (Cook Cnty. Ill. Cir. Ct. filed Feb. 25, 1915).

[90] Bill of Complaint at 1, *Fed. Baseball Co.*, No. B. 8905; *see also* Crusinberry, *supra* note 85, at 9 (noting that the case was filed "in Judge Baldwin's court").

[91] Bill of Complaint, *supra* note 90, at 2 ("[O]n or about the 28th day of February, 1914, [the Federal League] made, executed and delivered to [Kansas City], a certain written instrument designated 'A franchise' under and by the terms of which written instrument, defendant purported to grant to [Kansas City], the right to maintain a ball club in said league, perpetually . . . .").

[92] *Id.* at 3.

[93] *Id.*

[94] *Id.* at 3–4 ("[O]n or about September 8, 191[4], and at various times thereafter . . . defendant loaned and advanced to [Kansas City], various sums of money to be used . . . in maintaining and operating its said ball club, and also received from the treasurers of . . . the clubs representing Indianapolis, Indiana, and

able and willing to repay" any remaining loans from the league, and had in fact twice demanded an accounting of their debt.[95] Nevertheless, the complaint alleged, the league had "refused to make any itemized statement . . . of the amount due," instead providing only "a pretended statement containing many items for which [Kansas City] is not liable."[96]

The Packers' complaint went on to state that the Federal League intended to formally approve the forfeiture of the Kansas City franchise at a league meeting the next day in Buffalo,[97] an act that, if successful, would inflict an irreparable injury on the team's current shareholders.[98] Consequently, the Packers asked the court to preliminarily enjoin the Federal League from approving the forfeiture of the franchise, or from transferring the team to another city or owner.[99]

Judge Baldwin granted Kansas City a temporary injunction that afternoon, pending a full hearing in the matter that he scheduled for early March.[100] Knowing that President Gilmore was scheduled to depart late that afternoon by train for the next day's Federal League meeting in Buffalo, Kansas City's attorneys then raced to the train station to formally serve the injunction papers on Gilmore before he left town.[101]

As news of the temporary injunction spread, the Packers' shareholders appeared confident that the suit would force the Federal League to abandon its planned transfer of their franchise. D.J. Haff, a member of the club's board of directors, announced that "[t]he Kansas City in-

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Chicago, Illinois, various and sundry sums of money due from them to this complainant, for which this complainant is entitled to credit . . . .").

[95] *Id.* at 4.

[96] *Id.*

[97] *Id.* at 5 ("[D]efendant is now threatening, intending to, is about to, and will, on Friday, February 26, 1915, at a meeting of its Board of Managers called for that day . . . make and declare a pretended forfeiture . . . and will transfer the [Kansas City franchise] to other parties . . . .").

[98] *Id.*

[99] *Id.* at 6–7 ("[Kansas City] further prays that the court issue a restraining order herein restraining and prohibiting the defendant from forfeiting or transferring said franchise to any other person, association or corporation, pending a further hearing in this matter . . . .").

[100] *See Injunction Halts Federal League*, N.Y. TIMES, Feb. 26, 1915, at 10 (reporting that Judge Baldwin granted Kansas City a temporary injunction preventing the Federal League from transferring its franchise). The hearing was initially scheduled for March 5, 1915, but was ultimately postponed until Monday, March 8 in order to accommodate a scheduling conflict on the part of Kansas City's counsel. *See Packer Suit Postponed*, KAN. CITY TIMES, Mar. 4, 1915, at 8 (reporting that the hearing was "postponed until Monday" because "John M. Zane, the Chicago attorney who is handling the case for the [Kansas City] stockholders, has been called to Colorado on a very important case and cannot return to Chicago before Sunday"); Crusinberry, *supra* note 85 (noting that the hearing was initially scheduled for March 5, 1915).

[101] *See* Crusinberry, *supra* note 85 ("Just before the train pulled out of the La Salle street station at 5:30 p.m. the papers were served on President Gilmore of the Federal league, who was leaving to attend the schedule meeting of the league in Buffalo . . . .").

junction was a complete bombshell. Our opponents are greatly worried."[102] Indeed, multiple news outlets reported that the Federals were once again considering whether to transfer the Indianapolis Hoosiers to Newark instead due to Kansas City's lawsuit.[103] Federal League officials denied the reports, insisting that they were confident they would ultimately find a way to move the Packers to New Jersey, while still satisfying Kansas City's shareholders.[104] President Gilmore even went so far as to spin the lawsuit as a positive signal for his league, stating that "[i]t looks like a pretty favorable sign when Federal clubs begin fighting for franchises. In fact, Federal affairs all around look mighty good to me for 1915."[105]

Federal League officials discussed their options upon convening in Buffalo, reportedly deciding to "present a proposition to the Kansas City delegation which [they believed] would be most inviting, and whereby a satisfactory arrangement would result in the franchise being transferred to Newark without further trouble."[106] While there was no word of what the terms of the offer would be, the Packers' officials declared that they would not be interested in any settlement that resulted in their team being transferred to another city. As Conrad Mann, vice president of the club explained, "We'll fight this thing all the way through all the courts . . . . We have a major league city here and we can support a major league baseball club. . . . [W]e'll fight the case all the way and they'll have a hard time beating us."[107]

With a settlement appearing unlikely, the Federal League began to prepare its defense by submitting both a formal answer to the Packers' complaint and supporting affidavits to the court ahead of the scheduled hearing in the case. In its answer, the league denied that it had ever formally loaned the Kansas City franchise money, explaining instead that it had simply been forced to pay the team's players when the club

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[102] *A Bomb in the Fed Camp*, KAN. CITY STAR, Feb. 26, 1915, at 10.

[103] *See* Crusinberry, *supra* note 85, at 9 ("[I]ndications are that the league members will overcome the present difficulty by shifting plans today or tomorrow and transferring the Indianapolis club to the Newark promoters instead of the Kawfeds. . . . Rather than go into long court proceedings, Kansas City may be allowed to keep its franchise . . . ."); *A Bomb in the Fed Camp*, *supra* note 102 ("Already there is talk of turning the Indianapolis franchise over to Powers and Sinclair, thus giving them a team and also leaving a club in Kansas City.").

[104] *See Federal League Owners Meet in Buffalo Today*, CHRISTIAN SCI. MONITOR, Feb. 26, 1915, at 16 (reporting that Federal League officials were confident "that a way would be found to switch the [Kansas City] franchise to Newark and at the same time satisfy the Kansas City magnates").

[105] *Feds to Start Season April 10*, CHI. DAILY TRIB., Feb. 27, 1915, at 9.

[106] Ed Tranter, *Hoofeds Appear to be Safely Fixed Here*, INDIANAPOLIS STAR, Feb. 27, 1915, at 6.

[107] *No Action at Buffalo*, KAN. CITY TIMES, Feb. 27, 1915, at 8.

failed to meet its payroll in September 1914.[108] Consequently, the Federals contended that President Gilmore had properly exercised his authority by seizing the franchise in September pending the next scheduled meeting of the league's Board of Managers,[109] which allegedly then formally approved the forfeiture during its October 23, 1914 meeting.[110] Nevertheless, the answer explained that the league subsequently gave Kansas City's shareholders the opportunity to reclaim their franchise by raising $100,000 by December 10, 1914, only to find that the Packers' fundraising efforts had "wholly failed."[111] The Federals thus spent the next several months looking for someone willing to purchase the franchise, until early February when the team was formally transferred to Harry Sinclair.[112] Given these events, the answer asserted that Kansas City had brought suit merely to "embarrass" the league,[113] and requested that the court dismiss the case so that the league could consummate its proposed sale of the Packers franchise to Sinclair.[114]

Even though the Federal League's answer made the October 1914 forfeiture of the Kansas City franchise appear relatively straightforward

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[108] Answer at 21–22, Fed. Baseball Co. of Kan. City, Mo. v. Fed. League of Prof'l Base Ball Clubs, No. B. 8905 (Cook Cnty. Cir. Ct. Feb. 25, 1915) ("[N]either defendant, nor any of its constituent members [i.e., teams], at any time, loaned any sum of money to [Kansas City], but . . . did pay obligations theretofore incurred by complainant, the principal portion of which were obligations to ball players, under contract with complainant, who had not been paid by it, and who were entitled to payment . . . .").

[109] *Id.* at 10 (quoting Kansas City's franchise agreement as authorizing the League's "President or other officer, upon the default, failure, refusal, or neglect of the [franchise], pending the action of the Board of Managers . . . to take possession of the base ball park . . . and either in its own name or in the name of the licensee continue to play the schedule of games of base ball, or to license others so to do, with the players under contract with the [franchise] . . . and to otherwise protect the [league] as its interests may appear."); *see also id.* at 13 (citing a September 10th letter from Gilmore to C.C. Madison, President of the Kansas City club, notifying him "that on account of said default on the part of your club under the rules and regulations of this league and persuant [*sic*] to the terms of the franchise now in your possession, your franchise in this league is hereby forfeited.").

[110] *Id.* at 13 (stating that "on October 23, 1914, the first meeting of defendant's Board of Managers was held after the default . . . at which time at a lawful meeting . . . by unanimous vote . . . its Board of Managers[] approve[d] the action of its President, and formally forfeited complainant's . . . franchise").

