THE NOT-SO-ARTFUL DODGER: THE MCCOURT-SELIG BATTLE AND THE POWERS OF THE COMMISSIONER OF BASEBALL♦

INTRODUCTION

Since the inception of the Office of the Commissioner of Major

League Baseball, the powers of the office have been broad and loosely defined.[1] The Commissioner of Baseball (the "Commissioner") very much resembles the Chief Executive Officer of a major corporation. The Commissioner is hired by the Major League owners as "an authority . . . [to] control . . . whatever and whoever [has] to do with baseball."[2] Additionally, since he is an employee of the owners, he is responsible for protecting their significant monetary investments in their franchises.[3] Primarily, the Commissioner must act to maintain the financial stability and success of Major League Baseball and its constituent clubs.[4] The Office of the Commissioner of Baseball, however, is different from a CEO in that he is also charged with safeguarding the honor of the game of baseball.[5] In this way, the Commissioner is the guardian of the integrity of and public confidence in the national pastime.

Most of the Commissioner's authority is derived from the "best interests of baseball" clause of the Major League Agreement.[6] This clause grants the Commissioner the power to take action for the "best interests" of the game of baseball and to punish players, teams and owners for conduct that is not in the "best interest" of the game.[7] The clause is a mandate of almost unlimited power because the determination of what concerns the "best interests of baseball" is vested solely with the Office of the Commissioner.[8] Past commissioners have tested and expanded the limits of their authority, and judicial interpretation of the text of the Major League Agreement has upheld the broad scope of the Commissioner's powers.[9] Moreover, courts that have ruled on the "best interests of baseball" clause have mandated wide-ranging deference for determinations and disciplinary decisions made by the Commissioner.[10]

The language of the clause is purposely ambiguous and open to interpretation. Thus, whenever a dispute arises between the

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[1] *See* Michael J. Willisch, *Protecting the "Owners" of Baseball: A Governance Structure to Maintain the Integrity of the Game and Guard the Principals' Money Investment*, 88 NW. U. L. REV. 1619, 1619 (1994).
[2] Charles O. Finley & Co. v. Kuhn, 569 F.2d 527, 532 (7th Cir. 1978). This quote is from a statement made by Judge Kenesaw Mountain Landis, the first Commissioner of Baseball, upon accepting the position.
[3] *See* Willisch, *supra* note 1, at 1622.
[4] *See id.*
[5] *See id.* at 1622–23.
[6] *See* Adam Epstein, *An Exploration of Interesting Clauses in Sports*, 21 J. LEGAL ASPECTS SPORT 5, 13 (2011). The Major League Agreement is the governing document of Major League Baseball. *Id.* All constituent clubs of both the American and National Leagues sign on to it and agree to be bound by its rules. *Id.*
[7] *Charles O. Finley*, 569 F.2d at 533.
[8] *Id.* at 533.
[9] *Id.* at 537.
[10] *Id.*

Commissioner of Baseball and another individual involved with baseball—whether a player, employee, or owner—the limits of the Commissioner's authority can be called into question. The 2009 Los Angeles Dodgers divorce-bankruptcy scandal again brought the issue of the breadth of the Commissioner of Baseball's disciplinary power to the forefront. The scandal also provided current Commissioner, Alan "Bud" Selig, with the opportunity to further clarify the scope of his authority as Commissioner. Moreover, the case was significant because it called for the Commissioner to establish a new disciplinary precedent regarding owner financial misconduct in order to protect the future prosperity of the game of baseball.

In 2004, Boston parking lot magnate Frank McCourt purchased the Los Angeles Dodgers baseball club from Fox Sports, a subsidiary of the News Corporation.[11] After buying the Dodgers, McCourt and his family packed their bags and moved from the cold, dull winters of New England to sunny Southern California. McCourt essentially retired from his business as a real estate developer to enjoy the spoils of owning a professional sports franchise.[12] The Dodgers became Frank McCourt's only source of income. As owner of the Dodgers, Dodger Stadium, and the stadium's parking lots, McCourt created 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.[13] McCourt, in effect, leveraged the franchise's future for his own pleasure and to satisfy his family's every whim.

In 2009, when McCourt and his wife Jamie filed for divorce, his questionable financial practices involving the Dodgers were revealed.[14] Moreover, the financial mismanagement of the team and the ongoing divorce proceedings forced the Dodgers to the brink of bankruptcy.[15] The dire financial state of the franchise compelled Commissioner Selig, acting on behalf of Major League Baseball, to assume day-to-day control of the Dodgers.[16] This action had many legal ramifications

[11] *See* Mark Ashton, *The McCourt Divorce; Being Rich is Not What it Used to Be*, PA. FAM. L. BLOG (Jun. 21, 2011), http://pafamilylaw.foxrothschild.com/2011/06/articles/divorce/the-mccourt-divorce-being-rich-is-not-what-it-used-to-be/?utm_source=feedburner&utm_medium=feed&utm_campaign=Feed%3A+PennsylvaniaFamilyLaw+%28Pennsylvania+Family+Law%29; Larry Behrendt, *Frank McCourt Must Go (Updated)*, IT'S ABOUT THE MONEY (Jun. 21, 2011), http://itsaboutthemoney.net/archives/2011/06/21/commissioner-selig-frank-mccourt-must-go-a-petition/.

[12] *See* Behrendt, *supra* note 11.

[13] *See id.*

[14] *See* Eryn Doherty, *The Dodgers Debacle*, MARQ. U. L. SCH. FACULTY BLOG (Aug. 18, 2011), http://law.marquette.edu/facultyblog/2011/08/18/the-dodgers-debacle/?utm_source=feedburner&utm_medium=feed&utm_campaign=Feed%3A+MarquetteUniversityLawSchoolFacultyBlog+%28Marquette+University+Law+School+Faculty+Blog%29.

[15] *See* Behrendt, *supra* note 11.

[16] *See* Michael S. Schmidt & Richard Sandomir, *Baseball Taking Control of Dodgers' Operations*, N.Y. TIMES, Apr. 20, 2011, http://www.nytimes.com/2011/04/21/sports/baseball/

because it dramatically infringed on Frank McCourt's ownership rights. Commissioner Selig, however, cited his power under the "best interests of baseball" clause as justification for the takeover.[17]

The conflict between Dodgers owner Frank McCourt and Commissioner Bud Selig raised the issue of what powers the Commissioner of Baseball possesses under the "best interests of baseball" clause. Previous interpretations indicate that a franchise takeover and forced sale is within the scope of the Commissioner's authority. Although this is a valid and necessary use of the Commissioner's "best interests of baseball" clause power; wresting control from a delinquent owner and forcing a sale is an unprecedented and new facet of the Commissioner's authority. The broad scope of the Commissioner's power to protect the honor and integrity of baseball and judicial deference for such decisions allows Commissioner Selig to establish any disciplinary example he deems fit. Thus, if he should choose this course of action, he would blaze a new disciplinary trail and establish an important precedent to deter similar financially devious ownership practices. As guardian of the honor and integrity of the game of baseball, it is Commissioner Selig's duty to take such action.

I. THE "BEST INTERESTS OF BASEBALL" CLAUSE AND THE POWER OF THE COMMISSIONER

The Office of the Commissioner was created in 1921[18] in response to the 1920 "Black Sox Scandal."[19] Judge Kenesaw Mountain Landis was named the first Commissioner of Baseball. When approached about becoming the first Commissioner of Baseball, Judge Landis stipulated that he would only accept the position provided he had absolute decision-making power.[20] The Major League Agreement officially created the Office of the Commissioner and detailed the powers of the position.[21] It is a contract between the constituent clubs of the National and American Leagues and serves as the charter under

21dodgers.html?_r=2&dlbk.

17 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.

