

**THE MINOR LEAGUES STRIKE OUT: THE LEGAL
ISSUES ARISING FROM LEAVING CERTAIN
MINOR LEAGUE TEAMS ON THE BENCH IN
MAJOR LEAGUE BASEBALL'S REVAMPED MINOR
LEAGUE SYSTEM**

JAKOB SIEGFRIED*

ABSTRACT

Minor league baseball is an essential part of the sport of baseball. However, Major League Baseball has forever changed the sport through its reorganization of the minor leagues. As part of this reorganization plan, forty-three minor league teams lost their affiliation to the major leagues. MLB has justified this plan by stating they want to improve working conditions for minor leaguers by improving stadium facilities and travel conditions. Still, losing an affiliation is a major blow to teams financially, and minor league team owners had little power to stop the reorganization plan from happening because of the imbalance of power between the two sides. This imbalance largely comes from MLB's longstanding antitrust exemption which provides MLB immunity from potential antitrust claims and the minor leagues also fall under this exemption.

When most people hear about this situation, they naturally think suing MLB over the loss of an affiliation is the answer. While there are all sorts of legal claims, ranging from tortious interference with business to state antitrust violations, minor league team owners could bring against MLB, litigation is not the answer. This Note suggests that these minor league teams should work together with MLB to ensure that high quality baseball is still played in these areas instead of potentially alienating their relationship with MLB through litigation. Ultimately, this Note recommends that these teams should enter a Memorandum of Understanding with MLB to lay the groundwork for a binding agreement that stipulates that the teams will have the resources, provided by MLB, to survive long term without an affiliation. This type of agreement is more sustainable for the continued operation of these minor league teams than a one-time payout from a lawsuit.

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I. INTRODUCTION

Almost every American adult has heard the phrase “America’s pastime” when describing the game of baseball. The sport is filled with rich traditions and has a special place in our nation’s history. Minor league baseball is a vital part of the sport that is integral to growing the game, especially in more rural areas of the country, but it is often overlooked as it does not receive much, if any, media attention on a national scale. Minor league teams are often located in rural or remote areas, where the closest major league team might be over three hours away.¹ Creating a connection to the game in these areas is very important for baseball as a whole, especially when trying to

¹ See generally Andrew Witherspoon & Kendall Baker, *Where It’s Harder to Watch a Minor League Baseball Game in 2021*, AXIOS (Feb. 16, 2021), <https://www.axios.com/minor-league-baseball-watch-2021-6121f637-4e7a-446c-995b-3ae79ec77132.html>; Shlomo Sprung, *MLB to Begin Official Minor League Baseball Changes with Appalachian League at Worst Possible Time*, FORBES (Sep. 26, 2020, 9:00 AM), <https://www.forbes.com/sites/shlomosprung/2020/09/26/mlb-to-begin-official-minor-league-baseball-changes-with-appalachian-league-at-worst-possible-time/?sh=488cf5fc1bcf>.

create new fans of the game. Minor league teams are often pillars of their communities and help bring the community together for a few hours a night during the summer.² Additionally, these teams give families an affordable entertainment option in their local communities.³

Unfortunately, this is set to change in many areas as Major League Baseball (MLB) has dramatically reorganized all levels of Minor League Baseball (MiLB) by cutting 43 out of 160 teams from the affiliated minor leagues.⁴ MLB is reorganizing the minor leagues because they believe that they can run the minors more efficiently and save costs while improving player conditions.⁵ This means that many minor league baseball communities are going to have to face the reality that they will not have major league affiliated baseball anymore. This will come as a disappointment to fans as they will no longer be able to watch the next big-name prospect for their favorite major league team play in their city. This will not only be a disappointment to fans, but it will also be a disappointment to minor league team owners, as they stand to lose a great deal of money from the loss of their affiliation.⁶

This situation began back in October 2019 when a report leaked that MLB planned on cutting the total number of minor league teams from 160 to 120.⁷ This was at the point when MLB and MiLB, acting as a corporate entity, were still trying to negotiate a new Professional Baseball Agreement (PBA) to continue their decades long partnership.⁸ However, these negotiations did not make it very far, and the PBA expired on September 30th, 2020.⁹ Unfortunately for minor league owners, they had little leverage throughout negotiations and there was little to nothing that they could

² John W. Miller, *Communities Brace for Loss of Another Industry as Minor League Baseball Plans to Leave Appalachia*, 100 DAYS IN APPALACHIA (Oct. 5, 2020), <https://www.100daysinappalachia.com/2020/10/communities-brace-for-loss-of-another-industry-as-minor-league-baseball-plans-to-leave-appalachia/>.

³ *Minor League Baseball Remains a Budget-friendly Entertainment Option*, MiLB (July 7, 2016), <https://www.milb.com/news/gcs-188526688>.

⁴ Arty Berko et al., *Why MLB's Minor Leagues as You Know Them Will End Sept. 30*, ESPN (Sept. 3, 2020), https://www.espn.com/mlb/story/_/id/29795127/why-mlb-minor-leagues-know-end-sept-30; J.J. Cooper, *What's Next for the 43 Teams Left Out of Affiliated Baseball?*, BASEBALL AM. (Dec. 9, 2020), <https://www.baseballamerica.com/stories/whats-next-for-the-43-teams-left-out-of-affiliated-baseball/>.

⁵ J.J. Cooper has been the lead reporter covering this ongoing story and is the Executive Editor of *Baseball America* which is the leading news outlet for in depth news for the entire minor league system. See J.J. Cooper, *A Timeline of Professional Baseball Agreement Negotiations Between MLB, Minor League Baseball*, BASEBALL AM. (Aug. 25, 2020), <https://www.baseballamerica.com/stories/a-timeline-of-professional-baseball-agreement-negotiations-between-mlb-minor-league-baseball/>; *Minor League Baseball Reportedly Set to Agree to Elimination of 42 Teams*, NBC SPORTS, <https://www.nbcsports.com/chicago/white-sox/minor-league-baseball-reportedly-set-agree-elimination-42-teams> (last visited Nov. 27, 2020).

⁶ Berko et al., *supra* note 4.

⁷ Cooper, *supra* note 5.

⁸ The minor leagues had been operated independent of MLB since 1901. *Id.*

⁹ *Id.*

do to stop their teams from losing an affiliation.¹⁰ As one owner said during negotiations, “[y]ou’re basically wondering, are they going to compromise even a tiny bit to get a deal signed or are they going to impose on us? Because they can impose on us.”¹¹ The nature of the relationship between MLB and the minor leagues in the old system, and the fact that the minor leagues are included in MLB’s antitrust exemption which gives MLB protection from antitrust laws and leaves it free to engage in anti-competitive behavior when dealing with MiLB, has created the imbalance of power in this situation.¹²

Minor league team owners could potentially have claims for breach of contract, unfair and deceptive trade practices, and constructive fraud, among other claims in litigation.¹³ The cities that helped finance some of these expensive minor league stadiums could also bring claims arguing that finance agreements and loans provided to the minor league teams were contingent on the teams being affiliated with Major League Baseball.¹⁴ Even MLB’s antitrust exemption has been threatened to be narrowed by lawmakers from areas that lost a team.¹⁵ The legal ramifications from this reorganization plan could potentially be massive.

While MLB is at risk of potential litigation, none of these are guaranteed to win in court. Some claims might have more merit than others, but MLB will still have strong defenses to each claim.¹⁶ Additionally, attempting to narrow MLB’s antitrust exemption does not seem to be a real threat.¹⁷ Congress is unlikely to change the exemption and many minor league teams actually benefit a great deal from the exemption. Luckily, there might be a better solution for minor league owners than suing MLB or relying on narrowing the antitrust exemption.

Instead, these team owners, especially ones that have yet to find a replacement league, should attempt to work together with MLB to ensure that high quality baseball is still played in these areas. This could be achieved by entering into a Memorandum of Understanding (MOU) with specific terms to provide financial help to the teams that lost an affiliation. This MOU should also provide that MLB help find a

¹⁰ Berko et al., *supra* note 4.

¹¹ *Id.*

¹² See John T. Wolohan, *The Curt Flood Act of 1998 and Major League Baseball’s Federal Antitrust Exemption*, 9 MARQ. SPORTS L.J. 347, 367–68 (1999); J.J. Cooper, *Does Minor League Baseball Have An Alternative Plan to MLB’s Proposal?*, BASEBALL AM. (Sept. 8, 2020), <https://www.baseballamerica.com/stories/does-minor-league-baseball-have-an-alternative-plan-to-mlbs-proposal/>.

¹³ Michael McCann, *MLB Faces Tough Legal Road to Restructure Minor League Baseball*, SPORTS ILLUSTRATED (Nov. 19, 2019), <https://www.si.com/mlb/2019/11/19/minor-league-baseball-lawsuit>.

¹⁴ Bill Madden, *Rob Manfred’s Plan to Destroy Minor League Baseball*, N.Y. DAILY NEWS (Nov. 16, 2019), <https://www.nydailynews.com/sports/baseball/ny-minor-league-luhnow-madden-20191116-73ssnr7ybvvdwzdr5vd44vh4e5m-story.html>.

¹⁵ Berko et al., *supra* note 4.

¹⁶ McCann, *supra* note 13.