[111] *Id.* at 16.

[112] *See id.* at 16–18 ("That defendant until shortly prior to February 5, 1915, had no club to take over the franchise, nor any city in which to place it, and no organization, or individual, or individuals to place it with" before eventually "granting . . . said franchise to said Harry Sinclair").

[113] *Id.* at 18 ("[T]his action is brought for not only the purpose of preventing but also to embarrass said defendant in the arrangement of its schedule of games for the season of 1915.).

[114] *See id.* at 22 (concluding by stating that "defendant . . . prays that the [bill] be dismissed").

and uncontroversial, a joint affidavit submitted by seven Federal League executives revealed that the process was in fact much less cut-and-dried.[115] Specifically, although the officials maintained that the forfeiture had been approved during a meeting of the league's Board of Managers on October 23, they admitted that the action was not recorded in the minutes for the meeting due to an alleged oversight by the league's secretary,[116] raising at least a hint of doubt regarding the propriety of the league's action.

As the hearing in the suit neared, both sides remained confident they would ultimately prevail in the case. Jim Gilmore insisted the league would "fight the Kansas City crowd" just as vigorously as it had contested its recent antitrust suit before Judge Landis,[117] while stating that the suit was "ill advised and unjust"[118] insofar as the franchise had been properly forfeited to the league.[119] Meanwhile, Kansas City officials were "prepared to put up the stiffest battle the Federal League has ever bucked,"[120] believing that their "case is a strong one and that [they would] win it."[121]

Judge Baldwin called the hearing to order on the morning of Monday March 8, 1915.[122] John Zane, counsel for Kansas City,[123] led with his opening statement and contended that the Federal League failed to follow its own specified procedure when seizing the Packers, making the forfeiture ineffective.[124] Specifically, he argued that the action was never formally approved at a regularly scheduled meeting of the league's Board of Managers—as required by the league rules—but instead was

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[115] Aff. of James A. Gilmore et al. at 1, 3, Fed. Baseball Co. No. B. 8905.

[116] *See id.* at 3 ("[T]he Secretary . . . by oversight neglected to record in the minutes of said meeting the said [forfeiture by] said Board of Managers, and that the [League] through the vote of its Board of Managers did, in fact, approve . . . the forfeiture of said franchise . . . .").

[117] *The Umpire*, KAN. CITY STAR, Mar. 4, 1915, at 8 ("President James A. Gilmore of the Federal League gave out a statement in Chicago yesterday in which he said that he would 'fight the Kansas City crowd' as he fought the 'Johnson–Tener–Herrman trust.'").

[118] *Club in Newark, Declare "Feds"*, WASH. POST, Feb. 28, 1915, at S1.

[119] *See* Tranter, *supra* note 106 (quoting Federal League representative H.T. Brewer as stating: "The truth of the matter is that the Kansas City club forfeited its franchise before the end of the 1914 season, when the organization was bankrupt and the league was compelled to step in and meet its obligations. Under these conditions the franchise, according to rules and regulations, automatically reverted to the league to dispose of as it sees fit.").

[120] *Planning the Big Suit*, KAN. CITY TIMES, Mar. 2, 1915, at 6.

[121] *Back with Packer Cheer*, KAN. CITY TIMES, Mar. 1, 1915, at 10.

[122] *See The Packer Suit Today*, KAN. CITY TIMES, Mar. 8, 1915, at 8 (reporting that the hearing was "slated for this morning").

[123] *Kawfeds Ousted by a Committee*, INDIANAPOLIS STAR, Mar. 9, 1915, at 12.

[124] *See* Handy Andy, *Court Hearing Bares Secrets of Federals*, CHI. DAILY TRIB., Mar. 9, 1915, at 14 (noting that Zane made "the assertion that the franchise never had been forfeited, according to the rules of the league").

improperly undertaken by the league's executive committee, headed by president Gilmore: "The action which put out the Kansas City club was the action of an executive committee and not the action of the league itself. The bylaws provide that the directors as a body cannot delegate authority of this importance."[125]

Zane also contested the claim that the Packers owed the league money, noting that "[a]t the beginning of the 1914 season the Kansas City club paid a large sum of money to the league. The money was never returned, nor was an accounting made."[126] While he acknowledged that "[t]he league [subsequently] advanced the money at various times to the Kansas City club," he asserted that these loans had been offset by the fact that "the league received the [team's road] gate receipts . . . [for which n]o accounting ha[d] ever been made."[127]

Finally, Zane alleged that the Federal League led Kansas City's officials to believe that they could safely accept loans without fear of reprisal:

> The evidence will show that Mr. Madison, president of the Kansas City club, had a talk with Mr. Gilmore prior to the opening of the 1914 season in which Mr. Madison expressed doubt about having sufficient funds for the season and was assured by Mr. Gilmore that the league had several big moneyed men who would aid in tiding over the Kansas City club.[128]

In response, the Federal League's general counsel, Edward Gates, described the league's actions as having been eminently fair and reasonable in his opening statement.[129] In particular, he argued that:

> We gave the Kansas City Club every opportunity to protect its franchise. It was agreed that the club should raise $100,000 by Dec. 10. If it had raised this money it could have redeemed the franchise. This it failed to do and the league, in order to protect the interests of its other seven units, looked around for a responsible person to take the franchise.[130]

Following the opening statements, Kansas City called its first witness, former team president C.C. Madison, to the stand.[131] Madison confessed

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[125] *Kawfeds Ousted by a Committee*, *supra* note 123; *see also Statements by Federal League Officials Given*, CHRISTIAN SCI. MONITOR, Mar. 9, 1915, at 20 ("That the transfer of the franchise was an improper action of the executive committee is the claim made by J. M. Zane, counsel for the [Kansas City] club, who contended that the directors could not delegate so important a matter to the committee.").

[126] *Kawfeds Ousted by a Committee*, *supra* note 123.

[127] *Id.*

[128] *Id.*

[129] *See Statements by Federal League Officials Given*, *supra* note 125 (reporting that "E.E. Gates of counsel for the league" presented the Federals' opening statement).

[130] *Kawfeds Ousted by a Committee*, *supra* note 123.

[131] *See* Andy, *supra* note 124 ("Charles C. Madison of Kansas City, former president there, was the first witness called.").

that the team had received various loans from the league, but explained that the Packers had given the league its entire share of ticket sales from its last road trip in order to repay its debt.[132] Furthermore, he contested the claim made in the Federal League's answer that the forfeiture of the team had been formally approved at the October 23, 1914 meeting of the league's Board of Managers:

> So far as I knew at that time no action was taken toward the forfeiture of the Kansas City franchise. I stated at the meeting that while there had been a failure to meet certain obligations there had been no forfeiture of the franchise. No other statement regarding such forfeiture was made in my presence.[133]

Although Madison acknowledged that the team received a letter from Jim Gilmore in September declaring that the franchise had been seized by the league, he insisted that subsequent events—including a separate letter from Gilmore sent the same day promising to protect the franchise if it could raise sufficient funds—had nullified the forfeiture.[134]

Day two of the hearing began with an uneventful cross-examination of Madison by the Federal League's counsel.[135] Kansas City then called D.J. Haff, chairman of the team's financing committee, as its second witness.[136] Haff testified regarding the events that had transpired over the last several months, explaining that he met with Jim Gilmore in Chicago in early January "to ascertain what was being done by the league regarding the Kansas City franchise."[137] He attested that during the conversation Gilmore denied rumors that he was seeking to transfer the team, with the league president instead insisting "that he would not consider taking the club from Kansas City if we could finance it, as he considered it a very good ball town."[138] Based on these assurances, the Packers launched a fundraising drive to recruit new investors, only to find that the Federal League's recent antitrust litigation before Judge Landis

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[132] *See id.* (stating that Madison "told of various loans made [to] his club last season by the league" and that "during the last eastern trip of the club, its share of the receipts was turned over to the league direct[ly]").

[133] *Kawfeds Ousted by a Committee*, *supra* note 123.

[134] *See Madison on the Stand*, KAN. CITY TIMES, Mar. 9, 1915, at 10 (reporting that two letters of September 10th were received from Gilmore, "one giving notice that the Kansas City franchise had been forfeited . . . and another advising Madison that the franchise would be protected if Kansas City would raise $20,000 to finish the season"); *see also* Andy, *supra* note 124 (stating that Kansas City "maintained that events following" the receipt of the initial letter "proved conclusively that the league still considered the Kansas City club as a part of its organization").

[135] *See Federal League Case Ends Today*, CHI. DAILY TRIB., Mar. 10, 1915, at 14 ("Madison was on the stand in the morning for cross examination by the defense. Nothing material developed from his grilling.").

[136] *See id.* ("D. J. Haff, chairman of the financing committee at Kansas City, was the next witness.").

[137] *Rush the Packer Suit*, KAN. CITY TIMES, Mar. 10, 1915, at 8.