18 *See* Jonathan M. Reinsdorf, *The Powers of the Commissioner in Baseball*, 7 MARQ. SPORTS L. J. 211, 220 (1996). The baseball owners approached Judge Kenesaw Landis to become chairman of a new commission that would "rule over baseball." *Id.*

19 Charles O. Finley & Co. v. Kuhn, 569 F.2d 527, 532 (7th Cir. 1978).

20 *See* Reinsdorf, *supra* note 18, at 220–21. The owners of baseball assured Judge Landis that he would have the power that he requested. *See id.* at 221.

21 *See id.* at 221. The Major League Agreement was subject to approval by Judge Landis. *See id.* In fact, in one of the drafting sessions for the Major League Agreement, the owners attempted to place limitations on the Commissioner's authority. *See id.* Judge Landis refused to accept the Office of the Commissioner under this incarnation of the Major League Agreement. *See Charles O. Finley*, 569 F.2d at 532.

which Major League Baseball operates.[22] Judge Landis accepted the position of Commissioner and ratified the Major League Agreement stating that he agreed to accept the position with the understanding that the owners sought "an authority outside of [their] own business, and that a part of that authority would be a control over whatever and whoever had to do with baseball."[23]

The Commissioner derives power from the Major League Agreement, but the text of the agreement only vaguely delineates the limits of his authority.[24] Thus, the Commissioner has wide latitude in functioning as the head of the game of baseball. Since the inception of the office, the Commissioner has assumed two prominent duties: he maintains the public's confidence in the integrity of the game and protects the owners' business interests.[25] Although Major League Baseball enjoys an infamous anti-trust exemption[26] and is considered a game rather than a business, the Commissioner effectively assumes the role of the Chief Executive Officer of Baseball.[27] Furthermore, he is an employee of the owners and is therefore responsible for protecting the owners' significant monetary investments in their franchises.[28] He also acts to encourage the financial stability of Major League Baseball by maintaining labor peace between the owners and players, promoting fan attendance to stadiums, stimulating public interest in the game, and increasing television revenues.[29] The Commissioner's dual roles are sufficiently inter-related because maintaining public confidence in the integrity of the game is a crucial element of the continued financial success of Major League Baseball. Therefore, when the Commissioner takes action to protect the integrity of the game—even an instance of sanctioning an owner for misconduct—he consequently protects the business interests of his employers, the owners.[30]

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22 *See Charles O. Finley*, 569 F.2d at 533.
23 *Id.* at 532.
24 *See* Willisch, *supra* note 1, at 1619.
25 *See id.*
26 *See* Flood v. Kuhn, 407 U.S. 258 (1972). In *Flood*, the Court reaffirmed baseball's antitrust exemption from two previous cases, *Fed. Baseball Club v. Nat'l League* and *Toolson v. N.Y. Yankees*. *See id.* at 269–73. The Court in *Flood* held that: baseball is a business engaged in interstate commerce; in light of *Fed. Baseball* and *Toolson*, baseball is an aberration and exempt from antitrust laws; because of the unique characteristics of baseball and the longstanding history of the antitrust exemption, the aberration of baseball is entitled to the benefit of *stare decisis*; and Congress' positive inaction with regard to baseball's antitrust exemption in the years following *Fed. Baseball* and *Toolson* contribute to the perseverance of the exception. *See id.* at 282-83. The Court reiterates the holding in *Toolson* stating, "Congress had no intention of including the business of baseball within the scope of federal antitrust laws." *Id.* at 286 (citing Toolson v. N.Y. Yankees, 346 U.S. 356, 357 (1953)).
27 *See* Willisch, *supra* note 1, at 1622.
28 *See id.*
29 *See id.*
30 Willisch argues that the Commissioner's power is tempered by the Commissioner's employee-employer labor relationship with the owners. *See* Willisch, *supra* note 1, at 1623. He states that

The expression "best interests" is found nine times in the Major League Agreement and serves as a pivotal source for the Commissioner's broad authority over all of baseball.[31] The Major League Agreement provides that "[t]he functions of the Commissioner shall be . . . to investigate . . . any act, transaction or practice . . . not in the best interests of the national game of Baseball".[32] Furthermore, it is the function of the Office of the Commissioner "to determine what preventive, remedial or punitive action is appropriate in the premises, and to take such action."[33] The National and American Leagues, as well as their constituent clubs and owners, severally agreed to be bound by the determinations of the Commissioner and his disciplinary decisions.[34] Article I, Section 3 of the Major League Agreement further states:

> [i]n the case of conduct by Major Leagues, Major League Clubs, officers, employees or players which is deemed by the Commissioner not to be in the best interests of Baseball, action by the commissioner for each offense may include any one or more of the following: (a) a reprimand; (b) deprivation of a Major League Club of representation in joint meetings; (c) suspension or removal of any officer or employee of a Major League Club; (d) temporary or permanent ineligibility of a players; and (e) a fine . . . .[35]

In *Charles O. Finley & Co. v. Kuhn*, the Seventh Circuit held that Article I, Section 3 of the Major League Agreement does not limit the broad power expressly granted to the Commissioner by the agreement, but simply enumerates some of the possible remedial actions at the Commissioner's disposal.[36] Moreover, the court asserted that the Commissioner's wide-ranging authority applies especially in situations where violations of Major League Rules or moral turpitude are involved.[37]

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the Commissioner must take punitive measures to maintain the integrity of the game cautiously to avoid alienating the owners and fall out of favor. *See id.* Willisch's assertions, however, came at a time when the power of the Commissioner was at its weakest. Since Commissioner Fay Vincent's 1992 resignation, the powers of the commissioner have expanded considerably both through the owners' own amendments to the Major League Agreement, *see infra* notes 52–53 and accompanying text, and the practices of current Commissioner Alan "Bud" Selig.

31 *See* Epstein, *supra* note 6, at 13.

32 Charles O. Finley & Co. v. Kuhn, 569 F.2d 527, 533 (7th Cir. 1978).

33 *Id.*

34 *See id.*

35 *Id*. at 535 n.22 (emphasis added) (citing the Major League Agreement, Art. I, § 3 (1994)).

36 *See Charles O. Finley*, 569 F.2d at 535. The court further stated that "[i]n no other sport or business is there quite the same system, created for the same reasons and with quite the same underlying policies. Standards such as the best interests of baseball, the interests of the morale of the players and the honor of the game . . . are not necessarily familiar to the courts and obviously require some expertise in their application." *Id.* at 537. Therefore, "[w]hile it is true that professional baseball selected as its first Commissioner a federal judge, it intended only him and not the judiciary as a whole to be its umpire and governor." *Id.*

37 *See id*.

The *Charles O. Finley* case involved the assignment of players and subsequent veto of the transactions by the Commissioner of Baseball.[38] The Oakland Athletics, owned by Charles O. Finley & Co., held contracts with Joe Rudi, Rollie Fingers, and Vida Blue through the end of the 1976 season. At the end of this contract term, all three players would become free agents, eligible to negotiate contracts with any other major league team. Thus, during the 1976 season, Oakland negotiated to sell the club's contract rights for Rudi and Fingers to the Boston Red Sox and the contract rights for Blue to the New York Yankees.[39] Then Commissioner of Baseball, Bowie K. Kuhn, disapproved the assignments, deeming the transactions 'as inconsistent with the best interest of baseball, the integrity of the game and the maintenance of the public confidence in it.'[40] The Oakland Athletics filed suit, directly challenging the Commissioner's authority to disapprove assignments "in the best interests of baseball."[41] In a seminal holding maintaining the broad powers of the Office of the Commissioner over players, teams, and owners, the Seventh Circuit stated, "the express language of the [Major League] Agreement itself [is] to the effect that the Commissioner has the authority to determine whether *any* act, transaction or practice is 'not in the best interests of baseball,' and upon such determination, to take whatever preventative or remedial action he deems appropriate, whether or not the act, transaction or practice complies with the Major League Rules or involves moral turpitude."[42] Thus, the Seventh Circuit mandated that the Commissioner derive from the textual language of the Major League Agreement the power to take any action, in good faith, to protect the best interests of baseball, the interests and morale of the players, and the honor of the game.