¹⁷ J.J. Cooper, *Why Baseball’s Antitrust Exemption Isn’t a Strong Negotiating Tool for MiLB*, BASEBALL AM. (Jan. 30, 2020), <https://www.baseballamerica.com/stories/why-baseballs-antitrust-exemption-isnt-a-strong-negotiating-tool-for-milb/>.

replacement league for teams that still have not found another league to join. This MOU would create the groundwork for a binding agreement to ensure that these affected teams have the resources necessary to survive long-term without an affiliation. Entering into an MOU that is beneficial to both sides, and then a subsequent binding agreement, is a better solution than litigation because it is more likely that these teams will be viable long-term under this agreement than from a one-time payout from a lawsuit.

This Note will discuss the reorganization plan and the potential legal issues arising from it. Part II will give background on the reorganization plan itself and motivating factors behind the plan for MLB. Part II will also look at what it means for a minor league team to lose an affiliation. Part III will explore the legal issues that could arise from the reorganization plan, including lawsuits from owners and cities. Part III will further examine the history of MLB's antitrust exemption and identify the potential threats to it. Part IV will analyze the potential threats to the longstanding antitrust exemption to see if it really is possible that the exemption will be narrowed in some way. Part V proposes a possible solution to this situation, in the form of a Memorandum of Understanding, that would benefit both MLB and the minor league teams that lose an affiliation. Finally, Part VI offers a brief conclusion.

II. BACKGROUND

A. *The Reorganization Plan*

MLB plans to take over operations of MiLB as the Professional Baseball Agreement (PBA) between the two expired on September 30th of 2020.¹⁸ For years, MLB and MiLB have worked together through the PBA as partners, but that dynamic has now changed.¹⁹ Many baseball fans may not realize that the minor leagues were not already controlled by MLB because minor league teams have affiliations to the major leagues. This creates a system unlike any other major sports league.²⁰ In this system, minor league teams are often independently owned even though they are still affiliated with major league teams.²¹

The most significant part of MLB's reorganization plan for the minor leagues is cutting ties with about forty teams that previously had an affiliation.²² This plan was set into motion in December 2020 when MLB formally invited 120 teams to join the official affiliated minor leagues in 2021.²³ Before this plan was enacted, there were

¹⁸ J.J. Cooper, *The Professional Baseball Agreement Expired Without a Deal. So Now What?*, BASEBALL AM. (Oct. 1, 2020), <https://www.baseballamerica.com/stories/the-professional-baseball-agreement-expired-without-a-deal-so-now-what/>.

¹⁹ Berko et al., *supra* note 4.

²⁰ *How The Minor Leagues Work*, MiLB (Apr. 20, 2016), <https://www.milb.com/news/gcs-173407668>.

²¹ *Overview of Baseball's Minor League Organization*, THE SPORTS ADVISORY GROUP, <https://www.thesportsadvisorygroup.com/resource-library/business-of-sports/overview-of-baseballs-minor-league-organization/> (last visited Nov. 25, 2020).

²² Berko et al., *supra* note 4.

²³ J.J. Cooper, *MLB Invites 120 Teams to Join Minor Leagues in 2021*, BASEBALL AM. (Dec. 9, 2020), <https://www.baseballamerica.com/stories/mlb-invites-119-teams-to-join-minor-leagues-in-2021/>.

160 affiliated minor league teams.²⁴ In adjusting the amount of affiliated teams to 120, MLB aimed for four affiliated minor league teams per major league club.²⁵ The four teams per club are organized into the familiar levels of Triple-A, Double-A, High A, and Low A with Triple-A being the most competitive level.²⁶ This eliminates the short-season and rookie leagues that used to make up the lower levels of the minor leagues.²⁷

MLB has stated that one of the main reasons for this plan is to improve conditions for minor league players, which have been the subject of frequent criticism lately.²⁸ This would be accomplished, among other improvements, by requiring minor league facilities be upgraded if they do not meet certain standards and by making sure that teams in the same league are located closer together to improve previously difficult and exhausting travelling conditions.²⁹ Additionally, minor league players will be paid more in this new system, another issue that has brought a great deal of criticism towards MiLB.³⁰ Ultimately, MLB believes that they can run the minor leagues more efficiently than the old system.³¹

In the bigger picture, the takeover of the minor leagues significantly advances Commissioner Rob Manfred's vision of "One Baseball."³² This is arguably his most important and ambitious goal as commissioner, as he plans for MLB to play a significant role as the "coordinating decision-maker and guiding force" for the games of baseball and softball at all levels.³³ MLB has been struggling to keep people interested in the game of baseball, as compared to the other major sports leagues and

²⁴ Berko et al., *supra* note 4.

²⁵ *Id.*

²⁶ *Minor League Baseball Reportedly Set to Agree to Elimination of 42 Teams*, *supra* note 5.

²⁷ *Id.*

²⁸ *Id.*; see also J.J. Cooper, *MLB's New Proposed Travel Rules Could Prove Costly for Minor League Franchises*, *BASEBALL AM.* (Nov. 2, 2020), <https://www.baseballamerica.com/stories/mlb-hopes-to-revamp-milb-travel-rules-alter-start-times/>; Melissa Jacobs, *For the Love of the Game: Life as a Minor Leaguer on \$8,000 a Year*, *THE GUARDIAN* (Apr. 1, 2020), <https://www.theguardian.com/sport/2020/apr/01/minor-league-baseball-salary-pay-rise-mlb>; *An Inside Look into the Harsh Conditions of Minor League Baseball*, *BLEACHER REPORT* (May 14, 2014), <https://bleacherreport.com/articles/2062307-an-inside-look-into-the-harsh-conditions-of-minor-league-baseball>.

²⁹ J.J. Cooper, *Upgrades Required: MLB Proposes Stricter Minor League Facility Standards*, *BASEBALL AM.* (Oct. 29, 2020), <https://www.baseballamerica.com/stories/upgrades-required-mlb-proposes-stricter-minor-league-facility-standards/>; Cooper, *supra* note 28.

³⁰ J.J. Cooper, *Players Will Benefit From New Minor Leagues Landscape in 2021*, *BASEBALL AM.* (Dec. 22, 2020), <https://www.baseballamerica.com/stories/players-will-benefit-from-new-minor-league-landscape-in-2021/>; see also Daniel Gallen, *Minor League Baseball Salaries Hover at Poverty Level While Major League Teams Earn Big Profits*, *PENN LIVE* (July 8, 2019), <https://www.pennlive.com/sports/2019/07/minor-league-baseball-salaries-hover-around-poverty-line-some-are-pushing-for-change.html>.

³¹ Cooper, *supra* note 5.

³² *Id.*

³³ *Id.*

their respective sports.³⁴ This plan is meant to help create the next generation of fans by increasing engagement with MLB at all levels.³⁵ By taking over the minor leagues, this adds an additional way for Manfred to increase MLB's engagement with new fans and further his goal of creating a "One Baseball" system.³⁶

B. "Negotiations" Between MLB and MiLB

Negotiations between MLB and MiLB to renew the PBA before it expired on September 30th did not make significant progress as MLB was content to let the agreement expire so they could impose this new system.³⁷ Sources from the minors admitted that the minor league owners did not have much leverage in any stage of these negotiations.³⁸ This mainly stems from the legal protection MLB's antitrust exemption gives them from potential lawsuits for anti-competitive behavior.³⁹ MLB was essentially free to pick and choose which teams they wanted to keep an affiliation with, so MiLB was in no position to play hardball.⁴⁰ To make this situation worse for minor league teams, they had their previous season cancelled due to the Covid-19 pandemic.⁴¹ The financial fallout from losing the revenue normally generated during a season has created dire consequences for many owners.⁴² Because of all of this, the only realistic option for owners was to follow what MLB said, hope that their team was a part of the lucky 120, and cross their fingers that they would be able to play a 2021 season — even with the continuing pandemic.

For the teams that will be keeping their affiliation, the outlook is a little more positive.⁴³ MLB sent a new Professional Development License (PDL) for each individual team that is keeping its affiliation.⁴⁴ Agreeing to the PDL means each team

³⁴ See Peter Panacy, *MLB: How Major League Baseball is Losing its Appeal in the Modern Era*, BLEACHER REPORT (Mar. 14, 2013), <https://bleacherreport.com/articles/1566029-mlb-how-major-league-baseball-is-losing-its-appeal-in-the-modern-era>.

³⁵ Corey Leff, *'One Baseball': MLB's Plan to Develop Talent, Generation of Fandom*, SPORTICO (Aug. 17, 2020, 2:55 AM), <https://www.sportico.com/leagues/baseball/2020/one-baseball-mlb-develp-players-fans-1234611184/>.

³⁶ *Id.*

³⁷ Berko et al., *supra* note 4.

³⁸ *Id.*

³⁹ Cooper, *supra* note 12.

⁴⁰ *Id.*

⁴¹ J.J. Cooper, *The 2020 Minor League Season Is Canceled. So What Happen Next?*, BASEBALL AM. (June 30, 2020), <https://www.baseballamerica.com/stories/the-2020-minor-league-season-is-canceled-so-what-happens-next/>.

