

“Sports and Antitrust” -- Dan Shulman
April 9, 2008

Dan Shulman, the noted Twin Cities antitrust practitioner and shareholder in the Gray Plant, Mooty firm, addressed the Section membership on the impact of antitrust law on sports, principally through the example of baseball, interspersing his talk with asides on famous baseball players and events. The slide presentation accompanying Dan’s remarks is available on the Section website at www.mnbar.org.

Dan first discussed the general applicability of antitrust laws to wide areas of sporting activities. Courts have typically rejected attempts by sports leagues to avoid the reach of the antitrust laws with respect to their business operations by claiming to be single entities, shielded by the Copperweld doctrine.

Dan then reviewed the two major antitrust exemptions of general applicability to sports leagues -- the statutory and non-statutory labor exemptions. These exemptions immunize from the antitrust laws conduct which affects the players and owners, is a mandatory subject of collective bargaining, and occurs in arms-length negotiations. Notably, Dan is of the opinion that league contraction decisions are now almost certainly immune from antitrust scrutiny because of the non-statutory labor exemption.

Dan also addressed baseball’s infamous decisional law immunity from the antitrust laws, most recently reiterated in the 1972 case, Flood v. Kuhn. After the Supreme Court overturned 90 years of precedent imposing a per se ban on resale price maintenance in last term’s Leegin decision, Dan wonders how the Supreme Court can square that decision with continuing baseball’s exemption from the antitrust laws.

Among the baseball facts and puzzles Dan posed, perhaps none is more significant than the question of why Twins pitching greats Jim Kaat and Bert Blyleven are not in the Hall of Fame. It's too late for Kaat, but Blyleven has some years of remaining eligibility. The Chair will entertain a Section motion urging Bert Blyleven's admission to Canton . . . !