When current Commissioner Alan "Bud" Selig assumed the office in 1994, he asserted that the Commissioner's powers under the "best interests of baseball" clause were inherently narrow and were created only to ensure the integrity of the game.[43] In a commentary for *The New York Times*, Selig wrote, "[t]he notion of an almighty commissioner directing the business of baseball is incorrect."[44] Selig's sentiments reflected the views of the owners who amended the Major League Agreement in 1992 after the short and turbulent administration

[38] *See id.* at 531.
[39] *See id.*
[40] *Id.* The Commissioner expressed numerous concerns to justify his veto of the transactions: (1) the debilitation of the Oakland club; (2) the lessening of the competitive balance of professional baseball through the buying of success by the more affluent clubs; and (3) "the present unsettled circumstances of baseball's reserve system". *Id.*
[41] *Id.*
[42] *Id.* at 539.
[43] *See* Richard Sandomir, *Selig Widens 'Best Interests' View in Rangers Bid*, N.Y. TIMES, May 14, 2010, http://www.nytimes.com/2010/05/15/sports/15sandomir.html.
[44] *Id.*

of Commissioner Fay Vincent; this was done in an attempt to limit the powers of the Office of the Commissioner.[45] To resolve the issue of whether the Commissioner can use the "best interests of baseball" clause in opposition to existing Major League Rules, the owners amended Article I, Section 4 of the Major League Agreement.[46] Under the amended section, the Commissioner may not use his "best interests of baseball" power to take an action that the Major League Clubs could not accomplish themselves, unless the teams voted or refrained from voting at a Joint Major League Meeting or League Meeting concerning the Major League Constitution on the matter.[47] An exception exists, however, if the matter involves the integrity or public confidence of baseball.[48]

Similarly, the owners tried to limit the Commissioner's power by amending Article V, Section 2(e).[49] This provision limits the power of

[45] *See* Reinsdorf, *supra* note 18, at 231. Commissioner Vincent was forced to resign his position because he no longer had the support of the owners, and as a result, could no longer effectively serve as Commissioner. *See id.* The U.S. District Court case *Chicago National League Ball Club, Inc. v. Vincent* represents Vincent's futile term as Commissioner. *See id.* at 242. In *Chicago Cubs*, Commissioner Vincent, citing his "best interests" power as authority, ordered the realignment of the National League in the face of vetoes from the Chicago Cubs and New York Mets. *See id.* The Chicago Cubs challenged the Commissioner's authority to act as arbiter of realignment under Article V of the Major League Agreement. *See id.* Commissioner Vincent countered the Cubs' argument claiming authority to force a realignment under the "best interests of baseball" clause. *See id.* The U.S. District Court for the Northern District of Illinois granted a preliminary injunction against Commissioner Vincent, reasoning that

> the Commissioner's authority to investigate 'Acts,' 'transactions' and 'practices' and to determine and take 'preventative, remedial or punitive action' does not encompass restructuring the divisions of the National League. There has been no conduct [or misconduct] for the Commissioner to investigate, punish or remedy under Article I [of the Major League Agreement].

Id. (quoting Chicago Nat'l League Ball Club, Inc. v. Vincent, No. 92 C 4398, 1992 WL 179208 (N.D. Ill. July 23, 1992)). The court effectively held that the Commissioner's "best interests of baseball" powers were limited to incidents of player, owner, or team conduct or misconduct. However, before an appeal on the preliminary injunction could be heard, Commissioner Vincent resigned and the National League abandoned the matter of realignment. *See id.* at 243. Thus, the legal holding of the case and its applicability to the Commissioner's "best interests of baseball" powers is unresolved.

[46] *See id.* at 233. The amended Article I, Section 4 reads:

> Notwithstanding the provisions of Section 2, above, the Commissioner shall take no action in the best interests of Baseball that (i) requires the Clubs to take, or to refrain from taking, joint League action (by vote, agreement or otherwise) on any of the matters requiring a vote of the Clubs at a Joint Major League Meeting that are set forth in Article I, Section 9 or in Article V, Section 2(b) or (c), or (ii) requires the member Clubs of either League to take, or to refrain from taking, League action (by vote, agreement or otherwise), on any matter to be voted upon by Member Clubs of the League pursuant to their League Constitution; provided, however, that nothing in this Section 4 shall limit the Commissioner's authority to action any matter that involves the integrity of, or public confidence in, the national game of Baseball.

Major League Agreement, Art. I, § 4 (1994).

[47] *See id.*

[48] *See id.*

[49] *See id.* at 234. The amended Article V, Section 2(e) reads: "[a]ll League-specific matters shall be decided by a vote of the Member Clubs of such league pursuant to their League Constitution."

the Commissioner by not allowing the Commissioner to resolve matters concerning a specific league.[50] This section, however, is subject to the same exception enumerated in Article I, Section 4—if the integrity or public confidence in baseball is at issue, the Commissioner has broad authority under the "best interests of baseball" clause to take *any* action he deems necessary.[51] Thus, although the amendments were intended to limit the Commissioner's powers, they had the contrary effect. Under the new amendments, the Commissioner can use his "best interests" power in any way, except areas of labor, so long as he can show that the integrity or public confidence of baseball is at stake.[52] The amended clauses broaden the scope of the Commissioner's power because of baseball's standing as a public business; the Commissioner can easily justify his use of his "best interests" power by framing a matter as a public confidence or integrity issue. This is especially pertinent in matters where player, owner, or team conduct threatens the image and health of the game of baseball.[53]

A. *The Commissioner's "Best Interests" Powers and Judicial Deference*

As stated above, the courts have allowed the Commissioner a wide berth in the use of his "best interests of baseball" clause powers. The characteristics of professional baseball differ from that of any other business organization.[54] The most unique characteristic concerns bankruptcy—for most businesses, it is beneficial for a competitor to go bankrupt. A baseball team, however, cannot survive without competition from other clubs.[55] Therefore, the sustained financial

Major League Agreement, Art. V, § 2(e).

50 *See id.*

51 *See id.* (emphasis added).

52 *See id.* at 233.

53 In *Rose v. Giamatti*, the United States District Court for the Southern District of Ohio stated,

> it is clear that with regard to disciplinary matters, the major league baseball clubs have made the Commissioner totally independent of their control. Under the Major League Agreement, the Commissioner's status with respect to disciplinary matters is analogous to that of an independent contractor, a person employed by Major League Baseball to act as an arbitrator and judge independent of any control by the members of Major League Baseball.

721 F. Supp. 906, 919 (S.D. Ohio 1989). Essentially, the court reasons that through the Major League Agreement, the teams have vested the Commissioner with sole authority over misconduct concerning the game of Baseball. By signing on to the Major League Agreement, owners and teams subject themselves to the Commissioner's disciplinary rulings.The court in *Atlanta National League Baseball Club, Inc. v. Kuhn* interpreted the Commissioner's "best interests" powers even broader than the court in *Rose*. *See* Atlanta Nat'l League Baseball Club, Inc. v. Kuhn, 432 F. Supp. 1213, 1222 (N.D. Ga. 1977). The court's interpretation of the "best interests of baseball" clause is very similar to the later ruling in *Rose*, but the court is more expansive in its view of the breadth of the Commissioner's remedial power and the persons subject to the office's authority.

54 *See* Reinsdorf, *supra* note 18, at 243.

55 *See id.* ("*Additionally, professional baseball teams derive a majority of their income* from

vitality of Major League Baseball's constituent clubs is of paramount importance to the Office of the Commissioner. Due to the unique attributes of professional baseball, the Commissioner has unique responsibilities, some similar, and some different from a typical CEO.[56] Thus, the Commissioner is given wide latitude in using the authority of the Office.