[138] *Id.*

significantly hampered their efforts.[139] Haff explained that many local businessmen refused to invest in the franchise because they believed that a baseball team could not be profitable while simultaneously financing such a lawsuit.[140] Haff then went on to state that Gilmore never subsequently gave the Packers any indication that he planned to transfer the team until early February, when news reports emerged that the franchise was being sold to Sinclair and Powers.[141]

After Haff's testimony was completed, Kansas City then presented evidence showing that despite the reportedly imminent sale of the franchise, Jim Gilmore had nevertheless continued to lead the Packers' shareholders to believe they would be able to retain their team. Specifically, the club's counsel read from an affidavit by team stockowner Irwin R. Kirkwood, in which Kirkwood recounted a conversation he had had with Gilmore on February 13, 1915.[142] In his affidavit, Kirkwood alleged that Gilmore had assured him that Kansas City would be able to keep its team if it could raise the necessary funds,[143] with the league president confiding that he was confident he would be able to transfer the Indianapolis franchise to Newark instead.[144]

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[139] *See Federal League Case Ends Today*, *supra* note 135 (reporting that "Haff said the $150,000 necessary to insure Kansas City a Federal club could have been secured without trouble if the Feds had not started their big trust suit against organized baseball").

[140] *Id.* (quoting Haff as explaining that after the suit was filed with Judge Landis, "business men, when asked to subscribe for stock, refused on the ground that no baseball club could make money while fighting law suits").

[141] *See Rush the Packer Suit*, *supra* note 137 (quoting Haff's testimony that in a series of letters to the team in January 1915, Gilmore never made "any suggestion that the franchise would be disposed of").

[142] Aff. of I. R. Kirkwood, Fed. Baseball Co. of Kan. City, Mo. v. Fed. League of Prof'l Base Ball Clubs, No. B. 8905 (Cook Cnty. Ill. Cir. Ct. filed Feb. 24, 1915); *see also Gilmore Sought to Transfer Hoofeds*, INDIANAPOLIS STAR, Mar. 10, 1915, at 10 (noting that "an affidavit, sworn to by Mr. [Irwin R.] Kirkwood [was] read in evidence in the hearing before Judge Baldwin").

[143] *See* Aff. of I. R. Kirkwood, *supra* note 142, at 2 (quoting a transcript of the conversation in which Gilmore states "I want to say to you, Mr. Kirkwood, that I have every confidence that if Kansas City raises the necessary funds to pay their debt to the League, that you will be able to retain the franchise").

[144] *See id.* at 3 (quoting Gilmore as stating "I have an option on the Indianapolis Federal League franchise, . . . and will do my best to have the men who purchased the Kansas City franchise take the Indianapolis franchise instead, and I have no doubt that will be accomplished").

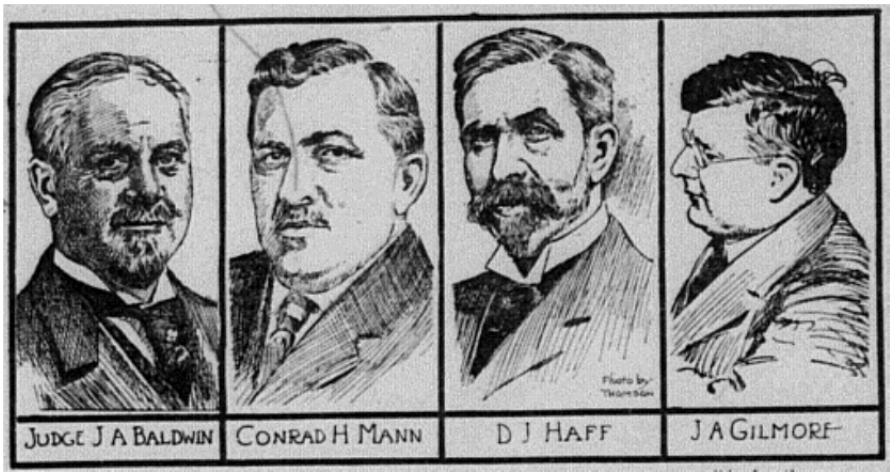

Fig. 1: An illustration depicting several of the key figures in the Kansas City Packers' lawsuit against the Federal League (First Published by the *Kansas City Times*, March 25, 1915, pg. 8).

After Kirkwood's affidavit was read into evidence, Jim Gilmore took the stand to testify on behalf of the Federal League.[145] Gilmore's testimony largely confirmed C.C. Madison's earlier statements regarding the loans Kansas City had received from the league, but Gilmore denied that he had promised the team any financial assistance prior to the start of the 1914 season.[146] He further contradicted Madison's testimony by insisting that the league's Board of Managers had in fact formally approved the forfeiture of the Packers during its October 23 meeting, delegating the authority to dispose of the team's assets to the league's executive committee (consisting of himself and the presidents of the Brooklyn and Buffalo clubs).[147] This executive committee gave Kansas City ample opportunity to retain its franchise, Gilmore explained, but ultimately decided to sell the club in early February after receiving a "discouraging" report regarding the team's fundraising efforts.[148] Consequently, Gilmore stated that he notified Madison that "the Kansas City franchise had been

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[145] *Rush the Packer Suit*, *supra* note 137 (stating that after the Kansas City club rested its case, "President Gilmore was the first witness for the defense").

[146] *Federal League Case Ends Today*, *supra* note 135 (noting that "Gilmore's testimony coincided in most details with the story told on the previous day by C.C. Madison," but that Gilmore "denied . . . the club had been promised financial aid from the league before the 1914 season started").

[147] *See Gilmore Sought to Transfer Hoofeds*, *supra* note 142 ("Power to dispose of the Kansas City franchise was [specifically] delegated to an executive committee by the league at a meeting in New York [on] Oct. 23, 1914, according to the testimony of President Gilmore. The committee was composed of Presidents Ward and Robertson of the Brooklyn and Buffalo clubs.").

[148] *See id.* (quoting Gilmore as stating that prior to February 4, 1915, he received "a letter from D. J. Haff, who was attempting to raise money in Kansas City, and it was so discouraging that I was convinced it was useless to hope for any results there").

sold" on February 9.[149] He also admitted that he had raised the possibility of selling the Indianapolis Hoosiers instead of Kansas City to both Madison and Kirkwood, but claimed that he never subsequently received an update on the Packers' fundraising efforts until shortly before the lawsuit was filed.[150]

Gilmore's testimony was eventually carried over into the next day, as he remained on the stand when court adjourned for the evening.[151] Following the second day of the hearing, however, Judge Baldwin held a meeting with counsel in his chambers.[152] Although there is no formal record of what was discussed at the meeting, contemporaneous press reports reveal that Baldwin "insisted that the proceedings be wound up [the next day],"[153] and encouraged the parties to explore a potential settlement of the case.[154] Indeed, after a brief cross-examination of Gilmore the next morning,[155] the hearing was continued until the next week, reportedly to give the Federals time to persuade Harry Sinclair to keep the Packers in Kansas City.[156]

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[149] *Id.*

[150] *See id.* ("On Feb. 9 Mr. Madison was told the Kansas City franchise had been sold, but I told him the Indianapolis club was so weak financially that this might react in favor of Kansas City. On Feb. 13 I told Mr. Irwin R. Kirkwood, one of the stockholders of the Kansas City club, the same thing, and that was the last I heard from Kansas City until Feb. 25, when Haff and others called and wanted a settlement of the case.").

[151] *See Federal League Case Ends Today*, *supra* note 135 (reporting that "President Gilmore of the league was on the stand when yesterday's court session closed").

[152] *See id.* ("[A]fterward the judge and the contending attorneys held a conference in the court's chambers.").

[153] *E.g.*, *id.* ("Judge Baldwin insisted that the proceedings be wound up today.").

[154] *See Expect Trouble with Kansas City Will be Settled*, CHRISTIAN SCI. MONITOR, Mar. 11, 1915, at 18 ("The effort to compromise the dispute came as a result of a conference held by representatives of both sides Tuesday night at a hint from Judge Baldwin."); *Feds' Suit Continued*, ATLANTA CONST., Mar. 11, 1915, at 9 (reporting that "[t]he effort at compromise resulted from a conference by representatives of both sides at the suggestion of Judge Baldwin").

[155] During the cross-examination Gilmore revealed that the Federal League intended to place a team in New York City for the 1916 season. *See* Handy Andy, *Feds May Settle By Compromise*, CHI. DAILY TRIB., Mar. 11, 1915, at 12 ("During the cross-examination of President Gilmore at the morning session it developed that the Federal league is framing definite plans for an invasion of New York next year."). He also admitted that he had ignored a telegram from D.J. Haff asking for an accounting of the franchise's debt after the team had already been sold to Sinclair. *See Compromise Now Sought in Fed Dispute*, INDIANAPOLIS STAR, Mar. 11, 1915, at 10 ("Mr. Gilmore said he paid no attention to a telegram from Mr. Haff asking what the club owed the league, as the transfer [to Sinclair] had been made and no obligation existed at Kansas City.").

[156] *See Feds' Suit Continued*, *supra* note 154 ("Judge Baldwin today continued until next Monday the hearing of the suit for injunction brought by the Kansas City baseball club . . . to give E.E. Gates . . . a chance to attempt to induce Harry Sinclair . . . to operate in Kansas City this year.").