⁴² Tom Gatto, *Minor League Baseball Warns of Financial Doom After 2020 Season Is Canceled*, SPORTING NEWS (June 30, 2020), <https://www.sportingnews.com/us/mlb/news/minor-league-baseball-season-canceled-mlb/2ce6w1ir30961sbl2wpkyhds>.

⁴³ Cooper, *supra* note 23.

⁴⁴ J.J. Cooper, *120 Minor League Teams Receive Professional Development Licenses*, BASEBALL AM. (Jan. 14, 2021), <https://www.baseballamerica.com/stories/120-minor-league-teams-receive-professional-development-licenses/>.

is also signing a strict non-disclosure agreement and will waive their right to sue.⁴⁵ The PDLs will have a 10 year term, which is a move away from the two year terms that were used in the previous standard affiliate agreement.⁴⁶ Every team out of the 120 that received an invite signed their PDL primarily because there were no other viable alternatives, in addition to the many other teams that would have gladly taken their spot.⁴⁷ Team operators admitted that they did not have much leverage to negotiate better terms in the PDL. However, MLB has shown its willingness to be cooperative by changing some terms in the PDL after receiving negative feedback when the first summary of terms was sent out.⁴⁸ Ultimately, there is hope for these teams that kept their affiliation that the new system will be beneficial for both sides.⁴⁹

There was uncertainty leading up to December 2020 over which teams would officially lose their affiliation. However, that has been made official with MLB sending out PDLs to the minor league teams they desire to keep an affiliation⁵⁰ and leaving the other teams without any compensation or severance package.⁵¹ The closest thing to a severance package these teams received was MLB promising multiple times to offer baseball in each city that lost their affiliated team.⁵² Approximately half of the 43 teams that lost an affiliation have been able to join new or existing independent professional leagues that are unaffiliated with MLB.⁵³ However, that still leaves many teams without a plan or league to join and it remains to be seen if MLB will actually step in to help these leftover teams find a league. While it is not MLB's formal responsibility to find these teams a new league, it may not be in MLB's best interest to ignore them if they want to expand their influence over all levels of baseball.

C. What Does Losing Their Affiliation Mean for Minor League Teams?

A minor league team losing their affiliation would have a definite economic impact not only on the owners but also the city where the team is located. If a team loses its affiliation, the organization as a business entity does not end.⁵⁴ However, the players on the roster will need to be replaced as their contractual rights belong to the major

⁴⁵ J.J. Cooper, *Minor League Owners Are Unhappy With MLB's Plan, But What Will They Do?*, BASEBALL AM. (Dec. 16, 2020), <https://www.baseballamerica.com/stories/minor-league-owners-unhappy-with-mlbs-plan-but-what-will-they-do/>.

⁴⁶ Cooper, *supra* note 44.

⁴⁷ *Id.*; Kevin Reichard, *Minor League Baseball Overhaul Unveiled*, BALLPARK DIGEST (Feb. 12, 2021), <https://ballparkdigest.com/2021/02/12/minor-league-baseball-overhaul-unveiled/>.

⁴⁸ Cooper, *supra* note 44; Cooper, *supra* note 45.

⁴⁹ Cooper, *supra* note 44.

⁵⁰ *Id.*

⁵¹ See generally J.J. Cooper, *Mailbag: Answering Questions About The Future of Minor League Baseball*, BASEBALL AM. (Sept. 9, 2020), <https://www.baseballamerica.com/stories/mailbag-answering-questions-about-the-future-of-minor-league-baseball/>.

⁵² *Id.*

⁵³ Cooper, *supra* note 4.

⁵⁴ Berko et al., *supra* note 4.

league team and their salaries are not paid by the minor league team owner.⁵⁵ The best-case scenario for a team losing their affiliation is joining an independent professional league or summer collegiate league, like the famous Cape Cod League.⁵⁶ The level of play in these leagues is not too different from short-season and rookie leagues.⁵⁷ If they do not join another league, the only other option many of these owners have is closing down, as most are already in severe economic situations due to the 2020 season being cancelled.⁵⁸ In fact, some teams, including the Staten Island Yankees, have already folded after losing their affiliation.⁵⁹

A crucial way for owners to make money is through attendance.⁶⁰ Even though fans have been able to return to the stands for the most part in the 2021 season, it is still unclear whether fans will be as motivated to attend games if the team is no longer connected to their favorite MLB team.⁶¹ An important draw for minor league fans is the ability to see the next big-name prospect in their organization before he makes his major league debut.⁶² This will not be the same if a team does not have an affiliation. This issue could be mitigated if a team joins a summer collegiate league, as these leagues usually only feature players that play at the higher levels of Division 1 and have a good chance of being drafted by major league teams.⁶³ Still, lack of attendance could lead to other issues, like sponsors dropping out if people are not in the stadiums to see their advertisements.⁶⁴ This will be a major issue for teams to figure out if they have lost their affiliation.

⁵⁵ *Overview of Baseball's Minor League Organization*, *supra* note 21.

⁵⁶ *See* Cooper, *supra* note 51; Berko et al., *supra* note 4.

⁵⁷ *See* *Indy Ball 101*, INDY BALL ISLAND, <https://indyballisland.com/indy-ball-101/> (last visited Dec. 3, 2020); Todd Boss, *What are Non-MLB Associated Baseball League Talent Equivalents?*, NAT'L ARMS RACE (Jan. 9, 2012, 9:59 AM), <https://www.nationalsarmrace.com/?p=3008>. *See generally* Teddy Cahill & Joe Healy, *Ranking the 25 Best College Summer League Teams In 2020*, BASEBALL AM. (July 13, 2020), <https://www.baseballamerica.com/stories/ranking-the-25-best-college-summer-league-teams-in-2020/>.

⁵⁸ Berko et al., *supra* note 4.

⁵⁹ Additionally, the Staten Island Yankees were the first team to sue MLB, and the New York Yankees, over the loss of their affiliation. *See* Kevin Reichard, *Staten Island Yankees Fold, Will Sue MLB*, BALLPARK DIG. (Dec. 3, 2020), <https://ballparkdigest.com/2020/12/03/staten-island-yankees-fold-will-sue-mlb/>.

⁶⁰ Ray Glier, *Minor League Baseball Is Better Business, Not Bigger Business*, USA TODAY (May 8, 2017, 8:39 PM), <https://www.usatoday.com/story/sports/mlb/2017/05/08/minor-league-baseball-better-business-not-bigger-business/101451572/>.

⁶¹ McCann, *supra* note 13.

⁶² David C. Ogden et. al., *Prospects, Promotions and Play-off Races: Do They Bring Fans to Minor League Games?*, BASEBALL RSCH. J., Fall 2013, at 109.

⁶³ *See generally* Cahill & Healy, *supra* note 57.

⁶⁴ *See* McCann, *supra* note 13.

Minor league baseball is not a big business and every bit of revenue matters to the owners;⁶⁵ an average team only makes around five million dollars per year with twenty-one full time employees.⁶⁶ Realistically, this means that these teams are small businesses.⁶⁷ Joining new independent leagues hurts the franchise value of these now unaffiliated teams. Teams that would have been purchased for \$15-20 million are now forced to join leagues where teams can be purchased for a few million dollars.⁶⁸ This does not even consider teams in summer collegiate leagues, which are harder to estimate but are likely worth even less than that.⁶⁹ The bottom line is that losing an affiliation would hurt these teams economically and the alternatives are not entirely appealing to owners or guaranteed to be successful.⁷⁰

III. LEGAL ISSUES ARISING OUT OF THE REORGANIZATION PLAN

A. Potential Litigation Against MLB

Minor league teams, along with the cities where the teams are located, have very little leverage in this situation; these teams are likely to turn to litigation against MLB to try to recover some of their losses because of this.⁷¹ For example, according to sports law journalist and professor Michael McCann, owners could have claims for “breach, unfair and deceptive trade practices, constructive fraud and possibly, state antitrust violations” to the extent that this plan creates breaches of contracts and unlawful disruptions to the owners’ businesses.⁷² Additionally, owners could raise the issue that this claim violates state consumer protection laws and could work with the state’s attorney general to look into this issue further.⁷³ For example, Lowell was one of the teams that lost its affiliation, and Massachusetts has very strong consumer protection laws, so the owner of the team could ask the attorney general to investigate this situation.⁷⁴ In a state with powerful consumer protection laws, this is an issue that

⁶⁵ Jared Diamond, *A Season Without Baseball Could Be Crushing Blow for Minor Leagues*, WALL ST. J. (Apr. 9, 2020, 7:02 AM), <https://www.wsj.com/articles/a-season-without-baseball-could-be-crushing-blow-for-minor-leagues-11586430020>.

⁶⁶ *Id.*

⁶⁷ *Id.*

⁶⁸ J.J. Cooper, *Teams Fear New Minor League Landscape Will Damage Franchise Values, Business Relationships*, BASEBALL AM. (Dec. 23, 2020), <https://www.baseballamerica.com/stories/teams-fear-new-minor-league-landscape-will-damage-franchise-values-business-relationships/>.

⁶⁹ *Id.*

⁷⁰ McCann, *supra* note 13; *see generally* Berko et al., *supra* note 4.

⁷¹ *See* McCann, *supra* note 13.