The courts have recognized the uniqueness of the Commissioner's responsibilities and authorized great deference for decisions made by the Office. Primarily, as discussed in *supra* note 26, the Supreme Court has upheld baseball's antitrust exemption, reasoning that baseball has "unique characteristics and needs."[57] The court in *Charles O. Finley* restated this exception and expanded its application to the Office of the Commissioner:

> baseball cannot be analogized to any other business or even to any other sport or entertainment. Baseball's relation to the federal antitrust laws has been characterized by the Supreme Court as an "exception," an "anomaly" and an "aberration." Baseball's management through a commissioner is equally an exception, anomaly and aberration.[58]

Moreover, the tenets of integrity and honor require safeguarding by the Commissioner.[59]

The court in *Charles O. Finley* established a precedent of deferring to the expertise of the Commissioner rather than interfering with matters of the honor and integrity of the game, which the court knows little about.

His expertise pertains almost entirely to the complex culture of baseball. Only in baseball is the Commissioner or CEO's authority based on the concepts of the "best interests" of the game.[60] Thus, a person experienced with this culture would most adeptly understand the nuances of governing baseball. The courts have recognized that the Commissioner possesses this special expertise and respect his decisions regarding the "best interests" of the game because he is uniquely qualified to interpret the "best interests of baseball" clause.[61] In *Charles O. Finley*, the court explained its reasoning behind its deferral to the Commissioner's "best interests" decisions because examining

television, licensing and other *joint* activities. [Further], due to salary arbitration, a baseball team must pay its employees the same amount of money as its competitors . . . even if its competitors do not desire a particular employee's services.") (emphasis added).

56 *See id.*

57 Flood v. Kuhn, 407 U.S. 258, 282 (1972).

58 Charles O. Finley & Co. v. Kuhn, 569 F.2d 527, 537 (7th Cir. 1978).

59 *See supra* note 5 and accompanying text.

60 *See* Reinsdorf, *supra* note 18, at 244.

61 *See id.*

them "would involve the courts in not only interpreting often complex rules of baseball to determine if they were violated but also . . . the 'intent of the [baseball] code,' an even more complicated and subjective task."[62] This deference to the Commissioner was reaffirmed by the court in *Atlanta National League Baseball Club, Inc. v. Kuhn*, which reasoned, "[w]hat conduct is 'not in the best interests of baseball' is . . . a question which addresses itself to the Commissioner, not [the] court."[63] Standards such as the "best interests of baseball" are unfamiliar to the court and thus require the expertise of the chief executive of baseball—the Commissioner—in their application.[64]

B. *Legal Precedent for the Commissioner's Remedial Powers Under the "Best Interests of Baseball" Clause*

The Commissioner's "best interest of baseball" powers require him to act unilaterally when a person or an organization threatens the integrity of the game. As stated above, the courts have afforded the Commissioner wide deference in the use of his "best interests of baseball" powers; furthermore, the courts have also declared support for the Commissioner's role as disciplinarian under the clause. In *Atlanta National League Baseball Club*, the court stated, "[t]he Commissioner has general authority, without rules or directives, to punish both clubs and/or personnel for any act or conduct which, in his judgment, is 'not in the best interests of baseball' within the meaning of the Major League Agreement."[65] This ruling granted the Commissioner broad authority to reprimand anyone involved in professional baseball. Further, it established the Commissioner as the sole disciplinarian over all of baseball—including clubs and owners.

The Commissioner's ability to dispense punishment was brought before the court in *Atlanta National Baseball Club, Inc. v. Kuhn* after a dispute arose in 1976.[66] The owners and players had signed a new collective bargaining agreement, which established free agency.[67] Acting Commissioner, Bowie Kuhn, warned owners not to negotiate with or make public comments about other teams' players until the players were free agents.[68] Ted Turner, owner of the Atlanta Braves, ignored the Commissioner's directive and made public statements about his team being interested in a potential free agent from another club.[69] Commissioner Kuhn responded by suspending Turner from

62 *Charles O. Finley*, 569 F.2d at 539.
63 432 F. Supp. 1213, 1222 (N.D. Ga. 1977).
64 *See Charles O. Finley*, 569 F.2d at 537.
65 *See Atlanta Nat'l League Baseball Club*, 432 F. Supp. at 1222.
66 *See* Reinsdorf, *supra* note 18, at 237–38.
67 *See Atlanta Nat'l League Baseball Club*, 432 F. Supp. at 1215.
68 *See id.* at 1215–17.
69 *See id.* at 1217.

involvement in the team's operations for one year and took away the Braves' first round draft choice in the next baseball draft.[70]

Turner filed suit against Commissioner Kuhn arguing that the Office of the Commissioner could not issue directives and that the Commissioner abused his discretion in disciplining Turner and the Braves.[71] The court upheld the Commissioner's power to issue directives and to discipline Turner. Although the court did not allow Commissioner Kuhn to take away the draft choice from the Braves, it ruled that his powers under the "best interests of baseball" clause were not limited by the contemporary collective bargaining agreement.[72] Further, the court maintained a "hands-off" approach concerning the Commissioner's "best interests" authority by counseling the courts to refrain from passing judgment on his determinations of what punishments are best for the game.[73] This ruling is important because it validated a Commissioner's punishment of an owner that threatened the "best interests of baseball" through misconduct and established judicial deference for future remedial actions taken against owners.

II. Background of the Sale of the Los Angeles Dodgers to Frank McCourt and his Subsequent Mismanagement of the Team

In 2004, Frank McCourt and his wife Jamie purchased the Los Angeles Dodgers and Dodger Stadium for $430,000,000.[74] McCourt purchased the Dodgers from Fox Sports, a subsidiary of the News Corporation.[75] McCourt's purchase of the Dodgers was financed almost entirely by debt.[76] McCourt borrowed $150 million from Bank of America, $75 million from Major League Baseball and received a $196 million debt package from Fox.[77] After completing the purchase, McCourt refinanced the debt he accrued in acquiring the team. In exchange for forgiveness of some of the debt package he had received from Fox, McCourt traded ownership of his Boston located parking lots. Furthermore, he used a Dodger affiliate, Dodger Tickets, LLC, to borrow $250 million to refinance the remaining debt from the purchase.

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70 *See id.*

71 *See id.* at 1218, 1220–21.

72 *See id.* at 1220.

73 *See id.* at 1225*; see also* Rose v. Giamatti, 721 F. Supp. 906, 919 (S.D. Ohio 1989) (holding that with regard to disciplinary matters, the clubs of Major League Baseball made the Commissioner totally independent of their control via the Major League Agreement).

74 *See* Ashton, *supra* note 11.

75 *See* Schmidt & Sandomir, *supra* note 16.

76 *See* Behrendt, *supra* note 11.

77 *See id.* Fox gave McCourt such a substantial loan to purchase the team from the company because it was eager to unload the Dodgers. Moreover, it is important to note that although McCourt's purchase of the franchise was highly leveraged, it satisfied all of Major League Baseball's debt rules and received approval from Commissioner Selig. *See* Schmidt & Sandomir, *supra* note 16.