Shortly thereafter, several Federal League officials traveled to meet with Sinclair,[157] only to find that the oil magnate quickly disavowed any interest in owning a team located anywhere but Newark.[158] Meanwhile, although Kansas City's officials expressed a willingness to resolve the suit out of court, they announced they would be unwilling to agree to any settlement that deprived their city of a Federal League team, as they were confident they would ultimately prevail in the litigation.[159] At the same time, officials from the Indianapolis Hoosiers announced that they too would file suit if necessary to prevent the Federal League from transferring their club to Sinclair, undoubtedly fearing that the circuit would revive its plans to shift their franchise to Newark in place of the Packers.[160]

Consequently, with an amicable resolution of the dispute appearing out of reach, the parties were forced to return to Judge Baldwin's court on Monday, March 15, 1915, to present their closing arguments.[161] Kansas City's counsel, John Zane, summarized his client's position by arguing that the alleged forfeiture of the franchise was invalid for a variety of reasons. First, he contended that any attempted forfeiture of the team in October 1914 was ineffective insofar as the meeting "was not held in January, as the articles of the league provide," and, "because Mr. Madison, President of the Kansas City Club, was not allowed to take part in the meeting . . . although he was recorded as present."[162] Second, Zane noted, the Federal League "never produced any evidence to show" that the Board of Managers had actually approved the forfeiture (thus emphasizing the league's failure to record the action in the minutes of its October

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[157] *See* Handy Andy, *Federals Leave to See Sinclair*, CHI. DAILY TRIB., Mar. 12, 1915, at 10 (reporting that Gilmore, along with ChiFeds president Charles Weeghman and Federal League general counsel E.E. Gates, traveled to New York City to meet with Sinclair).

[158] *See Newark to Have a Federal Club*, CHRISTIAN SCI. MONITOR, Mar. 12, 1915, at 16 (quoting Sinclair's partner Pat Powers as stating that he and Sinclair were "not in the least perturbed" by Kansas City's lawsuit and were moving forward with the construction of their Newark stadium).

[159] *See Packer Delegates Home*, KAN. CITY TIMES, Mar. 12, 1915, at 10 ("The Packer officials have expressed themselves as willing to talk to the oil man, but they declare they will listen to no proposition that means the loss of the Packers to Kansas City. They believe they have the upper hand and are confident that they will win the case now pending in the circuit court in Chicago unless a settlement is made between now and Monday."); *see also Can't Buy the Packers*, KAN. CITY STAR, Mar. 14, 1915, at 12A (quoting D.J. Haff as stating, "We will listen to no compromise proposition which deals with taking the Packers away from Kansas City. We believe we will win, and therefore we believe we have the upper hand in the compromising.").

[160] *Hoofeds to Fight, Too*, KAN. CITY TIMES, Mar. 13, 1915, at 10 (quoting Indianapolis team treasurer John George as stating, "Any attempt to move the Indianapolis club of the Federal League to Newark or any other city will be fought to the bitter end").

[161] *See* Handy Andy, *Court to Decide K.C. Case Today*, CHI. DAILY TRIB., Mar. 15, 1915, at 13 ("Final arguments in the fight between the Kansas City Federal club and the new league are slated to start at 2 o'clock.").

[162] *Arguments Close in Kansas City Suit*, N.Y. TIMES, Mar. 16, 1915, at 12.

1914 meeting).[163] Finally, Zane asserted that as recently as January 1915 the Federals had publicly affirmed that the franchise was still a member of the league:

> In the Federal League's suit against organized baseball now pending before Federal Judge Landis, the Kansas City Club was asked by the league to sign a petition of intervention as one of the constituent members of the league. This petition was signed and presented among others to Judge Landis. This is practically an admission on the part of the league that the Kansas City Club is one of its members.[164]

After the closing arguments were finished,[165] Judge Baldwin announced that he was not ready to issue a formal decision in the case.[166] Nevertheless, he did not hesitate to reveal that he was inclined to rule in favor of the Packers:

> I have had difficulty from the beginning in basing the right of forfeiture of the franchise on anything that has been introduced in the evidence. It seems to me that the President of the league went beyond his legal rights in declaring the forfeiture. Nor did I feel that proof is positive about the forfeiture of the franchise at the Board of Managers meeting in New York Oct. 24, 1914.
>
> . . . .
>
> I do not regard the conduct of the league officials at the conferences as consistent with the forfeitures, although I believe the President of the league . . . acted in good faith in protecting [its] interests.[167]

Baldwin suggested, however, that if he did rule in Kansas City's favor, he might require the club to furnish a bond evidencing its shareholders' ability to finance the team adequately for the 1915 season.[168]

Upon hearing Judge Baldwin's remarks, Federal League president Jim Gilmore reportedly turned to an associate and whispered, "We're beaten."[169] Further acknowledging that his league was unlikely to prevail in the suit, Gilmore later announced to the press that "[t]here will be no appeal if Kansas City wins. I do not think Judge Baldwin will jeopardize

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[163] *Judge Indicates Federals Will Lose Suit*, INDIANAPOLIS STAR, Mar. 16, 1915, at 10.

[164] *Arguments Close in Kansas City Suit*, *supra* note 162.

[165] Unfortunately, no record of Edward Gates' closing argument on behalf of the Federal League exists.

[166] *See* Handy Andy, *Hope of Kawfeds Given Big Boost*, CHI. DAILY TRIB., Mar. 16, 1915, at 8 ("Judge Baldwin was unable to hand down his verdict immediately, as he had planned . . . .").

[167] *Arguments Close in Kansas City Suit*, *supra* note 162.

[168] Andy, *supra* note 166 (reporting that Baldwin "suggest[ed] that it might be well for the Kansas City club to furnish a bond of some sort as proof of its ability to finance a club should he rule in its favor").

[169] *Id.*

the 3 million dollars represented by the Federal League unless he has sufficient indication that the Kansas City club is able to fulfill its contractual obligations."[170] Meanwhile, Kansas City's officials were "delighted with" the judge's announcement,[171] declaring that they were fully prepared to post a bond in whatever amount the court required.[172]

The parties returned to court the following day to present Judge Baldwin with various pieces of evidence he had requested the day before (primarily league documentation relevant to the case).[173] Then, in chambers, Judge Baldwin once again encouraged the two sides to discuss a settlement,[174] eventually announcing that he would postpone his decision for a week in order to give the litigants an opportunity to resolve the matter amicably.[175] The parties quickly followed the judge's advice, formally executing a settlement agreement the very next day.[176] In an agreement dated March 17, 1915, the two sides declared that Kansas City would be "entitled to hold and retain its franchise" so long as the team paid back its debt to the league within fifteen days.[177] Moreover, the Packers agreed to provide a $40,000 bond as proof that its shareholders would be able to provide adequate financial support for the club during the upcoming season.[178] The parties agreed to keep the existence of the settlement agreement secret for the next week, however, in order to give the Federal League time to coordinate the transfer of a different team to Newark.[179]

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[170] *Ready to Furnish Bond*, KAN. CITY STAR, Mar. 16, 1915, at 6.

[171] *See Hints Packers Will Win*, KAN. CITY TIMES, Mar. 16, 1915, at 1 (quoting D.J. Haff as stating, "Naturally, we are delighted with the view that the court took of the transactions involved in the litigation.").

[172] *See Ready to Furnish Bond*, *supra* note 170 (quoting associate team counsel Clarence Eldridge as stating, "Our clients are prepared to furnish any bond required by the court").

[173] *See* Handy Andy, *Feds Fail in Effort to Settle K.C. Case*, CHI. DAILY TRIB., Mar. 17, 1915, at 10 (reporting that "[r]epresentatives of both sides appeared in court yesterday afternoon, the league officials bringing in the copies of their franchise agreement with the Kansas City club and other documents requested by Judge Baldwin").

[174] *See id.* (stating that "the court gathered the contending forces in his chamber and left them to argue over a possible peaceful solution of the difficulty").

[175] *See Kansas City Federal League Case Postponed*, CHRISTIAN SCI. MONITOR, Mar. 17, 1915, at 20 (reporting that "Judge Baldwin today announced that the suit . . . would be postponed until Tuesday" and that "it was authoritatively reported that the Federal owners between now and Tuesday would submit to the Kansas City plaintiffs a proposition . . . in return for the dropping of the suit").

[176] Stipulation, Fed. Baseball Co. of Kan. City, Mo. v. Fed. League of Prof'l Base Ball Clubs, No. B. 8905 (Cook Cnty. Ill. Cir. Ct. filed Mar. 23, 1915).

[177] *Id.* at 1–2; *see also* Harvey T. Woodruff, *"Fighting Jim" Gilmore Capitulates to Kawfeds*, CHI. DAILY TRIB., Mar. 24, 1915, at 11.

[178] Stipulation, *supra* note 176 at 2 ("[I]t is further agreed that the said Federal Baseball Company shall make and deliver its surety company bond in the sum of forty thousand dollars . . . .").

[179] *See The Feds Stay Here*, KAN. CITY TIMES, Mar. 24, 1915, at 11 (reporting "that the agreement with the league was reached last Wednesday, but the Packer officials

And given that the start of the season was rapidly approaching,[180] the Federals had to work quickly to resolve the situation.