⁷² McCann, *supra* note 13. Professor Michael McCann is an expert in sports law and the Founding Director of the Sports and Entertainment Law Institute at the University of New Hampshire Franklin Pierce School of Law. In addition, he is a long-time contributor to Sports Illustrated as a legal analyst.

⁷³ *Id.*

⁷⁴ *See id.*; *see also* Cooper, *supra* note 4.

would gain a lot of public support for the attorney general.⁷⁵ MLB should try to avoid getting state governments actively involved in this situation, especially in states like Massachusetts. MLB could avoid getting the state attorney general involved by actively working with minor league teams to ensure that high quality baseball is still being played in these areas and that teams are not forced to fold solely because they lost their affiliation.

These claims are not guaranteed to win as MLB will have strong counter arguments at their disposal that they are simply conducting business as usual and that businesses have to make the difficult decision to downsize at certain points.⁷⁶ They can also counter with the fact that these teams can still exist as summer collegiate teams or independent league teams and that this does not automatically force them to close down operations.⁷⁷ It will most likely be a tough battle in court and it is unclear who will win on these arguments, but it is clear that MLB is opening itself up to numerous potential lawsuits from owners that lose an affiliation.

MLB will not only have to worry about possible lawsuits from owners but also from the cities that lose a team. Professional sports teams, including minor league teams, often ask cities to help subsidize the costs of stadiums.⁷⁸ Even for the rookie leagues — one of the minor league levels that is being eliminated — stadiums cost around \$8.5 million.⁷⁹ During the period from 2002-2015, ten of the eleven AAA and rookie league stadiums built were completely publicly financed.⁸⁰ These cities are responsible for a great deal of money because of these subsidies and having their teams lose their affiliation will hurt their investment. It makes sense for these cities to try to regain some of that investment through litigation.⁸¹ Cities could argue that they were misled when offering to finance these stadiums based on the fact that they were supposed to provide long-term entertainment for their taxpayers.⁸² The bottom line here is that, much like owners, cities will also have a great deal of incentive to bring lawsuits against MLB.

MLB could even be dealing with lawsuits from season ticket holders and sponsors as well.⁸³ These fans could argue that they were fraudulently induced into buying tickets if they had bought them while the team still had an affiliation since many fans

⁷⁵ See generally David G. Thomas et al., *The Massachusetts Consumer Protection Act/Chapter 93A Newsletter*, GREENBERGTRAURIG (Jul. 13, 2020), <https://www.gtlaw.com/en/insights/2020/7/the-massachusetts-consumer-protection-act-chapter-93a-newsletter-summer-2020>.

⁷⁶ McCann, *supra* note 13.

⁷⁷ *Id.*

⁷⁸ Nola Agha & Dennis Coates, *A Compensating Differential Approach to Valuing the Social Benefit of Minor League Baseball*, 33 CONTEMP. ECON. POL'Y 285, 288 (2015).

⁷⁹ *Id.*; *Minor League Baseball Reportedly Set to Agree to Elimination of 42 Teams*, *supra* note 5.

⁸⁰ Agha & Coates, *supra* note 78.

⁸¹ McCann, *supra* note 13.

⁸² *Id.*

⁸³ *Id.*

buy tickets to see the upcoming stars for their favorite major league team play.⁸⁴ Unfortunately, this is no longer possible for fans of teams that lost an affiliation. A season ticket holder bringing a lawsuit is not that far-fetched: Adam Wallach, a season ticket holder for the Astros, gained a great deal of public attention for suing the team over their infamous cheating scandal.⁸⁵ Additionally, sponsors of the teams could have claims that they were fraudulently induced into buying signage at the stadiums.⁸⁶ Sponsors would be especially inclined to bring this claim if attendance fell due to a team losing its affiliation and no fans were there to see their advertisement. Potential lawsuits from both fans and sponsor adds another front to the potential myriad of litigation that MLB could be facing in the near future.

B. MLB's Antitrust Exemption

MLB will also have to deal with their historic antitrust exemption potentially being narrowed by lawmakers in areas where a team has lost their affiliation.⁸⁷ As of now, the exemption is in place for the minor leagues, which means that MLB can currently operate without worrying about violating any antitrust laws.⁸⁸ This exemption dates back to 1922, when the Supreme Court decided in *Federal Baseball* that baseball exhibitions were exempt from antitrust regulation because it was not commerce among the states.⁸⁹ This decision was reaffirmed in *Toolson*, where the Supreme Court refused to revisit the Commerce Clause analysis offered in *Federal Baseball* because of stare decisis.⁹⁰ Even more important in *Toolson* was the Court's decision that baseball should continue to be exempt from antitrust law because of congressional intent.⁹¹ Finally, the Court's most recent case on this exemption was *Flood v. Kuhn*, which again upheld the exemption based on stare decisis and congressional intent.⁹² However, in this case, the Court did acknowledge that MLB was participating in interstate commerce but left Congress to fix this issue as they see fit.⁹³ Since *Flood*

⁸⁴ *Id.*

⁸⁵ Bill Shaikin, *Astros Sued on Behalf of Season-Ticket Holder for 'Deceptively Overcharging' Them*, L.A. TIMES (Feb. 18, 2020), <https://www.latimes.com/sports/story/2020-02-18/houston-astros-lawsuit-fan-adam-wallach-season-tickets-mike-bolsinger>. Fans have also recently sued to receive refunds for the 2020 season that was cancelled due to COVID-19. See Amanda Bronstad, *Major League Baseball Sued by Fans Seeking Refunds*, LAW: THE RECORDER (Apr. 20, 2020, 9:58 PM), <https://www.law.com/therecorder/2020/04/20/major-league-baseball-sued-by-fans-seeking-refunds/>.

⁸⁶ McCann, *supra* note 13.

⁸⁷ *Id.*

⁸⁸ *Id.*

⁸⁹ *Fed. Baseball Club, Inc. v. Nat'l League of Pro. Baseball Clubs*, 259 U.S. 200, 208–09 (1922).

⁹⁰ *Toolson v. N.Y. Yankees, Inc.*, 346 U.S. 356, 357 (1953).

⁹¹ *Id.*

⁹² *Flood v. Kuhn*, 407 U.S. 258, 283–84 (1972).

⁹³ *Id.* at 283 (“Remedial legislation has been introduced repeatedly in Congress but none has ever enacted. The Court, accordingly, has concluded that Congress as yet has had no intention to subject baseball’s reserve system to the reach of the antitrust statutes. This, obviously, has been deemed to be something other than mere congressional silence and passivity.”).

was challenging MLB's reserve clause, some commentators believe that the Court's opinion on exemption should be limited only to include the reserve clause.⁹⁴ Regardless, no other challenge against the antitrust exemption has made it to the Supreme Court.

The antitrust exemption is unique to MLB as no other professional sports league has a similar exemption. Almost all of the major professional leagues have tried to extend this exemption to their own, but the Court has specifically struck down attempts from the NFL and NBA.⁹⁵ In fact, in subsequent cases dealing with other leagues, the Court has limited the holding in *Federal Baseball* to its specific facts.⁹⁶ This is most likely due to the great amount of criticism the exemption has faced not only because of the sweeping immunity it grants MLB but also because of the lack of a consistent standard.⁹⁷ Yet, up until this point, there has not been a genuine challenge in the judicial system to the exemption besides the cases mentioned above. Paring down the minor leagues to 120 teams could create the first significant opportunity for Congress to narrow the exemption further since the Curt Flood Act of 1998.⁹⁸

1. Potential Narrowing of the Antitrust Exemption by Congress

The opposition to MLB's reorganization plan has created one of the strongest opportunities to repeal part of MLB's antitrust exemption, especially for those who have long been critics of the exemption. Members of Congress, including Congresswoman Lori Trahan of Massachusetts and Congressman David McKinley of West Virginia, have publicly spoken out against the reorganization plan by sending a letter to Commissioner Manfred stating their "firm opposition" to the plan.⁹⁹ These two members of Congress have been leading a bipartisan effort, along with 104 of their colleagues in the House of Representatives, on this matter.¹⁰⁰ The letter states

⁹⁴ Joseph A. Kohm, Jr., *Baseball's Antitrust Exemption: It's Going, Going . . . Gone!*, 20 NOVA. L. REV. 1231, 1244 (1996) ("[I]t appears that the last of the Supreme Court cases, *Flood*, held that baseball's antitrust exemption was limited in its scope to the reserve clause."). Flood was an all-star outfielder for the St. Louis Cardinals and was traded to the Philadelphia Phillies without his consent. Unhappy with the situation, Flood requested to be made a free agent but was denied. He then initiated the antitrust suit and challenged the reserve clause which at the time stated that the franchise that first signed the player owned their rights indefinitely. This case occurred before free agency existed. See *Flood*, 407 U.S. at 264–65.

⁹⁵ See *Radovich v. NFL*, 352 U.S. 445, 447–48 (1957); *United States v. Int'l Boxing Club*, 348 U.S. 236, 241–42 (1955); *Haywood v. NBA*, 401 U.S. 1204, 1205 (1971).

⁹⁶ *Radovich*, 352 U.S. at 451 ("[W]e now specifically limit the rule there established to the facts involved, i.e., the business of organized professional baseball.").