In addition, McCourt personally received $50 million from Fox as part of the debt package.[78] Subsequent events made clear that McCourt did not put any of his own money into the transaction and managed to use his newly acquired franchise as collateral to borrow the hundreds of millions of dollars required to finance the purchase.[79]

From all indications Frank McCourt did not actually possess enough wealth to purchase and own a professional sports franchise. His financial mismanagement of the Dodgers, including his highly leveraged purchase, is evidence of such. McCourt and his family led a lavish lifestyle, and they used the Dodgers franchise to finance this lifestyle.[80] According to team Vice Chairman Jeff Ingram, the Dodgers' team budget revolved not around fielding a successful team, but around funding the personal financial demands of the McCourt family.[81] First and foremost, the Dodgers paid out salaries to the entire McCourt family: $2 million annually for Jamie McCourt as compensation for her position as CEO of the Dodgers; $5 million annually to Frank McCourt from one or more Dodgers business affiliates; and $600,000 to two of the McCourt children, one of whom attended Stanford University, and the other of whom had a job with Goldman-Sachs.[82] The Dodgers served as the only source of income for Frank and Jamie McCourt.[83]

Exorbitant salaries, however, were not the only way in which the Dodgers organization financed the McCourts' indulgent way of life. First of all, shortly after purchasing the Dodgers, McCourt borrowed $367 million against future ticket sales through a Dodgers affiliate, Dodgers Tickets, LLC.[84] McCourt commonly used Dodger affiliates and subsidiaries to borrow money against the team.[85] In order to facilitate his practice of extracting money from the organization, McCourt expanded the Dodgers into more than twenty separate businesses.[86] The Dodgers team was owned by a company called TeamCo, while the Dodgers parking lots were owned by Blue LandCo; Dodger Tickets LLC presided over the team's ticket sales, and LA Real

[78] *See* Behrendt, *supra* note 11.
[79] *See id.* The terms of the sale and the subsequent refinancing of the debt indicate that Frank McCourt "essentially bought the Dodgers on a credit card." Gene Maddaus, *Does Dodger Debt Hold Key to Team's Payroll Woes?*, LA WEEKLY BLOGS (Aug. 11, 2010, 1:47 PM), http://blogs.laweekly.com/informer/2010/08/frank_mccourt_divorce_payroll.php.
[80] *See* Behrendt, *supra* note 11.
[81] *See id.* According to Ingram, "the family and business checkbooks were largely one and the same." Moreover, Ingram actually stated that the family used the team like a credit card. *See id.*
[82] *See id.*
[83] *See id.* These salaries, however, were not enough to fund the financial needs of the family, which were reported at nearly $2 million a month. *See id.*
[84] *See* Ashton, *supra* note 11. It is unclear how this loan was distributed among the refinancing of McCourt's debt, the team, and the McCourt family.
[85] *See* Behrendt, *supra* note 11.
[86] *See id.*

Estate, LLC owned Dodger Stadium.[87] The Dodgers gave its parking lots to Blue LandCo as a gift, and subsequently paid $6 million to $9 million in annual rent for the use of parking lots it once owned. McCourt leveraged this rental stream into a $70 million dollar loan to Blue LandCo—not to operate the ballclub, but for the McCourts' personal use. Further, McCourt created another rental stream by giving away ownership of Dodger Stadium to RealCo. Moreover, as mentioned above, McCourt gave the rights to sell Dodgers tickets to Dodger Tickets, LLC, which, in turn, borrowed hundreds of millions of dollars to refinance McCourt's debt and for personal use by Frank McCourt and his family.[88] Thus, McCourt's management and corporate organization of the Dodgers led to the team paying rent on a stadium and parking lot it once owned, paying all ticket revenues directly to creditors, and accruing hundreds of millions of dollars in debt.

III. The McCourt Divorce, the Road to Financial Ruin, and the Luck of the Irish

In October 2009, the McCourts announced their separation, and Frank declared himself sole owner of the Dodgers, while Jamie claimed to own half of the team. A week later, Frank fired Jamie from her position as CEO of the Dodgers. Since California is a community property state, Jamie was actually entitled to half of Frank's shares of the Dodgers and to half of his personal assets.[89]

A. The Dodgers' Financial Problems and the Major League Baseball Takeover

In April 2011, the Dodgers did not possess enough cash to meet payroll and basic operating expenses. This prompted Frank McCourt to obtain a $30 million personal loan from Fox Sports—the Dodgers' broadcast partner—in order to pay the Dodgers' operating costs.[90] McCourt leveraged the loan from Fox by approaching Fox's broadcasting rival, Time Warner, for a loan.[91] Since the loan was a

[87] *See id.* Ownership of all of these companies can be traced back to Frank McCourt.
[88] *See id.*
[89] *See* Doherty, *supra* note 14. A post-nuptial marital property agreement was in dispute as part of the fight for ownership of the team. Under this agreement, the McCourts agreed to place all of the company's property in Jamie's name in order to protect them from creditors in the event of a failure of Frank's business ventures. In this agreement, there was disagreement over a provision that granted Frank sole ownership of the Dodgers. Three of the six copies of the agreement signed by the McCourts contained language stating that the Dodgers were inclusive of Frank's separate property, and three contained language stating that the Dodgers were exclusive of his separate property—shared marital property. In November 2010, the judge presiding over the divorce found that the post-nuptial agreement was invalid under California property law because there was no "meeting of the minds." Frank futilely fought this ruling, but his objections were overruled on January 2011. *See id.*
[90] *See* Schmidt & Sandomir, *supra* note 16.
[91] *See* Doherty, *supra* note 14. Faced with the possibility of McCourt receiving a "bail out" from

personal loan and not a loan to the Dodgers, it circumvented approval by Commissioner Alan "Bud" Selig.[92] Upon learning of the personal loan, however, Major League Baseball seized control of the day-to-day operations of the Dodgers on April 20, 2011.[93]

Commissioner Selig expressed his "deep concerns regarding the finances and operations of the Dodgers" when he authorized the Major League Baseball takeover of the team's operations.[94] Commissioner Selig reasoned that the decision to take over the Dodgers was made to "protect the best interests of the Club, its great fans and all of Major League Baseball."[95] Commissioner Selig then appointed Tom Schieffer to monitor the franchise.[96] Although Major League Baseball controlled the team, the McCourts still owned the Dodgers. His financial struggles, divorce, and the Major League Baseball takeover of his baseball team left McCourt scrambling for a financial solution to all three problems. Since McCourt had given away the Dodgers' ownership of its stadium, ticket revenues, and parking lots, the Dodgers only had one more source of value—its television rights.

B. The Failed Television Rights Contract, the Dodgers' Bankruptcy, the McCourt Divorce Settlement, and an Agreement with Major League Baseball

On June 17, 2011, Frank and Jamie McCourt reached a property division settlement.[97] The divorce settlement was contingent upon Major League Baseball approving a new television rights deal between the Dodgers and Fox Sports.[98] Before the two parties even hammered out a settlement, Frank approached Fox Sports about renegotiating the Dodgers' television rights deal to remedy the team's increasingly dire financial situation. Fox Sports' original broadcast agreement with the Dodgers was set to expire in 2013. Under the agreement, Fox had exclusive negotiating rights until 2012. On April 15, 2011, per Major League Rules, Frank McCourt submitted a seventeen-year, $2.7 billion television deal between the Dodgers and Fox to Major League Baseball for approval.[99]

The deal between the Dodgers and Fox Sports actually appeared to be a personal financial bailout for McCourt himself. The deal called for

one of its biggest rivals, Fox had no choice but to offer McCourt the personal loan he desired.

[92] *See* Schmidt & Sandomir, *supra* note 16.

[93] *See* Doherty, *supra* note 14.

[94] Press Release, *supra* note 17.

[95] *Id.*

[96] *See* Marie-Andrée Weiss, *Take Me Out to the Courts: the Los Angeles Dodgers File for Bankruptcy*, ENT., ARTS, AND SPORTS L. BLOG (July 1, 2011, 8:24 AM), http://nysbar.com/blogs/EASL/2011/07/take_me_out_to_the_courts_the.html.

[97] *See* Doherty, *supra* note 14.

[98] *See id.*

[99] *See* Weiss, *supra* note 96.

an upfront payment of $385 million. Almost the entirety of this upfront payment would go to McCourt, with $173.5 going to the family and McCourt's attorneys, while an additional $80 million would go towards the family's debt and $23.5 million to repay the previous personal loan from Fox to McCourt.[100] Furthermore, $10 million of the up-front cash payment would pay off legal fees from the divorce proceedings and $50 million would be immediately diverted to pay half of the $100 million divorce settlement required for Jamie to relinquish her claim to half-ownership of the Dodgers.[101]

The details of the deal were dubious in the eyes of Major League Baseball and the Office of the Commissioner. Major League Baseball viewed the deal as being below market value for a marquee franchise in a population center as large as Los Angeles.[102] The league'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.[103] In determining whether to approve the broadcast agreement, Major League Baseball had a similar model at its disposal—the 2011 Texas Rangers television rights extension.[104] The Texas Rangers negotiated a $1.6 billion, twenty-year television rights extension with Fox Sports in early 2011. Major League Baseball approved the agreement because the proceeds from the deal, as opposed to the Dodgers deal, went directly to pay operating expenses, player salaries, and fund free agent acquisitions and capital improvements to Rangers Ballpark.[105] Due to his concerns about the financial adequacy of the media rights deal and the diversion of funds away from the Dodgers, Commissioner Selig vetoed the agreement, stating that, "[the] proposed transaction would not be in the best interest of the Los Angeles Dodgers franchise, the game of baseball and the millions of loyal fans of this historic club."[106] Furthermore, Commissioner Selig

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100 *See* Doherty, *supra* note 14.