C. Pliny W. Bartholomew v. The Federal Base Ball Club of Indianapolis[181]

With its plans to sell the Kansas City Packers to Harry Sinclair having been derailed, the Federal League once again explored moving the Indianapolis Hoosiers to Newark instead. As noted above,[182] despite winning the Federal League championship in both 1913 and 1914, the Hoosiers were reportedly over $100,000 in debt as the start of the 1915 season approached.[183] Consequently, Federal League president Jim Gilmore headed to Indianapolis shortly after wrapping up the Kansas City suit in Chicago to attempt to persuade the franchise's shareholders to sell the team to Sinclair.[184]

Despite making what he believed to be "more than a fair offer for their holdings,"[185] Gilmore reported that his proposition to "take the club off the hands of the Indianapolis owners" had been rejected.[186] Hoosier officials confirmed that they had formally rejected Gilmore's offer,[187] insisting that any attempt to move the team to Newark would be met "by legal means" if necessary.[188] John George, the Hoosiers' secretary–treasurer, went so far as to predict that "[t]he controversy with Kansas City will be trivial as compared to the fight we will make before we will give up."[189] Nevertheless, both Gilmore and the Hoosiers were quick to note that the team's rejection of the Federal League's offer did not necessarily mark the end of the negotiations.[190]

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refrained from making it public in order to give the league time to arrange the Indianapolis–Newark transfer").

[180] *See Feds to Start Season April 10*, *supra* note 105 (noting that the Federal League season was scheduled to begin on April 10, 1915).

[181] No. 98342 (Marion Cnty. Sup. Ct. Mar. 24, 1915).

[182] *See supra* note 77 and accompanying text.

[183] *See* Crusinberry, *supra* note 77 ("Although the Hoofeds won the pennant last season, they failed to draw well and made no money . . . ."); *Indianapolis Wins Flag*, *supra* note 77.

[184] *See* Harvey T. Woodruff, *K.C. Sure to Get Feds' Franchise for This Season*, CHI. DAILY TRIB., Mar. 19, 1915, at 13 (reporting that Gilmore would be leaving "for an unnamed destination" with "Indianapolis [being] the mo[st] logical guess").

[185] Ralston Goss, *Fedchamps' Transfer in a Deadlock*, INDIANAPOLIS STAR, Mar. 20, 1915, at 10.

[186] *Gilmore Fails to Take Federal Franchise Away*, CHRISTIAN SCI. MONITOR, Mar. 20, 1915, at 16.

[187] *See* Goss, *supra* note 185 (quoting team vice president F.L. Murray as stating that "Gilmore came to Indianapolis for the purpose of making the directors of the local Federal League club a proposition . . . and we formally rejected it").

[188] *Hoofeds Will Fight Sale*, KAN. CITY STAR, Mar. 19, 1915, at 14A.

[189] *Id.*

[190] *See* Goss, *supra* note 185, at 10 (quoting Gilmore as stating, "I am not in a position to say that negotiations have ended here," while reporting that Indianapolis

Indeed, although the Indianapolis officials had formally rejected Gilmore's initial offer to buy their team, they quickly scheduled a meeting of the team's nearly 400 shareholders several days later in order to determine the franchise's next steps.[191] Because the club had to raise more than $75,000 over the next several weeks to remain solvent for the 1915 season, the press speculated that the stockholders might decide to overrule the club's directors and accept the Federal League's offer to buy the team.[192] Before the shareholder meeting convened, however, one Indianapolis investor took matters into his own hands.

Specifically, Pliny W. Bartholomew, a Hoosier shareholder and former Indianapolis Superior Court Judge, filed a lawsuit in Indiana state court requesting that the franchise be placed in receivership to settle its debts.[193] Bartholomew's suit alleged that the team was "in an embarrassed financial condition, unable to meet its obligations and . . . losing money each day."[194] He contended that the Hoosiers owed its creditors $75,000, and was "in arrears on dividends" to its preferred shareholders "to the amount of [an additional] $50,000."[195] Bartholomew then claimed that "the management of the club is considering a transfer of the club to parties unknown without securing the claims of stockholders and debtors," and asked for the "immediate appointment" of a receiver in order to protect his and his fellow shareholders' interests.[196]

The Federal League seized upon the opportunity presented by Bartholomew's suit by renewing its efforts to acquire the Indianapolis club. The league offered to assume $76,500 of the club's debt in exchange for the right to transfer the franchise to Sinclair and move it to Newark.[197] In

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vice president F.L. Murray refused to state whether the team's negotiations with the Federal League were over).

[191] *See* Ralston Goss, *Up to Stockholders Whether Hoofeds Shall Remain Here*, INDIANAPOLIS STAR, Mar. 21, 1915, at III-1 (reporting that a meeting of the team's shareholders would be held in two days); *see also* WIGGINS, *supra* note 14, at 189 (stating that "the Hoosier club's chances for a profit were burdened by its 394 stockholders").

[192] *See* Goss, *supra* note 191 (estimating that more than $75,000 was needed to keep the club in Indianapolis and speculating that "[t]here is a possibility that, when the offer made by President Gilmore of the league is laid before the stockholders, the rejection . . . will be overruled and permission to transfer the club will be given."); *see also* LEVITT, *supra* note 14, at 201 ("Despite the brave front, the Indianapolis board knew that they were, in fact, bankrupt and had little hope of financing the 1915 season.").

[193] Bartholomew v. Fed. Base Ball Club of Indianapolis, No. 98342 (Marion Cnty. Sup. Ct. Mar. 24, 1915); *see also* Ralston Goss, *Fedchamps Seem Lost to the City*, INDIANAPOLIS STAR, Mar. 23, 1915, at 10 (reporting that "[f]ormer Judge Bartholomew, who is a stockholder owning $500 in preferred and a like amount in the common stock of the [Indianapolis] club, yesterday brought suit in the Superior Court demanding that a receiver be appointed" for the team).

[194] Goss, *supra* note 193 (quoting complaint).

[195] *Id.*

[196] *Id.* (quoting complaint).

[197] *See* Ralston Goss, *Stockholders Agree to Sell the Hoofeds to the League*, INDIANAPOLIS STAR, Mar. 24, 1915, at 8 (reporting that the Federal League agreed to pay

addition, the Federals agreed to pay one-year's rent for the Hoosiers' stadium at a cost of $4,500.[198] The team's shareholders considered the league's offer at their previously scheduled meeting the following evening, unanimously agreeing to accept the Federals' terms.[199] As a result, Bartholomew agreed to drop his suit,[200] and the Federal League completed its plans to transfer the Hoosiers to Newark.[201]

A relieved Jim Gilmore welcomed the news, stating:

> I am decidedly pleased that the stockholders saw fit to accept the league's proposition. It relieves me of an embarrassing situation caused by the Kansas City tangle and permits the league to retain Harry Sinclair . . . among its club owners. I think the league made a very fair proposition to the stockholders here and am glad that they unanimously agreed with us in that.[202]

The press agreed with Gilmore's assessment, characterizing the league's offer as "remarkably fair . . . especially when it can be taken into consideration that [the Federals] could have declared the franchise forfeited for nonpayment of dues and money owing the league."[203] Consequently, the *Indianapolis Star* declared that the agreement "places the [Federal] league in the position of 'leaving a good taste' in the mouths of the Indianapolis sport-loving public."[204]

D. The Eventual Demise of the Federal League

Although all the key stakeholders appeared content with the resolution of the Kansas City and Indianapolis lawsuits, the Federal League's efforts to fortify its franchises' financial standing would ultimately prove fruitless. Many of the league's teams struggled financially throughout the

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"$76,500, . . . the amount of all the debts contracted by the club which remain unpaid"); *see also Ready to Buy the Hoofeds*, KAN. CITY TIMES, Mar. 23, 1915, at 8 (quoting Jim Gilmore as stating that the Federal League made a new offer for the team "in Indianapolis today and we feel that it will be accepted when suitable terms are agreed upon").

[198] *See* Goss, *supra* note 197 (stating that Federal League would lease "the grounds on Kentucky avenue for a rental of $4,500").

[199] *See id.* (reporting that "[b]y unanimous vote, stockholders . . . agreed to accept the offer made by the Federal League").

[200] *See Hoofeds Drop Court Action*, KAN. CITY TIMES, Mar. 25, 1915, at 8 ("Receivership proceedings against the Indianapolis Federal League baseball club, scheduled to be heard [in] the superior court this morning, were dropped following the decision of the stockholders' meeting last night to sell the franchise to the league . . . .").

[201] *Indianapolis Club Comes to Newark*, N.Y. TIMES, Mar. 24, 1915, at 12 (reporting that "The Indianapolis Federal League franchise will be taken over by the league . . . [and] moved to Newark, N.J.").

[202] Goss, *supra* note 197.