⁹⁷ Mitchell Nathanson, *The Irrelevance of Baseball's Antitrust Exemption: A Historical Review*, 58 RUTGERS L. REV. 1, 2 (2005); Michael J. Mozes & Ben Glicksman, *Adjusting the Stream? Analyzing Major League Baseball's Antitrust Exemption After American Needle*, 2 HARV. J. SPORTS & ENT. L. 265, 274 (2011).

⁹⁸ Cooper, *supra* note 5. See generally Mozes & Glicksman, *supra* note 97.

⁹⁹ McCann, *supra* note 13.

¹⁰⁰ See Press Release, Lori Trahan, Representative, U.S. Congress, Representatives Trahan and McKinley Lead Bipartisan Call for Major League Baseball (MLB) to Abandon Harmful Reorganization Effort (Nov. 19, 2019), <https://trahan.house.gov/news/documentsingle.aspx?DocumentID=1307>.

that the “abandonment of Minor League clubs” could impact the “long-term support that Congress has always afforded our national pastime on a wide variety of legislative initiatives.”¹⁰¹ This is a threat that MLB should not take lightly even if they feel confident that they can keep their immunity to antitrust litigation.

As mentioned previously, this Congressional opposition could be the first challenge to successfully narrow the exemption since the Curt Flood Act of 1998. This Act, with the support of a bipartisan Congress, narrowed the exemption to cover issues of “minor league baseball, the amateur draft, the relationship between the major leagues and the minors, franchise relocation, intellectual property, the Sports Broadcasting Act, and umpires.”¹⁰² While this may sound good on its face, a deeper look shows that the only area that this Act changed was the allowance of antitrust claims in the area of employment between major league owners and players.¹⁰³ This is a step in the right direction, but an argument can be made that the Act strengthened the antitrust exemption.¹⁰⁴ Specifically, that argument would be that Congress finally acted on narrowing the exception but purposely did not include the business of baseball as a whole as they “wanted everything not having to do with player relations exempt from antitrust law.”¹⁰⁵ In other words, Congress specifically chose the minor leagues, among other aspects of MLB mentioned, to be included in the exemption.¹⁰⁶ The intent of Congress is clear here and it will be difficult to change the precedent set in this Act.

One area that is still ambiguous under the Curt Flood Act is whether state antitrust claims against MLB are allowed.¹⁰⁷ In *Flood*, the Supreme Court indicated that state antitrust claims would not be allowed because the Commerce Clause issues precluded these claims under state law.¹⁰⁸ However, because many critics believe this opinion on the exemption should be narrowed to only include the reserve clause, it has left the door open for the interpretation that *Flood* actually acted to contract the antitrust exemption.¹⁰⁹ For example, the *Piazza*, *Butterworth*, and *Postema* cases that followed

¹⁰¹ Letter from Lori Trahan et al., Owners/Presidents/CEOs of Pro. Baseball Orgs., to Rob Manfred, Commissioner, MLB (Nov. 19, 2019) (available at https://trahan.house.gov/uploadedfiles/trahan_mckinleymlb_letter.pdf).

¹⁰² Wolohan, *supra* note 12; Curt Flood Act, 15 U.S.C. §26(b) (1998).

¹⁰³ Wolohan, *supra* note 12, at 369–70.

¹⁰⁴ *Id.* at 376–77.

¹⁰⁵ *Id.* at 377.

¹⁰⁶ *Id.*

¹⁰⁷ McCann, *supra* note 13.

¹⁰⁸ *Flood v. Kuhn*, 407 U.S. 258, 284–85 (1972).

¹⁰⁹ Wolohan, *supra* note 12, at 377; Kohm, *supra* note 94; Latour Rey Lafferty, *The Tampa Bay Giants and the Continuing Vitality of Major League Baseball’s Antitrust Exemption: A Review of Piazza v. Major League Baseball*, 831 F. Supp. 420 (E.D. Pa. 1993), 21 FLA. ST. U.L. REV. 1271, 1278–79 (1994).

The reserve clause allows teams to own the rights to a player’s contract until their sixth year of major league service. See Alex Belth, *Ending Baseball’s Antitrust Exemption: What Would It Mean?*, BASEBALL PROSPECTUS (Nov. 26, 2001),

Flood have interpreted it as limiting the exemption.¹¹⁰ Yet, not all courts that followed *Flood* have interpreted it the same way.¹¹¹ The *Finley* and *McCoy* cases have held the opposite and encompassed a wide exemption that would exempt the entire business of baseball.¹¹² It would seem to follow that if a court were to use the logic seen in *Piazza*, *Butterworth*, or *Postema* that state antitrust claims would be allowed against MLB because the courts in these cases had the view that the exemption should be narrowly construed.¹¹³ For someone bringing a state antitrust claim, *Butterworth* would be important precedent to rely on, as this has been the only case decided on the grounds of a state antitrust issue where the court found that MLB was not exempt from certain state antitrust laws.¹¹⁴ However, this might only help owners in Florida, where this case was decided, because it is unclear whether other states will follow this same logic given the fact that other courts like *Finley* and *McCoy* have decided this issue

<https://www.baseballprospectus.com/news/article/1286/ending-baseballs-antitrust-exemption-what-would-it-mean/>.

¹¹⁰ Wolohan, *supra* note 12, at 377. In *Piazza*, Vincent Piazza and Vincent Tirendi made an agreement to purchase the San Francisco Giants and move them to Tampa Bay. However, MLB wanted to keep the team in San Francisco and rejected their proposal and instead found local investors to buy the team. Piazza and Tirendi filed an antitrust lawsuit in response. The case eventually settled between the two parties before trial at the district court level. *See Piazza v. Major League Baseball*, 831 F. Supp. 420 (E.D. Pa.1993) (holding that after *Flood*, there is no doubt that baseball is engaged in interstate commerce and the antitrust exemption was limited to the reserve clause).

In *Butterworth*, the Florida Attorney General launched an antitrust civil investigative demand after the relocation of the Giants was denied. *Butterworth* lost at both the trial and the District Court of Appeals level but appealed to the Florida Supreme Court which held that the United State Supreme Court's language in *Flood* supported the narrow interpretation of baseball's antitrust exemption found in *Piazza*. *See Butterworth v. Nat'l League of Pro. Baseball Clubs*, 644 So. 2d 1021, 1023 (Fla. 1994).

In *Postema*, a female umpire claimed that baseball discriminated against her and that this violated antitrust laws. The case was not decided on the antitrust issue, but the court stated, “. . . the baseball exemption [to the antitrust law] immunize baseball from antitrust challenges to its league structure and its reserve system, the exemption does not provide baseball with blanket immunity.” *See Postema v. Nat'l League of Pro. Baseball Clubs*, 799 F. Supp. 1475, 1488 (S.D.N.Y. 1992).

¹¹¹ Wolohan, *supra* note 12, at 377.

¹¹² *Id.*; *McCoy v. Major League Baseball*, 911 F. Supp. 454, 458 (W.D. Wash. 1995) (interpreting the antitrust exemption as covering the entire business of baseball after an antitrust action was brought based on the owners' alleged unfair labor practices during the 1994 strike). *Finley* was the first case to challenge the antitrust exemption after *Flood*. Here, the owner of the Oakland Athletics sued the Commissioner after he rejected the sale of three Athletics' players. *Finley*, the owner, argued “that the Commissioner, acting in concert with others, conspired to eliminate Oakland from baseball in violation of federal antitrust laws.” The Seventh Circuit Court of Appeals decided in favor of MLB and held that the Supreme Court intended to exempt all of baseball and not just the reserve clause. *See Charles O. Finley & Co. v. Kuhn*, 569 F.2d 527, 531, 541 (7th Cir. 1978).

¹¹³ *See Piazza*, 831 F. Supp. at 420; *Butterworth*, 644 So. 2d at 1024–25; *Postema*, 799 F. Supp. at 1488.

¹¹⁴ *Butterworth*, 644 So. 2d at 1024–25.

differently. There is still no clear answer to this issue and, given the ambiguity, bringing a state antitrust claim against MLB might not be the best way for owners to try to recoup their losses.

IV. IS THE ANTITRUST EXEMPTION REALLY IN DANGER OF BEING FURTHER NARROWED?

While there have been legitimate threats made towards the antitrust exemption, narrowing the exemption further to exclude minor league baseball would be difficult to accomplish. Even though courts have questioned the scope of the exemption, it will be difficult to alter it through the judicial process because of the Supreme Court's continued acceptance of the exemption with no current indication that the Court will change its mind.¹¹⁵ Additionally, Congress has shown their specific intent to leave minor league baseball as part of the exemption, so this oft-used statutory interpretation argument is no longer available.¹¹⁶ Because changing the exemption judicially does not seem like a realistic possibility at the moment, MLB only has to fear Congressional action on the exemption.