101 *See id.*

102 *See* Tony Jackson & Jayson Stark, *Dodgers file for bankruptcy protection*, ESPN (Jun. 28, 2011, 10:54 AM), http://sports.espn.go.com/los-angeles/mlb/news/story?id=6708046. Major League Baseball believed that it was in the best interests of the club to allow the exclusive negotiating period to expire and solicit bids from broadcast companies other than Fox. According to the league, the figure produced from this type of bidding war would represent the true market value of the Dodgers' broadcasting rights. *See id.*

103 *See* Behrendt, *supra* note 11.

104 *See* Maury Brown, *Divorce Settlement Shows Frank McCourt is Rearranging Deckchairs on the Titanic with the Dodgers*, BIZOFBASEBALL (Jun. 17, 2011, 2:39 PM), http://bizofbaseball.com/index.php?option=com_content&view=article&id=5283:divorce-settlement-shows-frank-mccourt-is-rearranging-deckchairs-on-the-titanic-with-the-dodgers&catid=70:mlb-club-sales&Itemid=157. Brown states that "no matter how to try and frame it, money that should be going to the Dodgers funnels into the divorce. Whether money from the TV deal goes into the Dodgers, and other funds go to Frank or visa-versa, it's [sic] a matter of semantics." *Id.*

105 *See id.*

106 Doherty, *supra* note 14.

asserted that the proposed deal "mortgag[ed] the future of the Dodgers franchise to the long-term detriment of the club."[107]

As a result of Commissioner Selig's veto of the proposed television agreement, the divorce settlement between Frank and Jamie McCourt dissolved.[108] Without an influx of cash from a new television deal, the Dodgers could not meet payroll obligations. Thus, rather than cede control of the team to Major League Baseball, McCourt filed for Chapter 11 Bankruptcy. Filing for Chapter 11 Bankruptcy is in direct violation of the Major League Agreement and can result in an owner being stripped of his ownership rights.[109] In U.S. Bankruptcy Court in Wilmington Delaware, Major League Baseball contended that the Dodgers should have first sought the approval of Tom Schieffer, the League appointed monitor of the team, before filing for bankruptcy.[110] Major League Baseball and McCourt, however, were able to agree on a $150 million "debtor in possession" loan from Major League Baseball to the Dodgers.[111] The terms of the loan mandated that Major League Baseball could not seize the team if it defaulted on the loan, but Major League Baseball reserved the right to punish McCourt and the Dodgers for any past or future violations of Major League Rules and regulations—including filing for bankruptcy protection.[112] McCourt's strategy for repaying the Major League Baseball loan and resolving the

[107] Jackson & Stark, *supra* note 102. Commissioner Selig's statement:

> [t]he Commissioner's Office has spent the better part of one year working with Mr. McCourt and his representatives on the financial situation of the Los Angeles Dodgers, which was caused by Mr. McCourt's excessive debt and his diversion of club assets for his own personal needs. We have consistently communicated to Mr. McCourt that any potential solution to his problems that contemplates mortgaging the future of the Dodgers franchise to the long-term detriment of the club, its loyal fans and the game of Baseball would not be acceptable. My goal from the outset has been to ensure that the Dodgers are being operated properly now and will be guided appropriately in the future for their millions of fans. To date, the ideas and proposals that I have been asked to consider have not been consistent with the best interests of Baseball. The action taken [] by Mr. McCourt does nothing but inflict further harm on this historic franchise.

Id.

[108] *See* Doherty, *supra* note 14.

[109] *See* Doherty, *supra* note 14. Article VIII § 4(ii)(l) of the Major League Agreement states, "[t]he rights, privileges and other property rights of a Major League Club hereunder and under any other Baseball-related agreement may be terminated . . . if the Club in question shall . . . file a voluntary petition in bankruptcy." Major League Agreement, Art. II, § 4(ii)(l) (1994). Furthermore, Article II § 3(c) of the Major League Agreement grants the Commissioner the right to suspend or remove any owner of a Major League Club. *See* Major League Agreement, Art. II, § 3(c).

[110] *See* Weiss, *supra* note 96.

[111] *See* Doherty, *supra* note 14. Initially in the bankruptcy proceedings, McCourt arranged for a $150 million loan from a hedge fund. Both Major League Baseball and Jamie McCourt opposed this proposed financing deal, but the bankruptcy judge approved the arrangement on an interim basis to enable the Dodgers to meet payroll. At a later hearing, however, the bankruptcy judge rejected the outside private loan and ordered McCourt to seek financing from Major League Baseball. *See id.*

[112] *See id.*

Dodgers' financial crisis involved the sale of its television rights with the bankruptcy court's approval. McCourt wished to use bankruptcy protection to breach his contract with Fox and negotiate with other media entities.[113]

On October 17, 2011, Frank and Jamie McCourt reached a final divorce settlement in which Jamie would receive $130 million.[114] As part of the settlement, Jamie agreed to withdraw her opposition to the proposed sale of the Dodgers' television rights and cede her claim of a fifty percent ownership stake in the franchise.[115] Shortly after the McCourts settled their divorce, Frank finally succumbed to financial and legal pressures and agreed with Major League Baseball that the Dodgers would be sold at auction.[116] McCourt and Major League Baseball issued a joint statement, announcing that they "agreed to a court supervised process to sell the team and its attendant media rights in a manner designated to realize maximum value for the Dodgers and their owner Frank McCourt."[117] The sale was supposed to include the team, Dodger Stadium, and the surrounding parking lots—assets that had been separated from the club and placed under the control of numerous McCourt subsidiaries.[118] In order for McCourt to pay off his divorce, his significant debts, and taxes, he would have to sell the Dodgers for at least $1 billion.[119]

[113] *See id.* By selling its television rights while under bankruptcy protection, the Dodgers did not need Major League Approval. Fox, however, filed suit challenging any television rights sale in violation of its current contract with the Dodgers. *See id.* Furthermore, Commissioner Selig stated that Major League Baseball would challenge any deal where the funds are diverted to McCourt and not put back into the Dodgers. *See* Weiss, *supra* note 96.

[114] *See McCourt to Pay Ex-Wife $130M for Control of Dodgers*, CBSSPORTS (Oct. 17, 2011), http://www.cbssports.com/mlb/story/15750341/report-mccourts-reach-settlement-over-control-of-dodgers.

[115] *See id.* Jamie also agreed to file a motion in support of Frank selling the Dodger's television rights. Under the settlement, Jamie also withdrew her motion to the divorce court to force a sale of the Dodgers in order to split the proceeds between her and her ex-husband. *See id.*

[116] *See* Scott Miller, *McCourt, MLB Agree to Auction Dodgers*, CBSSPORTS (Nov. 2, 2011, 11:19 AM), http://scott-miller.blogs.cbssports.com/mcc/blogs/entry/6270335/33079996.