[203] *Id.*

[204] *Id.*

1915 season due in no small part to the onset of a national economic recession and the beginning of World War I.[205] As a result, a number of Federal League clubs were forced to substantially reduce their ticket prices throughout the season, with the result that by the end of the year both the Kansas City and Buffalo franchises were effectively bankrupt.[206] Even those teams backed by wealthy investors suffered significant losses in 1915, testing their magnates' resolve to continue forward another season.[207] Moreover, because Judge Landis still had not issued a decision in the Federal League's antitrust lawsuit against the major leagues, the rival organization appeared to be out of options to reverse its fortunes. Consequently, the Federals began to pursue a potential settlement with the American and National Leagues.[208]

In order to position themselves to strike a more favorable deal, the Federals began to publicize their plans to build a massive new stadium in Manhattan for the 1916 season.[209] League officials then engaged representatives of the major leagues in settlement negotiations throughout the fall of 1915.[210] These efforts ultimately culminated in the signing of a formal settlement agreement between the leagues in late-December 1915.[211] Under the agreement, the Federal League agreed to cease com-

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[205] *See* GROW, *supra* note 24, at 111 ("[T]he confluence of a national economic recession in the mid-1910s and the onset of World War I greatly undermined the financial viability of the Federal League").

[206] *See id.* at 101 ("[B]oth the Buffalo and Kansas City franchises were on the brink of bankruptcy by season's end, while several other teams in the league had been forced to lower their ticket prices to ten cents—well below the twenty-five cent minimum price charged by the major leagues—to attract fans").

[207] *See* LEVITT, *supra* note 14, at 223 (reporting that "Federal League president Jim Gilmore [later] testified that by June 1915 the moneyed Federal League investors had concluded that under current operating conditions the Federals would not be financially viable for many years").

[208] *See id.* at 224 (stating that by the end of the 1915 season "most of the Federal League owners were looking to settle if they could get anything close to acceptable terms").

[209] *See id.* at 223 (noting that "throughout the fall of 1915 the Federals talked up their proposed New York invasion"). There is some dispute over whether the Federal League ever sincerely intended to establish a team in Manhattan, or if the plan was, from its inception, merely a bluff to bring the American and National Leagues to the bargaining table. *See id.* at 223–24 (disputing Federal League president Jim Gilmore's assertion that the plan to build a stadium in Manhattan had always been a bluff). Indeed, although Gilmore would later testify in 1919 that the plan was merely a ruse, he testified during Kansas City's suit that the league intended to invade New York City in 1916. GROW, *supra* note 24, at 160–61 (discussing Gilmore's 1919 testimony); *see supra* note 155 and accompanying text (discussing Gilmore's 1915 testimony in the Kansas City suit).

[210] *See* WIGGINS, *supra* note 14, at 284 ("Talks between representatives of Organized Baseball's major leagues and the Federal League inaugurated during the World Series laid the groundwork for further negotiations aimed at ending the baseball war.").

[211] *See* LEVITT, *supra* note 14, at 242–43.

peting with the major leagues and withdraw its antitrust suit before Judge Landis. In exchange, the American and National Leagues agreed to let two Federal League owners—the ChiFeds' Charles Weeghman and the St. Louis Federals' Philip Ball—purchase existing major league teams (the Chicago Cubs and St. Louis Browns, respectively). Finally, the major leagues also agreed to make generous settlement payments to several of the Federal League owners (amounting to nearly $500,000 in total).[212]

While the settlement ultimately satisfied seven of the Federal League's eight teams, the circuit's Baltimore franchise refused to approve the deal.[213] The club's shareholders were particularly upset that no provisions were made for their franchise in the agreement, and asked for the opportunity to purchase an existing major league team.[214] When their request was rejected, the team opted to file its own antitrust lawsuit against the major leagues,[215] proceedings that would ultimately culminate in the U.S. Supreme Court's 1922 decision in *Federal Baseball Club of Baltimore v. National League*, the opinion that gave rise to baseball's infamous exemption from antitrust law.[216]

III. Lessons from the Federal League Insolvencies of 1915

A. Common Approaches to Adjudicating Cases Involving Insolvent Professional Sports Teams

The Federal League insolvencies of 1915—and Kansas City's lawsuit in particular—provide some valuable insight into the manner in which courts handle disputes between a professional sports league and one of its financially struggling franchises. Despite the temporal, factual, and procedural differences between the Packers' suit and the more recent contested professional sports team bankruptcies, the courts presiding over these cases have nevertheless adopted similar approaches to managing the litigations. Specifically, courts have generally granted some deference to the league's internal rules, while at the same time encouraging the parties to amicably settle the case and thereby avoid having to resolve the difficult issues presented in these suits themselves.

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[212] *See id.* at 228, 243 (outlining the terms of the settlement agreement).

[213] *See id.* at 242–43; Wiggins, *supra* note 14, at 287.

[214] *See* Wiggins, *supra* note 14, at 287 ("The Baltimore representatives maintained their city was deserving of a major league team.").

[215] The Baltimore club initially filed suit against the major leagues in Philadelphia in 1916, but ultimately dismissed that case midway through the trial in June 1917. It then subsequently refiled its suit in Washington, D.C. *See generally* Grow, *supra* note 24 (documenting the history of the *Federal Baseball* litigation).

[216] 259 U.S. 200 (1922). Specifically, the Court held that professional baseball was not engaged in interstate commerce and therefore not subject to the Sherman Act. *Id.* at 208–09.

For instance, in Kansas City's lawsuit against the Federal League, although Judge Baldwin never issued a formal opinion in the case, he indicated at the end of the hearing that he would place considerable weight on the terms of the Federal League's internal constitution and bylaws, declaring that "I have had difficulty from the beginning in basing the right of forfeiture of the franchise on anything that has been introduced in the evidence."[217] At the same time, however, Baldwin also encouraged the two sides to resolve the dispute themselves on several occasions,[218] even going so far at one point as to suspend the proceedings for several days in order to give the parties time to negotiate a settlement in the case.[219] Moreover, once a stipulation resolving the case had been reached, the judge agreed to withhold an announcement of the agreement until after the Federal League had finalized the terms of its deal to transfer the Indianapolis Hoosiers to Newark.[220]

Courts presiding over recent contested professional sports team bankruptcies have employed similar approaches. While several recent team bankruptcies have not been challenged by the franchise's respective league—most notably, the bankruptcies involving MLB's Chicago Cubs and Texas Rangers, as well as the NHL's Dallas Stars[221]—in two cases the league vigorously opposed its team's bankruptcy filing, thereby forcing the courts to reconcile the authority of a professional sports league to control the disposition of its franchises' assets and the rights of the debtor team to maximize the value of its property under bankruptcy law.

For example, the NHL's Phoenix Coyotes filed for bankruptcy protection in 2009 in order to expedite the proposed sale of its franchise to Jim Balsillie, the founder of Research in Motion (the company that de-

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[217] *Arguments Close in Kansas City Suit*, *supra* note 162.

[218] *See* Andy, *supra* note 173 (stating that "the court gathered the contending forces in his chamber and left them to argue over a possible peaceful solution of the difficulty" on March 16); *Feds' Suit Continued*, *supra* note 154 (reporting that "[t]he effort at compromise resulted from a conference by representatives of both sides at the suggestion of Judge Baldwin" on March 10).

[219] *See Feds' Suit Continued*, *supra* note 154 (reporting that on Wednesday, March 10 "Judge Baldwin . . . continued until next Monday the hearing of the suit for injunction brought by the Kansas City baseball club . . . to give E. E. Gates . . . a chance to attempt to induce Harry Sinclair . . . to operate in Kansas City this year").

[220] *See supra* note 179 and accompanying text.

[221] *See* John Dillon, Comment, *Major League Baseball Team Bankruptcies: Who Wins? Who Loses?*, 32 LOY. L.A. ENT. L. REV. 297, 298 (2012) ("MLB supported the bankruptcy filings of the Chicago Cubs and the Texas Rangers . . . ."). These teams entered bankruptcy primarily to facilitate the sale of their franchises to new ownership, obviating the need to obtain approval from each of their creditors. *See* Schulz, *supra* note 1, at 144–47 (noting that bankruptcy "allows a debtor to transfer its assets . . . free and clear of all liens and encumbrances of the debtor's creditors" before reviewing the motivations for the Cubs, Rangers, and Stars bankruptcies).

veloped the BlackBerry).[222] The franchise had struggled mightily since relocating from Winnipeg, Manitoba to Phoenix, Arizona in 1996,[223] losing more than $70 million in just three seasons from 2006 to 2009.[224] Despite the team's financial difficulties, the NHL opposed its potential sale to Balsillie due to his stated intentions to relocate the franchise to Hamilton, Ontario.[225] The league instead hoped to purchase the team itself in order to facilitate the sale of the franchise to another, yet-to-be-identified owner who would presumably keep the team in Arizona. Consequently, the NHL presented the franchise with a letter of intent on May 5, 2009, outlining its proposal to purchase the Coyotes on behalf of the entire league.[226]

Rather than accept the terms of the NHL's offer, the Coyotes instead filed for Chapter 11 bankruptcy later that same day,[227] asking the court to approve its proposed sale to Balsillie on an expedited basis under Section 363 of the federal Bankruptcy Code.[228] The NHL countered by asserting that any proposed sale or relocation of the team was governed by the NHL's constitution and bylaws, which required league pre-approval of any such transfer.[229]

The bankruptcy court initially resolved these competing claims by scheduling two different auctions for ownership of the team, one in

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[222] *See* Ryan Gauthier, Comment, In re Dewey Ranch Hockey, 1 HARVARD J. SPORTS & ENT. L. 181, 186 (2010) (noting that "the Coyotes filed for bankruptcy" in order to "have Jim Balsillie, co-CEO of Research in Motion (the developers of the BlackBerry), purchase the team out of bankruptcy . . . for $212.5 million") (citation omitted).