Congressional action against the exemption is a possibility, but gaining enough support to narrow the exemption would be challenging, especially because just three years ago Congress passed the Save America's Pastime Act (SAPA).¹¹⁷ This Act excluded minor league players from the Fair Labor Standards Act.¹¹⁸ The practical effect of the act allowed teams to pay minor league players less than minimum wage.¹¹⁹ Paying players less than minimum wage would not be possible without the antitrust exemption as this allows MLB to collude to keep minor leaguers' wages extremely low.¹²⁰ Before this Act, MLB was not actually provided protection by the antitrust exemption for violations of federal wage and overtime laws, but that has now been changed.¹²¹ In a way, this Act once again showed Congress' intent to reaffirm that minor league baseball should be included in the exemption by allowing minor leaguers almost no recourse for their low wages. It is not likely that only two years after Congress passed this Act, they would want to threaten the exemption, even with the negative effects of MLB's reorganization plan looming. Despite the letter from Representatives Trahan and McKinley garnering a good deal of support, it does not

¹¹⁵ Thomas R. Hurst & Jeffrey M. McFarland, *The Effect of Repeal of the Baseball Antitrust Exemption on Franchise Relocations*, 8 DEPAUL J. ART, TECH. & INTELL. PROP. L. 263, 301 n.243 (1998).

¹¹⁶ Wolohan, *supra* note 12, at 377.

¹¹⁷ Nathaniel Grow, *The Save America's Pastime Act: Special-Interest Legislation Epitomized*, 90 U. COLO. L. REV. 1014, 1015 (2019).

¹¹⁸ *Id.* at 1029, 1049.

¹¹⁹ Mike Axisa, *Congress' 'Save America's Pastime Act' Would Allow Teams to Pay Minor-leaguers Less than Minimum Wage*, CBS SPORTS (Mar. 22, 2018, 12:19 AM), <https://www.cbssports.com/mlb/news/congress-save-americas-pastime-act-would-allow-teams-to-pay-minor-leaguers-less-than-minimum-wage/>.

¹²⁰ Ian Gordon, *Minor League Baseball Players Make Poverty-Level Wages*, MOTHER JONES, (July–Aug. 2014), <https://www.motherjones.com/politics/2014/06/baseball-broshuis-minor-league-wage-income/>.

¹²¹ *See id.*

seem likely that Congress will be taking action on this issue any time soon, especially with how recently SAPA was passed.

Most minor league team owners would not actually support excluding minor league baseball from the antitrust exemption because they benefit a great deal from it.¹²² Minor league players' contractual rights are determined by MLB, which is only allowed because of the exemption.¹²³ Under the current system, major league teams own the contract rights of minor league players and pay their salaries.¹²⁴ The teams then decide to send them to their minor league teams where they will play.¹²⁵ This is all based on the reserve clause built into each player's contract.¹²⁶ Originally, this clause stated that the franchise that first signed a player owned the rights to that player indefinitely.¹²⁷ However, this changed in the 1976 collective bargaining agreement, which allowed a player to become a free agent after their sixth year of major league service.¹²⁸ Still, this clause allows major league teams to have deep minor league systems because they own the rights of those players until they reach their sixth year of major league service, which does not happen for a lot of minor league players.¹²⁹

If the exemption were narrowed to not include minor league baseball, this current contractual system would be no more.¹³⁰ The clause would then be subject to a legal challenge and if it were found to be a "violation of antitrust law, baseball teams might have to forfeit the rights to some or even all of their minor-league players."¹³¹ Furthermore, if found to be a violation, this would require a new agreement where minor league players negotiate their pay through a collectively bargained agreement.¹³² At the very least, this would lead to minor league owners contracting and paying their own players.¹³³ However, with many owners struggling financially due to the Covid-19 pandemic, this will not be a very appealing option as this will drastically increase their budgets. In turn, this could lead to a contraction in the number of minor league teams with owners not able to afford the salaries of every player on the roster.¹³⁴ This could then become a very similar situation to what owners are currently battling in terms of a reduction in affiliated teams.¹³⁵ Because of this, it would be difficult to get enough support from owners, especially those who believe their

¹²² Cooper, *supra* note 17.

¹²³ *Id.*

¹²⁴ *Id.*

¹²⁵ *Id.*

¹²⁶ Belth, *supra* note 109.

¹²⁷ See Nathanson, *supra* note 97, at 9–10.

¹²⁸ See *id.* at 20.

¹²⁹ Belth, *supra* note 109.

¹³⁰ Cooper, *supra* note 17.

¹³¹ Belth, *supra* note 109.

¹³² Cooper, *supra* note 17.

¹³³ *Id.*

¹³⁴ See *id.*

¹³⁵ *Id.*

team is not in danger of losing an affiliation, to support narrowing the antitrust exemption when it might cause more harm than good to them.

If MLB thought their exemption was really in danger of being narrowed, they most likely would not have moved forward with the reorganization plan. The benefits of the reorganization plan for MLB, like improving minor league player conditions and running the minor leagues more efficiently, would not outweigh the costs of potential antitrust litigation if the exemption was narrowed.¹³⁶ While an argument can be made that the negative impact of the minor leagues being excluded from the exemption would be relatively insignificant to MLB,¹³⁷ especially because minor league owners would have to pay their own players, this would have a definite effect on another front MLB is currently battling.

The additional front that MLB is currently battling is the federal class action lawsuit against MLB over whether teams violated the Fair Labor Standards Act and other state laws guaranteeing minimum wage overtime pay by paying minor league players much less than minimum wage.¹³⁸ The players' argument in *Senne* is that based on the hours per week they work—somewhere between 60-70 hours—they should be making much more than the \$7,500 a year most players make.¹³⁹ If the minor leagues were excluded from the antitrust exemption, then the attorneys representing the minor league players in this litigation would argue that MLB and its teams “unlawfully conspired to adopt anti-competitive wage rules that stifle minor league players’ opportunities to negotiate market-based compensation.”¹⁴⁰ While it is not clear what impact these additional arguments could have on the litigation, it does appear to be a strong argument against MLB. Not to mention, the pressure is already building against MLB in this case, as the Supreme Court recently denied MLB’s request to review the class certification decision.¹⁴¹ MLB stands to lose a lot in this litigation, possibly having to pay out millions in damages and back pay.¹⁴² It would not make sense for MLB to pursue a plan that would legitimately threaten their antitrust exemption in regard to the minor leagues in the middle of this litigation. It would seem to follow

¹³⁶ McCann, *supra* note 13; *Minor League Baseball Reportedly Set to Agree to Elimination of 42 Teams*, *supra* note 5.

¹³⁷ Cooper, *supra* note 17.

¹³⁸ This lawsuit was originally filed in 2014 before SAPA was passed. SAPA was initially created over concerns of the negative financial impact the outcome of this case could have on minor league owners. *See Senne v. Kan. City Royals Baseball Corp.*, 934 F.3d 918, 924 (9th Cir. 2019); Grow, *supra* note 117, at 1016–17, 1024.

¹³⁹ *See* Chris Bumbaca, *Minor Leaguers Score Win in Quest for Fair Wages as Supreme Court Dismisses MLB Request*, USA TODAY (Oct. 5, 2020, 2:17 PM), <https://www.usatoday.com/story/sports/mlb/minors/2020/10/05/supreme-court-mlb-minor-league-salary-wages/3625838001/>.

¹⁴⁰ *See* McCann, *supra* note 13.

¹⁴¹ Hailey Konnath, *MLB Tells High Court Minor Leaguers Can’t Form Pay Class*, LAW360 (June 8, 2020, 9:32 PM), <https://www.law360.com/articles/1280864/mlb-tells-high-court-minor-leaguers-can-t-form-pay-class>; Jeff Passan, *Supreme Court Denies MLB Request to Dismiss Lawsuit Seeking Increased Minor League Wages*, ESPN (Oct. 5, 2020), https://www.espn.com/mlb/story/_/id/30046350/supreme-court-denies-mlb-request-dismiss-lawsuit-seeking-increased-minor-league-wages.

¹⁴² McCann, *supra* note 13.

that MLB is not really concerned that their antitrust exemption will actually be narrowed.

V. A POSSIBLE SOLUTION FOR BOTH SIDES: A MEMORANDUM OF UNDERSTANDING

Because threatening the antitrust exemption might not be a successful strategy for minor league owners, their main recourse in this situation seems to be litigation. While they may have plenty of potential claims, that might not be the best choice for their long-term goals. At this point, two teams, the Staten Island Yankees and the Tri-City ValleyCats, have sued MLB in response to losing their affiliation.¹⁴³ Even though the ValleyCats were able to join another independent league, the Frontier League, they are still seeking damages in excess of \$15 million.¹⁴⁴ While there is a chance they could win on their various claims of breach of fiduciary duty and tortious interference,¹⁴⁵ there is an even better chance that MLB will want nothing to do with the operator of the franchise if they have to pay significant damages to the ValleyCats. The ValleyCats have found a solution to their immediate issue of losing an affiliation by joining the Frontier League,¹⁴⁶ but their ultimate goal should be positioning themselves to possibly regain their affiliation in the future. While there is no guarantee that they will regain an affiliation in the near future, this should be the owners' ultimate goal because having an affiliation maximizes their return on investment.