[117] *Id.* McCourt originally took the Dodgers into bankruptcy in order to win court approval to sell the team's television rights so that he could bail out himself and the franchise from debt. *See* Bill Shaikin, *Frank McCourt Appears Close to Agreeing He'll Sell Dodgers*, L.A. TIMES, Oct. 31, 2011, http://www.latimes.com/sports/la-sp-1101-dodgers-sale-20111101,0,3218015.story [hereinafter *Frank McCourt Appears Close to Agreeing He'll Sell Dodgers*]. Even if he were successful on this front, however, it is unlikely that he could retain control of the Dodgers or achieve financial solvency. If the court were to allow a sale of the television rights it would also have to restrict Major League Baseball's ability to regulate how McCourt could use the proceeds of the sale. Essentially, in order to maintain control of the Dodgers McCourt would need the bankruptcy judge to approve a sale of media rights against Major League Baseball's objections and basically overturn all of Major League's Baseball's rules. As time wore on, it appears that McCourt realized that his strategy had a low likelihood of success and would result in an even greater financial difficulties due to increased legal fees. *See id.*

[118] *See Frank McCourt Appears Close to Agreeing He'll Sell Dodgers*, *supra* note 117.

[119] *See id.*

C. The Sale of the Dodgers to Guggenheim Baseball Management

On March 27, 2012, Major League Baseball owners approved the three remaining bidding groups as possible owners of the Dodgers.[120] Then, in an auction subject to approval by federal bankruptcy court, the ownership group Guggenheim Baseball Management reached an agreement to purchase the club for $2.15 billion.[121] The new ownership group consists of Magic Johnson, controlling partner and CEO of Guggenheim Partners Mark R. Walter, former baseball executive Stan Kasten, film producer Peter Guber, Bobby Patton, and Guggenheim Partners' President Todd Boehly.[122] Guggenheim Partners was started in 2000 and now manages over $125 billion.[123] In addition to money management, the firm also has an insurance branch and an advisory practice.[124]

The managing partners of the new ownership group planned to use a small amount of their own cash for the purchase and a significant amount of cash from certain Guggenheim Partners subsidiaries.[125] These subsidiaries are insurance companies, namely Guggenheim Life and Security Benefit.[126] Insurance money is typically supposed to be invested in simple and safe assets, and occasionally, private equity and real estate deals. Moreover, Mr. Walter owes a fiduciary duty to the firm's policyholders.[127] Thus, it is quite rare for an insurance company to buy a sports franchise using its policyholders' or investors' money.[128]

Most analysts believe that Guggenheim Partners overpaid by a wide margin. According to Mark Rosentraub, a University of Michigan sports management professor, the team's actual value is around $1.1 billion: "[u]nder the most favorable circumstance you broke $1.1 billion with $1.4 billion getting crazy. Now you're up in the $2 billion range, which is $800 million more than what pencils out for a profitable investment for a baseball team."[129] One reason the Dodgers may have

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120 *See* Matt Snyder, *Magic Johnson's Group Reaches Agreement to Buy Dodgers*, CBSSPORTS (Mar. 27, 2012, 11:06 PM), http://www.cbssports.com/mlb/blog/eye-on-baseball/18094623/magic-johnsons-group-reaches-agreement-to-buy-dodgers.

121 *Id.* The sale price represented a record for a North American sports franchise.

122 *See id.*

123 *See* Andrew Ross Sorkin, *A Costly Toy Subsidized by Others*, N.Y. TIMES, Apr. 9, 2012, http://dealbook.nytimes.com/2012/04/09/a-costly-toy-subsidized-by-others/.

124 *See id.*

125 *See id.*

126 *See id.*

127 *See id.*

128 *See id.* Tom Hicks, founder of the private equity firm Hicks Muse, Tate & Furst, bought the Texas Rangers in 1998, but he did not use any of the fund's money. Rather, he brought in qualified outside investors to cover the cost of purchasing the franchise. *See id.*

129 Arash Markazi, *Price for Dodgers Questioned*, ESPN (Mar. 28, 2012, 8:15 PM), http://espn.go.com/los-angeles/mlb/story/_/id/7747848/economist-2b-los-angeles-dodgers-makes-no-sense. Rosentraub went on to say, "[i]f making money doesn't count, this is a great move. But now we're into buying art and I can't value art." *Id.*

sold for $2 billion is due to the regional sports network battle, discussed above, that was being fought at the time of the sale.[130] The Dodgers, under new ownership, are expected to sign a television deal in the range of $3 billion to $5 billion with either Fox Sports or Time Warner Cable; alternatively, the new ownership group may decide to start their own regional sports network similar to the New York Yankees' YES Network.[131] The use of revenue from a new television deal to offset the costs of overpaying for the franchise is problematic, however, because such revenues are supposed to be used to improve the team.[132] As discussed above, one of Commissioner Selig's primary motives in vetoing McCourt's proposed $2 billion television rights deal with Fox Sports was to deter the pocketing of television revenues by owners or the use of such revenues to pay off debts.[133] This strategy for purchasing the Dodgers at such an exorbitant price seemed directly contrary to the precedent Selig intended to set with his June 2011 veto.

Perhaps the most disturbing facet of the transfer of ownership was Frank McCourt's continued involvement with the franchise. McCourt and certain members of Guggenheim Baseball Management agreed to form a joint venture—half of which would be owned by McCourt—to purchase the Chavez Ravine property, which surrounds Dodger stadium, for an additional $150 million.[134] Furthermore, the new ownership group agreed to pay this joint venture $14 million in annual rent for use of the Dodger Stadium parking lots.[135] Thus, Guggenheim Baseball Management paid over $2.15 billion for the Dodgers, but did not acquire sole possession of Chavez Ravine or the Dodgers Stadium parking lots and will have to pay McCourt, in part, $14 million for use of the land each year. This arrangement further suggests the group drastically overpaid for the franchise.

IV. WIELDING THE "BEST INTERESTS OF BASEBALL" CLAUSE TO

[130] *See id.*

[131] *See id.*

[132] *See id.* Rosentraub foresees a problem with the sale of the team being tied to the television rights deal, stating that, "[i]f you take the Fox deal or try to start your own network that's going to eat down your capital cost and you've just lost a huge share of revenue." *Id.* Furthermore, Rosentraub stated that usually this type of revenue is funneled directly into the general operating fund: "[t]hat's a source of revenue that other teams depend on and that's the issue . . . you're not getting that with the Dodgers." *Id.*

[133] *See id.* Andrew Zimbalist, a professor of economics at Smith College, eloquently described this contradiction, stating, "[o]ne of the things that commissioner [sic] Selig was trying to avoid when he did not authorize the contract between McCourt and Fox was he thought McCourt would take the money and pocket it instead of using it to build the Dodgers . . . [t]hat indirectly will happen anyway because McCourt is going to get his money and the new ownership will have to use a good chunk of the television money to pay off their asset purchase." *Id.*

[134] *See* Snyder, *supra* note 120.

[135] *See* Dayn Perry, *Frank McCourt Will Still Be Making Money off the Dodgers*, CBSSPORTS (May 5, 2012, 11:01 AM), http://www.cbssports.com/mlb/blog/eye-on-baseball/18971046/frank-mccourt-will-still-be-making-money-off-the-dodgers.

ESTABLISH DISCIPLINARY PRECEDENT

The Dodgers bankruptcy, although displaying egregious financial mismanagement and corruption, is not wholly unique in the Major League Baseball context. Commissioner Selig previously used the "best interests of baseball" clause to assume control of and sell an in-debt franchise.[136] Thus, Commissioner Selig had already laid the precedential groundwork for taking ownership of the Dodgers from McCourt in order to protect the franchise and the game of baseball as a whole. McCourt's actions should not go unpunished. It is the responsibility of the Office of the Commissioner, as the bastion of the honor and integrity of Major League Baseball, to send a clear message to current and future owners: manage your franchises in the best interests of the game, or the "best interests of baseball'" clause will be invoked to expel you from ownership.