[223] *See id.* at 182–83 (stating that "[t]he Coyotes began their life as the Winnipeg Jets" before relocating to Phoenix in 1996).

[224] *See* Alan S. Gover & Ian J. Silverbrand, *Phoenix Coyotes Bankruptcy Can Still Be Model for Troubled Sports Franchises*, 27 ENT. & SPORTS LAW., Fall 2009, at 4, 5 (reporting that "through the end of the 2008–09 hockey season . . . and over the past three seasons" the team had lost "more than $70 million").

[225] *See* Elizabeth Blakely, Comment, Dewey Ranch *and the Role of the Bankruptcy Court in Decisions Relating to the Permissible Control of National Sports Leagues over Individual Franchise Owners*, 21 SETON HALL J. SPORTS & ENT. L. 105, 111–12 (2011) (noting that NHL commissioner Gary Bettman told a team representative that the league wanted the team to remain in Arizona and would not approve Balsillie's proposed relocation to Canada).

[226] *See id.* at 112 (stating that NHL officials "presented a letter of intent for the NHL to purchase . . . the Coyotes" on May 5, 2009).

[227] *In re* Dewey Ranch Hockey, LLC, 406 B.R. 30, 32 (Bankr. D. Ariz. 2009); Blakely, *supra* note 225, at 112 ("On [May 5, 2009], . . . the Debtors sought bankruptcy protection by filing a Chapter 11 bankruptcy proceeding in the United States Bankruptcy Court for the District of Arizona.").

[228] *See* Nicolas Saenz, Note, *Sports Franchise Bankruptcy: A New Way for Team Owners to Escape League Control?*, 10 VA. SPORTS & ENT. L.J. 63, 76 (2010) (explaining that the Coyotes "filed a motion with the bankruptcy court seeking the approval of the sale to Balsillie—along with the desired relocation condition—notwithstanding the NHL's consent").

[229] *See* Gauthier, *supra* note 222, at 188 (summarizing the NHL's argument).

which only bids to keep the team in the Phoenix area would be considered, and a second for bids proposing to relocate the team elsewhere.[230] Although the initial deadline for bids to keep the team in Arizona passed without any offers having been submitted, the court nevertheless deferred to the NHL's wishes to keep the team in Arizona by revising the schedule to allow potential Phoenix-based owners more time to submit their bids.[231] Ultimately, both the NHL and Balsillie submitted bids, with the league intending to keep the team in Phoenix and Balsillie planning to relocate it to Canada.[232]

Even though Balsillie's bid was more than $100 million higher than the NHL's, the court rejected his offer in favor of the league's.[233] In the process, the court explicitly deferred to the NHL's interests in (i) only admitting "new members who meet its written requirements," (ii) "the right to control where its members play their home hockey games," and (iii) "the right to a relocation fee, if appropriate, when a member team relocates to a new site."[234] Because the court believed these league interests could not be adequately protected if Balsillie's bid was accepted—and the franchise relocated to Canada—it rejected his bid with prejudice under Section 363(e) of the Bankruptcy Code.[235] Instead, the court approved the NHL's offer on the condition it correct several minor defects in its proposal.[236]

Meanwhile, the Los Angeles Dodgers filed for bankruptcy protection in 2011 following owner Frank McCourt's mismanagement of the storied franchise. After acquiring the club in 2004, McCourt arguably "leveraged the franchise's future" by creating "a convoluted corporate structure of the franchise's holdings in order to extract as much cash as possible to fund his and his family's extravagant lifestyle."[237] By April 2011, the team was effectively insolvent and unable to fund its basic operating expenses

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[230] *In re* Dewey Ranch Hockey, LLC, 414 B.R. 577, 582 (Bankr. D. Ariz. 2009) (explaining that two auctions had been scheduled, and that "[t]he first auction was set for August 5th as a Glendale only auction," while "[t]he second auction was set for September 10th for bidders at any location").

[231] *See* Alan S. Gover & Ian J. Silverbrand, In re Dewey Ranch Hockey II*: A Pragmatic Outcome to the Phoenix Coyotes Section 363 Dispute*, 28 ENT. & SPORTS LAW., Fall 2010, at 1, 23 ("The Bankruptcy Court announced that it would consider Glendale bids and relocating bids at a single sale hearing to take place on September 10, 2009.").

[232] *See In re Dewey Ranch Hockey*, 414 B.R. at 587.

[233] *See id.* at 587–88 (stating that the NHL's bid was for $140 million, while Balsillie offered $242.5 million for the franchise).

[234] *Id.* at 591.

[235] *Id.* at 592.

[236] *See id.* at 593. Specifically, the court found that the NHL's bid improperly attempted to avoid paying off two of the team's creditors, both former owners of the club (Jerry Moyes and Wayne Gretzky). *Id.*

[237] Matthew L. Winkel, Note, *The Not-So-Artful Dodger: The McCourt-Selig Battle and the Powers of the Commissioner of Baseball*, 31 CARDOZO ARTS & ENT. L.J. 539, 541 (2013) (noting that McCourt purchased the Dodgers in 2004).

(including meeting the team's payroll).[238] Consequently, McCourt obtained a $30 million personal loan from Fox Sports, the company holding the television broadcast rights to the Dodgers.[239] Growing increasingly concerned about the financial stability of the club, MLB Commissioner Bud Selig formally seized control of the franchise shortly thereafter pursuant to his "best interests of baseball" powers, asserting that the action was necessary to "protect the best interests of the Club, its great fans and all of Major League Baseball."[240]

Nevertheless, McCourt attempted to maintain control of the franchise by negotiating a new, 17-year television broadcast agreement for the Dodgers with Fox.[241] MLB refused to approve the proposed deal, however, contending that it was below market value and would "hamstring" the franchise in the future.[242] In particular, MLB was concerned that under the terms of the tentative agreement, McCourt would receive an upfront payment of $385 million from Fox that he intended to use to pay off his sizable personal debts (including the recent settlement of his contentious divorce proceedings).[243]

With his team practically insolvent, and any chance of salvaging his personal finances through the television deal fading, McCourt opted to plunge the Dodgers into Chapter 11 bankruptcy in the hope that the court would approve the terms of his proposed transaction with Fox.[244] MLB contested the filing, asserting that its right to approve all broadcast agreements could not be displaced in a bankruptcy proceeding.[245] In-

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[238] *See id.* at 552 ("In April 2011, the Dodgers did not possess enough cash to meet payroll and basic operating expenses.").

[239] *See id.* (explaining that McCourt obtained "a $30 million personal loan from Fox Sports—the Dodgers' broadcast partner—in order to pay the Dodgers' operating costs").

[240] *Id.* at 553 (quoting Press Release, Commissioner Alan H. "Bud" Selig, MLB Statement Regarding the Dodgers, MLB (Apr. 20, 2011), *available at* http://mlb.mlb.com/news/press_releases/press_release.jsp?ymd=20110420&content_id=18038724&vkey=pr_mlb&fext=.jsp&c_id=mlb).

[241] *See* Dillon, *supra* note 221, at 309–10 (discussing the terms of McCourt's divorce and his subsequent negotiations with Fox Sports).

[242] *See* Winkel, *supra* note 237, at 554 (stating that "Major League Baseball viewed the deal as being below market value for a marquee franchise in a population center as large as Los Angeles"); *see also* Joe Forward, *Sports and the Law: A National Niche and a Baseball Deal to Remember*, 85 WIS. LAW., Sept. 2012, at 6, 8 (quoting MLB commissioner Bud Selig as declaring that the "proposed transaction with Fox would not be in the best interests of the Los Angeles Dodgers franchise, the game of baseball and the millions of loyal fans of this historic club").

[243] *See* Winkel, *supra* note 237, at 553–54 (noting that MLB's "primary concern with the deal, however, was that it diverted too much money away from the Dodgers for McCourt's personal use to pay his debts and settle his divorce").

[244] *See In re* Los Angeles Dodgers LLC, 457 B.R. 308 (Bankr. D. Del. 2011); Dillon, *supra* note 221, at 311 (reporting that the Dodgers filed for Chapter 11 bankruptcy on June 27, 2011 following MLB's "refusal to approve the proposed Fox transaction").