A Memorandum of Understanding, otherwise known as a letter of intent,¹⁴⁷ with MLB, including certain terms to benefit these teams, would be more effective at helping teams achieve long-term success post affiliation through a working relationship with MLB. While this MOU is aimed at teams that have lost an affiliation and have not been able to find another league to join, each team that loses an affiliation could benefit from entering into an MOU with MLB. In general, the important terms of the MOU would look something like this:

1. MLB agrees to make a good faith effort to ensure these teams can find another high-quality league to join; and

¹⁴³ Mark Singelais, *ValleyCats Sue Major League Baseball, Houston Astros for \$15M*, ALB. TIMES-UNION (Jan. 15, 2021, 7:47 PM), <https://www.timesunion.com/sports/article/ValleyCats-sue-Major-League-Baseball-Houston-15874082.php>; Reichard, *supra* note 59. The ValleyCats survived a motion to dismiss hearing on their complaint with the judge allowing four of their ten original claims to move forward, specifically being more persuaded by the ValleyCats' claims of tortious interference with third parties. See Michael McCann, *Minor League Club Scores Win in Contraction Lawsuit*, YAHOO SPORTS (Sept. 7, 2021, 12:00 PM), <https://sports.yahoo.com/minor-league-club-scores-win-160042340.html>.

¹⁴⁴ Singelais, *supra* note 143.

¹⁴⁵ *Id.*

¹⁴⁶ The Frontier League, along with two of the other major independent leagues, was announced as a partner league of MLB. It is important to note that this is different than being an affiliated team and the operations of these leagues will remain autonomous from MLB. See Nick Diunte, *Major League Baseball Adds Frontier League and American Association as 'Partner Leagues'*, FORBES (Sept. 25, 2020, 7:48 PM), <https://www.forbes.com/sites/nickdiunte/2020/09/25/major-league-baseball-adds-frontier-league-and-american-associations-as-partner-leagues/?sh=77ab81ab35b0>.

¹⁴⁷ *Letter of Intent*, BLACK'S LAW DICTIONARY (11th ed. 2019).

2. MLB agrees to completely subsidize the costs of the team's player and coach salaries in their new league for the next three years; and
3. MLB agrees to provide an additional one-time subsidy to help teams offset losses from losing their affiliation and from the 2020 season being cancelled due to the Covid-19 pandemic; and
4. MLB agrees to revisit the reorganization plan five years from the time this MOU is agreed to. MLB agrees to give fair consideration to teams that lost an affiliation and, if applicable and feasible, create a working plan for those teams to regain affiliation; and
5. Minor league team owners agree to waive the right to sue MLB based upon possible claims they might have for losing their affiliation.

This MOU would show MLB's commitment to their promise to help unaffiliated teams find another league, which is important in creating a working relationship between the two sides.¹⁴⁸ The MOU is a symbol of goodwill between the two parties and lays the groundwork for a formal agreement that can be entered into when MLB's reorganization plan has been developed further. This provides an alternative for MLB so they can follow through with their promise to help these teams but also avoid having to negotiate a separate binding agreement with each team while simultaneously trying to implement their new minor league system. Ideally, a binding agreement with each team that lost an affiliation, based on the mutual understanding of the terms contained in the MOU, would be reached by the end of 2022 to ensure these teams are receiving financial assistance as soon as possible. This MOU is an important step in creating a formal agreement and if both sides find these terms acceptable at this stage, it shows that a lasting relationship between the two is more than possible. However, it is still important that MLB starts working with these teams right away, especially when it comes to helping find a league for teams to join if they have yet to find one already.

A. Term #1: MLB Agrees to Make a Good Faith Effort to Ensure These Teams Can Find Another High-Quality League to Join

While the teams ultimately cannot control whether they are able to keep their affiliation, this term in the MOU allows them to continue working with MLB to secure the best available option to keep high-quality baseball in these areas. MLB could provide help to these teams through requesting that one of the independent leagues that MLB recently partnered with¹⁴⁹ put serious consideration into adding another team. Additionally, MLB exerts such influence over the entire sport that if they reached out to a collegiate summer league and asked them to consider adding one of these teams, the summer league would most likely strongly consider it. If needed, MLB could incentivize a collegiate summer league to add another team as well. For example, if the television rights would allow it, they could offer to televise one or two of the summer league's games in order to encourage them to add another team. These collegiate leagues could greatly benefit from that type of exposure and it could be enough to influence them to add another team or two.

¹⁴⁸ Cooper, *supra* note 51.

¹⁴⁹ See generally Diunte, *supra* note 146.

There is no guarantee that MLB will be able to find a new league for every team that has yet to find another league which is why this term only requires a good faith effort and does not require MLB to find another league. Nevertheless, the leagues that would be available to join, like the summer collegiate leagues or independent leagues, are considered high quality leagues. The quality of play does not drop off as drastically as one would think for unaffiliated baseball. For example, the quality of play in independent leagues is often comparable to the lower-level rookie leagues.¹⁵⁰ Additionally, for the most part, only the top collegiate players usually play in these summer leagues.¹⁵¹ Even if the quality of play drops a small amount compared to when teams had their affiliation, it is often suggested that the fans that attend games at the lower minor league level care more about promotions and off-field entertainment.¹⁵² However, some studies have shown that a higher quality of play and winning increases attendance even at the Single-A level, so ensuring a high quality product should be a priority for these operators. Regardless, this could give teams a glimpse of hope that their franchise will be able to last long-term in unaffiliated baseball.¹⁵³ Given the nature of this situation, working together with MLB to find these replacement leagues will only increase the odds that baseball is still being played in these areas long term.

If MLB is serious about playing a larger role in all levels of baseball as part of the “One Baseball” plan then it would be beneficial to try to keep a relationship with the teams that lose an affiliation through helping them find a new league to join. If MLB does not help these teams, they are essentially turning their back on a variety of markets that have a desire to have a team and are interested in baseball. It is in the best interest of MLB to keep a working relationship with these unaffiliated teams as well and this specific term in the MOU would help further the plan to expand MLB’s influence. While this term is not legally binding, MLB should not let that sway them into delaying help to these teams in hopes that they find a league on their own. MLB has the ability to significantly help in this situation, and they should make a good faith effort right away, for the reasons mentioned above, to help these teams get out of an unfortunate situation that MLB imposed on them.

B. Term #2: MLB Agrees to Completely Subsidize the Costs of the Team’s Player and Coach Salaries in Their New League for the Next Three Years

This term ensures that minor league teams will not have additional costs as it relieves them of the burden of having to pay player and coach salaries that major league clubs were previously paying. As previously mentioned, when teams have an affiliation, the major league club will pay the salaries of the affiliated minor league team’s players. Teams that lose an affiliation will already be losing value in their

¹⁵⁰ *Indy Ball 101*, *supra* note 57.

¹⁵¹ *See generally* Boss, *supra* note 57.

¹⁵² Ogden, *supra* note 62, at 109–10. The study in this article surveyed fans at a AAA-level game to see whether they paid more attention to and enjoyed the promotions and attractions more than the actual game. The results showed that most fans were able to identify the final score and who won the game and listed the actual game experience as the most enjoyable part of the night. The authors of the study make sure to note that this effect might not be seen at the A-level where the quality of play is not as high. *Id.*

¹⁵³ Seth R. Gitter & Thomas A. Rhoads, *Determinants of Minor League Baseball Attendance*, 11 J. SPORT ECON. 614, 623 (2010).

franchise and they most likely will not be able to handle many more costs.¹⁵⁴ If teams have to pay their own players and coaches and have no outside help with covering these costs, it will lead to some of these teams folding.¹⁵⁵

If MLB is serious about keeping high-quality baseball in these areas long-term, this is a necessary action for them to take to lighten the financial burden on these teams. It would not be enough just to subsidize these costs for next season as these teams are facing serious financial situations and need help over the span of multiple years to ensure that these teams can be viable long-term. Additionally, it is not like the player and coach salaries that MLB would pay would be astronomically high. In 2018, the salary cap for the Frontier League was \$75,000 for an entire team which comes out to an average salary per month of \$725.¹⁵⁶ Even after a shortened season and financial losses stemming from the pandemic, MLB's revenue was still just under \$3 billion.¹⁵⁷ This of course came after MLB set a revenue record for the 17th year in a row, recording \$10.7 billion in revenue in 2019.¹⁵⁸ Subsidizing these costs for teams that lose an affiliation seems like something that would be able to fit within MLB's budget. After all, MLB can be seen as the direct cause of many of these franchises losing value. It is important that MLB attempts to make these teams whole again and subsidizing player and coach salaries is a critical step towards that.

C. Term #3: MLB Agrees to Provide an Additional One-Time Subsidy to Help Teams Offset Losses

This term provides another safeguard to ensure that teams are not left in a financial situation where they are guaranteed to fail. The amount of this subsidy could be determined in many different ways. For example, it could be determined using a percentage of the average total revenue generated from ticket sales in the past three years. These minor league teams make a large amount of their potential profit through ticket sales¹⁵⁹ and this term helps ensure that these teams are receiving at least some part of the ticket sales revenue that they missed out on from last season being cancelled.

This additional subsidy is important as teams that join an independent league will have more costs than teams joining a collegiate league because, under current NCAA

¹⁵⁴ Cooper, *supra* note 68.

¹⁵⁵ See generally Cooper, *supra* note 17.

¹⁵⁶ See, e.g., J.J. Cooper, *End of Indy Leagues?*, BASEBALL AM. (Mar. 22, 2018), <https://www.baseballamerica.com/stories/save-americas-pastime-act-could-wound-or-kill-indy-leagues/>. This article looked at the impact that SAPA could have on lower-level independent leagues. These teams often have even less resources than teams that just lost an affiliation.