[245] *See* Dillon, *supra* note 221, at 313 (summarizing MLB's argument).

stead, MLB urged the court to order the sale of the franchise to a new ownership group acceptable to the league.[246]

As the case was pending, the Dodgers asked the court to approve a $150 million loan it had negotiated from a private lender in order to continue funding the team's operations.[247] MLB once again objected, arguing that it had made a good faith offer to loan the team the necessary funds itself, but that the Dodgers had refused to negotiate with the league.[248] The court ultimately sided with MLB, ordering the club to commence negotiations with the league in good faith.[249] In particular, the court noted that the proposed terms of MLB's loan were preferable to that offered by the private lender,[250] determining that McCourt's decision to pursue private financing had been unduly influenced by his poor relationship with the league.[251]

Growing concerned that the parties had become "ever more entrenched in what the Court could see would become a protracted, expensive and non-productive struggle over the control of the Dodgers," Judge Gross eventually encouraged the team and MLB to mediate their dispute several months later.[252] The settlement negotiations proved fruitful when McCourt ultimately acquiesced to MLB's demands that the franchise be sold to new owners,[253] and as a result the Dodgers were sold at auction in March 2012 for over $2 billion.[254]

Thus, the Packers, Coyotes, and Dodgers cases all featured insolvent teams fighting attempts by their respective leagues to force the transfer of the franchises to new, preferred ownership groups. Despite the different procedural postures in the cases (e.g., federal bankruptcy litigation versus a civil injunction proceeding in Illinois state court), the courts in both the Coyotes and Dodgers bankruptcies employed a similar approach to that used by Judge Baldwin in Kansas City's suit nearly 100 years before.

Specifically, in all three cases the courts deferred to some to degree to the league's interests or internal rules. For example, even though Judge Baldwin did not rule in favor of the Federal League in its dispute with Kansas City, he did indicate that he would ground his decision in the league's constitution and bylaws (a factor that would have ultimately

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[246] *See id.* (stating that "MLB asserted that the only successful path through bankruptcy was the sale of the Dodgers").

[247] *In re Los Angeles Dodgers*, 457 B.R. at 310–11.

[248] *Id.* at 311.

[249] *Id.* at 314.

[250] *Id.* at 312.

[251] *Id.* at 313.

[252] *In re* Los Angeles Dodgers LLC, 468 B.R. 652, 654 (Bankr. D. Del. 2011).

[253] *Id.*

[254] *See* Winkel, *supra* note 237, at 557–58 (discussing the sale to an ownership group led by Hall-of-Fame basketball player Earvin "Magic" Johnson).

benefited the Packers).[255] Similarly, in the Coyotes' bankruptcy, the court paid great deference to the NHL's interests and rules, eventually rejecting a significantly larger bid in order to keep the team in Phoenix as the league had urged.[256] Finally, although the Dodgers' court did not defer to MLB's interests or rules as clearly as the courts above, it did nevertheless insist that the team pursue a loan from the league as MLB had requested, and contrary the club's wishes.

Consequently, based on the foregoing examples, one could reasonably expect courts to grant some degree of deference to a professional sports league's interests or rules in future lawsuits for control of an insolvent team.[257] However, if a future court wishes to be less deferential to a league and its rules, it may potentially be able to distinguish each of the suits discussed above in at least one respect. Specifically, the Packers, Coyotes, and Dodgers had each accepted a loan from its respective league,[258] meaning that the league was itself one of the team's creditors. As a result, although never explicitly stated, the foregoing courts may have determined that granting the league or its rules a greater degree of deference was justified in these cases. But should a future dispute arise in which the insolvent team has not accepted a loan from its league, then the presiding court may decide that less deference to the league is warranted.

In addition to the deference paid to the league's internal interests or rules, the judicial management of the Packers, Coyotes, and Dodgers cases also shares another common trait. Specifically, in each case the court strongly encouraged the parties to amicably settle their differences, thereby attempting to avoid having to resolve the difficult issues presented in the litigations themselves. While both the Packers and Dodgers courts urged the respective team and league to pursue a settlement of their disagreement,[259] at one point the judge presiding over the Coyotes'

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[255] *See supra* note 217 and accompanying text.

[256] *See supra* notes 232–36 and accompanying text.

[257] It should be noted that the court in the Texas Rangers bankruptcy appeared to be less deferential to MLB's league constitution. In that case, MLB supported the Rangers' bankruptcy in order to facilitate the sale of the team to the league's preferred new owner. *See In re* Texas Rangers Baseball Partners, 434 B.R. 393 (Bankr. N.D. Tex. 2010). When the team's creditors objected, however, the bankruptcy court noted that "[i]t is not clear to the court that the MLC [(Major League Constitution)] abrogates the rights of [the creditors] under" the lender agreement. *Id.* at 403.

[258] *See* LEVITT, *supra* note 14, at 198 (stating that the Federal League "had lent Kansas City $5,000 to meet payroll" in early September 1914); Blakely, *supra* note 225, at 142 (noting that the NHL was a secured creditor of the Phoenix Coyotes in its bankruptcy proceedings); John W. Polonis, Comment, *Stealing Home in Hollywood: Why the Takeover of the Los Angeles Dodgers Illustrates the Unjust Nature of Major League Baseball's Antitrust Exemption*, 19 VILL. SPORTS & ENT. L.J. 785, 787 (2012) (stating that the judge in the Dodgers' bankruptcy proceeding "ordered [Los Angeles owner Frank] McCourt to accept a loan from MLB").

[259] *See supra* notes 218–20, 252 and accompanying text.

bankruptcy went so far as to order the parties to mediate their dispute.[260] Although the court-ordered mediation did not prove fruitful in the Coyotes case, the parties in both the Packers and Dodgers proceedings were ultimately able to resolve their differences amicably. Thus, even if future courts do not defer as greatly to a professional sports league's interests or rules as was the case in the Packers, Coyotes, and Dodgers proceedings, it appears likely that, at a minimum, they will likely work to encourage a settlement between the parties.

B. The Potential Risk of Publicly Owned Professional Sports Franchises

Finally, one additional lesson can be drawn from the Federal League insolvencies of 1915. Specifically, one factor that contributed to both the Kansas City and Indianapolis clubs' financial difficulties—while also making the Federal League's negotiations with each team more difficult—was the fact that both franchises were owned by a large number of local citizen–shareholders.[261] Because many of these individuals invested in their home teams in order to bring major league baseball and its accompanying national recognition to their cities, they refused to place the greater interests of the league ahead of their own local communities.[262] At the same time, many of these shareholders were also unwilling to invest a larger share of their own wealth to recapitalize their teams for 1915 in light of the Federal League's financial struggles the previous season.[263] Further compounding matters, because these shareholders were typically entitled to free admission to any of their team's home games, they also limited their franchises' ability to generate significant revenue from ticket sales.[264]

Consequently, the experience of the Kansas City Packers and Indianapolis Hoosiers helps explain why U.S. professional sports leagues have

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[260] *See Mediator to Settle Coyotes' Ownership*, ESPN.COM, (May 19, 2009), http://sports.espn.go.com/nhl/news/story?id=4180789 (reporting that the court "ordered the NHL and Phoenix Coyotes owner Jerry Moyes to mediation on Tuesday in an attempt to resolve their fight over who is in control of a franchise that both sides agree is insolvent").

[261] *See* LEVITT, *supra* note 14, at 198 (explaining that the "[Federal League] teams in the four markets competing with Double-A Minor League teams [including both Kansas City and Indianapolis] were owned semi-publicly by a large number of local investors").

[262] *See id.* ("These professionals and businessmen bought into the teams out of civic pride and ego—getting a Major league franchise for their city of which they would be a part-owner—and promises of a healthy return").

[263] *See* Goss, *supra* note 191 (stating that "few of [the Indianapolis shareholders] really desire to put up the money necessary to keep the team here").

[264] *See* WIGGINS, *supra* note 14, at 189 (noting that the Indianapolis franchise's "394 stockholders" limited "the club's chances for a profit" due to the fact that "gross attendance was burdened by a large pass gate for each game").

historically disfavored public ownership of their clubs.[265] Indeed, this preference was initially well founded, as publicly owned teams without the backing of a single wealthy investor were at greater risk of becoming insolvent. While modern professional sports' more substantial and predictable profits—as well as the heightened regulation of publicly traded corporations afforded by federal securities law—may largely alleviate this concern today, in the first few decades of the 1900s it was not unreasonable for leagues to prefer that their franchises be owned by well-financed individuals rather than the public at large.

Conclusion

This Article has explored the history of two long-forgotten legal disputes in 1915 between the Federal League of Professional Base Ball Clubs and its Kansas City Packers and Indianapolis Hoosiers franchises by first introducing the Federal League, and then documenting the battle for control of both insolvent franchises. Finally, the Article discussed the present day implications of these disagreements, comparing the historic legal battles to more recent contested bankruptcy proceedings between professional sports leagues and their insolvent teams. In the process, it contended that both then and now, courts in such cases have adopted similar approaches to managing the litigation. Moreover, the Article also noted that the organizational structures adopted by both the Kansas City and Indianapolis clubs not only contributed to their insolvencies, but also help to explain why U.S. professional sports leagues have traditionally disfavored public ownership of their teams. As a result, the Article concludes that despite the passage of nearly 100 years—and their long-forgotten status—the insolvencies of the Federal League's Kansas City Packers and Indianapolis Hoosiers remain quite relevant today.

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[265] *See* Nathaniel Grow, *In Defense of Baseball's Antitrust Exemption*, 49 Am. Bus. L.J. 211, 252 (2012) (explaining that "municipal or public ownership is extremely rare across the [U.S.] professional sports landscape"); *see also* Nick DeSiato, *Silencing the Crowd: Regulating Free Speech in Professional Sports Facilities*, 20 Marq. Sports L. Rev. 411, 413–14 (2010) ("[A]ll but one of America's major professional clubs are privately owned and operated.").