¹⁵⁷ Mike Ozanian, *MLB Teams Lost \$1 Billion in 2020 on \$2.5 Billion Profit Swing*, FORBES (Dec. 22, 2020, 11:30 AM), <https://www.forbes.com/sites/mikeozanian/2020/12/22/mlb-teams-lost-1-billion-in-2020/?sh=6c31687817d7>.

¹⁵⁸ Maury Brown, *MLB Sees Record for \$10.7 Billion in Revenues for 2019*, FORBES (Dec. 21, 2019, 7:02 PM), <https://www.forbes.com/sites/maurybrown/2019/12/21/mlb-sees-record-107-billion-in-revenues-for-2019/?sh=7714ad6a5d78>.

¹⁵⁹ Glier, *supra* note 60.

rules,¹⁶⁰ college players are not able to be paid even when playing in a league separate from the NCAA.¹⁶¹ In other words, this additional subsidy could even out the disparities caused by the additional costs that independent leagues have by having to pay both players and coaches. Once again, this additional subsidy would not unduly burden MLB financially given the growing profitability of the league as a whole and record setting revenues in recent years.¹⁶²

D. Term #4: MLB Agrees to Revisit the Reorganization Plan Three Years from the Time This MOU Is Agreed Upon

It is important that there is a possibility that these teams could regain their affiliation in the future. MLB is creating a drastic change in the longstanding system and there is always the chance that the reorganization plan might not work out like they had hoped. MLB might find out that they actually are not able to run the minor leagues more efficiently and that having more affiliated teams was better for the overall health of the sport. Conversely, the new system could be so much more efficient and profitable than the old system that MLB has the ability to expand the minor leagues and give teams their affiliation back. Either way, this term gives the opportunity for MLB to revisit the progress of the reorganization plan with these teams that lost an affiliation and determine whether there is a path to regain their affiliation.

MLB could have specific issues with teams that kept their affiliation and signed a PDL that might lead to them being replaced. For example, teams have three years to meet the new facility requirements that were outlined in the PDLs.¹⁶³ A team could be in jeopardy of losing their PDL if they do not meet these requirements within three years.¹⁶⁴ These upgrades will be costly, especially at the lower levels and some teams might not be able to afford them if their facilities are in particularly bad condition.¹⁶⁵ If MLB needs to revoke a team's PDL and find a replacement team, it could happen at this point in three years and MLB and the unaffiliated team could work together to create a path to regain their affiliation and, if needed, upgrade facilities or other tasks to meet MLB's specific standards. Additionally, at this point in three years, MLB could create a long-term plan with a team to regain their affiliation if they believe that an affiliated team will need to be replaced, for financial or other reasons, when their PDL expires in 10 years. This term helps both sides as it gives unaffiliated teams a specific goal in three years to work towards to make sure their franchise meets the required standards to possibly regain their affiliation and it gives MLB a pool of backup teams if their agreement with a current affiliated team does not work out.

¹⁶⁰ It is important to note that even with developments in Name, Image, Likeness legislation that collegiate players cannot be paid by the team solely for playing on their team.

¹⁶¹ NAT'L COLLEGIATE ATHLETIC ASS'N, 2020–21 NCAA DIVISION I MANUAL (2020), <https://web3.ncaa.org/lstdbi/reports/getReport/90008>.

¹⁶² Brown, *supra* note 158.

¹⁶³ *Explaining How MLB Completely Revamped the Minors*, *Baseball America* (Dec. 9, 2020) (downloaded using Spotify).

¹⁶⁴ Cooper, *supra* note 29.

¹⁶⁵ *Id.*

E. Term #5: Minor League Team Owners Agree to Waive the Right to Sue MLB for Claims Arising Out from Loss of Affiliation

This term is the main reason that MLB should enter in this MOU as they should try to avoid potential litigation that may stem from the reorganization plan. While they will not be able to avoid all of it, especially as two teams have already sued,¹⁶⁶ this should resolve most of the litigation by making these subsidies and other benefits contingent on waiving the right to sue.¹⁶⁷ Additionally, entering into the MOU in the near future would dissuade teams from suing MLB because they are making an active effort to help these teams. Given the potential massive financial outcome of the *Senne* case,¹⁶⁸ MLB should avoid as many lawsuits as possible in the near future. For example, MLB has already stated that they would pay for the expansion fees for teams that lost an affiliation to join a new league in exchange for those teams to waive their right sue.¹⁶⁹ Some teams have declined this proposal by MLB because they value their right to sue more than the cost of the expansion fees.¹⁷⁰ This term would extend that proposal a step further as the terms given above, once a formal agreement is made, will offer more than just paying expansion fees.

If teams choose not to enter into the proposed MOU because they want to keep their ability to sue, they will be leaving much needed financial assistance on the table. In most cases, it would be unwise for one of these teams that lost an affiliation to choose to do that because it is unclear how these potential lawsuits will be decided. Both sides have strong arguments, but the court has treated MLB and its teams favorably in the past. The bottom line for these owners is that they would be risking a lot if they refuse to waive their right to sue for this MOU. Refusing this waiver would also hurt the long-term goals of these franchises as bringing lawsuits against MLB would undoubtedly be detrimental to the relationship between these owners and MLB and would hurt the chances of these teams ever regaining their affiliation. The end goal for these owners should be the long-term success of their team both in competition and economically and refusing this waiver would hurt that goal.

V. CONCLUSION

The decades long partnership between MLB and the minor leagues is coming to an end, which means the minor league system will look very different in the coming year.¹⁷¹ As part of Commissioner Manfred's plan for MLB to become more engaged at all levels of the sport, MLB will be taking over operations of the minor leagues.¹⁷² Not only does MLB want to increase their influence but they believe that they can run

¹⁶⁶ Reichard, *supra* note 59; Singelais, *supra* note 143.

¹⁶⁷ Unfortunately for MLB, this term does not alleviate any potential litigation from cities and municipalities, but it would be unrealistic to assume that they can avoid all litigation from this plan.

¹⁶⁸ McCann, *supra* note 13.

¹⁶⁹ Cooper, *supra* note 4.

¹⁷⁰ Society for American Baseball Research, *Minor League Baseball Discussion with Scott Bush and J.J. Cooper*, ZOOM (Feb. 19, 2021).

¹⁷¹ Cooper, *supra* note 41.

¹⁷² Madden, *supra* note 14.

the minor leagues more efficiently while improving player conditions.¹⁷³ While this is a very worthy cause for MLB, especially after the dreadful player conditions have become increasingly infamous, this plan includes reorganizing the minor leagues and forty-three teams have lost their affiliation at this point.¹⁷⁴

Losing an affiliation for teams does not mean the team will disband. The team will still exist and could join another league like an independent league or a collegiate summer league. In fact, around half of the forty-three teams that lost their affiliation have been able to find new homes, whether it be in existing independent or summer collegiate leagues or through creating their own leagues.¹⁷⁵ However, this will still have a negative economic impact on these teams which has been amplified by the fact that many of these teams are already struggling financially due to the ongoing pandemic and having their season cancelled in 2020.¹⁷⁶ These minor league owners have very little leverage in this situation because of their desperate economic situation and because minor league baseball falls under MLB's antitrust exemption. The antitrust exemption gives MLB power to take almost any course of action they please in this situation while facing little consequence.

The main recourse that these owners have in this situation is to bring litigation against MLB. Early on in the process, there was hope that litigation could potentially stop the reorganization plan. However, the plan has been finalized as the teams that were invited to keep their affiliation had to sign their 10-year professional development licenses by February 10, 2021.¹⁷⁷ Owners could still sue MLB to try to recover some of their losses from losing their affiliation and could have many different claims ranging from breach of contract to state antitrust claims.¹⁷⁸ Additionally, these owners could potentially work with lawmakers that represent cities that lost a team to threaten to narrow the antitrust exemption.

However, this might not be the best solution for these teams. First off, the antitrust exemption is unlikely to be narrowed because minor league owners that kept their affiliation benefit a lot from the exemption.¹⁷⁹ The minority of teams that lost their affiliation would not be able to convince the majority to support them in attempting to narrow the exemption. While suing MLB could seem like an attractive option for these owners, especially after MLB caught some of these teams off guard as they thought their affiliation was safe, trying to continue a working relationship with MLB would be a better long-term option. Entering into a MOU with the specific terms previously mentioned will help both sides work together towards their long-term common goals, like continuing to grow the game of baseball, while meeting short-term goals like teams improving their financial situation through economic relief provided by MLB and MLB avoiding potential litigation. This MOU lets these minor league teams know that MLB is serious about helping them right off the bat and provides an important framework and a step towards a binding agreement between the two sides to ensure

¹⁷³ Cooper, *supra* note 5.

¹⁷⁴ Cooper, *supra* note 4.

¹⁷⁵ *Id.*

¹⁷⁶ Cooper, *supra* note 41.

¹⁷⁷ Cooper, *supra* note 44.

¹⁷⁸ Cities and municipalities could have these claims as well. *See* McCann, *supra* note 13.

¹⁷⁹ Cooper, *supra* note 17.

that these minor league teams receive the assistance they need. This MOU, and the subsequent agreement, will help both sides and make the most out of an unfortunate situation for many minor league owners.