A. *A Previous Bankruptcy and Sale*

As stated above, Commissioner Selig further widened the scope of the "best interests of baseball" clause by assuming control of an in-debt franchise and facilitating a sale. In 2009, Hicks Sports Group, the ownership group of the Texas Rangers, defaulted on $525 million in loans.[137] Thomas Hicks, the Rangers' majority owner needed to sell the team in order to pay back his lenders.[138] The default of the Rangers compelled Major League Baseball and Commissioner Selig to invoke the "best interests of baseball" clause and to take the reins of the franchise.[139] After using the "best interests" of baseball clause to assume control of the Rangers franchise from the in-debt owner ownership group, Major League Baseball oversaw the sale of the team at auction.[140]

[136] *See* Michael McCann, *Options Vary for McCourt Selig*, SPORTS ILLUSTRATED (Apr. 21, 2011),
http://sportsillustrated.cnn.com/2011/writers/michael_mccann/04/21/mccourt.selig/index.html.

[137] *See* Sandomir, *supra* note 43.

[138] *See id.*

[139] *See* McCann, *supra* note 136.

[140] Zach Lowe, *The Texas Rangers Sale: A Test Case for the Power of Sports Leagues?*, AMERCIAN LAWYER (May 12, 2010), http://www.law.com/jsp/tal/PubArticleTAL.jsp?id=1202458105113&The_Texas_Rangers_Sale_A_Test_Case_for_the_Power_of_Sports_Leagues&hbxlogin=1. Commissioner Selig faced opposition to the initial sale agreement to a group led by former pitcher Nolan Ryan for just over $500 million from the creditors holding Thomas Hick's debt. The creditors did not believe that the sale represented the true value of the Rangers. *See id.* Commissioner Selig sought to broaden his "best interests" power further by threatening to invalidate the liens that the lenders held on the team and force the sale to Nolan Ryan's ownership group. *See* Sandomir, *supra* note 43. This would represent a new use of the "best interests" clause, as it would be applied to outsiders not within the game of baseball. Selig did not get the opportunity to use this threatened power because Thomas Hicks filed for bankruptcy in an attempt to speed up the sale of his team. *See* Richard Sandomir, *Texas Rangers Sold at Auction*, N.Y. TIMES, Aug. 5, 2010, http://www.nytimes.com/2010/08/06/sports/baseball/06rangers.html [hereinafter *Texas Rangers*]. The bankruptcy judge ordered the team to be sold at auction, which

The sale of the Texas Rangers differs considerably from the potential takeover and forced sale of the Los Angeles Dodgers. Moreover, the debt and conduct of former Rangers majority owner Thomas Hicks differs considerably from the debt and shameful misconduct of Los Angeles Dodgers owner Frank McCourt. Primarily, Thomas Hicks did not default on his loans through financial misconduct—rather, he spent significant money on the team's payroll, stadium improvements, and other general upgrades to the Rangers ballclub. Furthermore, Hicks actually defaulted on his loans, effectively forcing the Commissioner's Office to orchestrate the sale of the franchise.[141] Although Hicks filed for bankruptcy—which is against Major League Rules—he did so in an attempt to expedite the sale of the Rangers, not in an attempt to maintain control of the team.[142] Moreover, the general partnership operating the Rangers entered into an agreement with Commissioner Selig:[143] wherein the Rangers ownership group agreed to give the Office of the Commissioner certain rights concerning the sale of the team.[144] The Texas Rangers sale is an example of an ownership group, over its head in debt, amicably ceding stewardship of its franchise to the Office of the Commissioner in order to preserve the best interests of the team and the best interests of the entire game of baseball.

The battle between Frank McCourt and Major League Baseball, on the other hand, emphasizes the necessity for the Commissioner's power to takeover a franchise under the purview of the "best interests of baseball" clause. McCourt, unlike Hicks, restructured the Dodgers' holdings to fund his family's lifestyle—a corporate restructuring that would ultimately bleed the team dry.[145] Moreover, McCourt filed for bankruptcy—in direct contravention of Major League Rules—in an attempt to block a Major League takeover and maintain control of the Dodgers.[146] McCourt's conduct sullied the reputation of one of Major League Baseball's most storied franchises. Furthermore, McCourt's financial mismanagement of the team and subsequent legal battle with Major League Baseball threatened the value of the Los Angeles Dodgers and of franchises league-wide. The McCourt case is an example of an owner selfishly lining his pockets and, in so doing, injuring the good will of the fans, devaluing a flagship franchise, and ultimately threatening the best interests of the game. The Hicks and McCourt cases could not be more dissimilar. For these reasons, the

Nolan Ryan's ownership group won with a $590 million bid. *See id.*

[141] *See Sandomir*, *supra* note 43.

[142] *See Texas Rangers*, *supra* note 140.

[143] Weiss, *supra* note 96.

[144] *See* Weiss, *supra* note 96.

[145] *See* Behrendt, *supra* note 11.

[146] *See* Weiss, *supra* note 96.

Office of the Commissioner can justify disparate treatment of the situations.

B. *The Impact of the "Best Interests of Baseball" Clause on the Resolution of the McCourt Situation*

There are many possible reasons for Frank McCourt finally acquiescing and agreeing to sell the Los Angeles Dodgers. Perhaps he finally succumbed to the pressure of mounting legal bills and angry creditors. Perhaps he realized that there was no more money left to drain from the franchise. Perhaps the fear that Commissioner Bud Selig would invoke the "best interests of baseball" clause to take over the Los Angeles Dodgers and sell the team on his terms—terms that McCourt, because of his misconduct, would have to accept—ultimately forced him to surrender. In reality, a combination of the above factors most likely led to the decision, but the latter is the most significant in terms of the lasting ramifications of the conflict.

In *Charles O. Finley*, the Seventh Circuit interpreted the Commissioner's "best interests of baseball" powers, stating that, "the express language of the [Major League] Agreement itself [is] to the effect that the Commissioner has the authority to determine whether *any* act, transaction or practice is 'not in the best interests of baseball,' and upon such determination, to take whatever preventative or remedial action he deems appropriate, whether or not the act, transaction or practice complies with the Major League Rules or involves moral turpitude."[147] Here, Commissioner Selig is justified in exercising his "best interests of baseball'' powers for multiple reasons enumerated by the court in *Charles O. Finley*. Under the terms of the $150 million loan from Major League Baseball to McCourt, the League maintained the right to reprimand McCourt and the Dodgers for any past or future violations of Major League Rules.[148] By filing for bankruptcy, McCourt violated Article VIII, Section 4(ii)(l) of the Major League Agreement, which states, "the rights, privileges and other property rights of a Major League Club hereunder and under any other Baseball-related agreement may be terminated . . . if the Club in question shall . . . file a voluntary petition in bankruptcy."[149] Moreover, a team's owner filing for Bankruptcy in direct contravention of Major League Rules and the Commissioner's commands is detrimental to the collective good of the owners, their franchises, and all of Major League Baseball. Thus, under the language of the Major League Agreement and the holding in *Charles O. Finley*, Commissioner Selig possessed the power to use the "best interests of baseball" clause to remove McCourt as owner and to

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[147] Charles O. Finley & Co. v. Kuhn, 569 F.2d 527, 539 (7th Cir. 1978).
[148] *See* Doherty, *supra* note 14.
[149] Major League Agreement, Art. VIII § 4(ii)(l) (1994).

sell the Los Angeles Dodgers for breaking Major League Rules and engaging in conduct contrary to the "best interests" of the game.

The court in *Charles O. Finley* also stated that the Commissioner may use his "best interests of baseball" clause powers when an "act, transaction or practice . . . involves moral turpitude."[150] McCourt most certainly engaged in morally bankrupt behavior. By stripping the Dodgers of its most valuable assets—its stadium, its parking lots, its future ticket receipts—in order to generate income for himself,[151] McCourt crippled the team financially, which threatened the livelihood of all those involved with the Dodgers from the players to the vendors and parking lot attendants. Moreover, McCourt's conduct displayed no respect for the fans, which number in the millions. McCourt's irresponsible and selfish financial management of the team hampered the Dodgers' ability to be competitive, which, in turn, betrayed the trust, loyalty, as well as the emotional and financial investment of the fans. This type of moral disregard for the financial well-being of a franchise, of a team's employees, and the good will of the fans justifies use of the "best interests of baseball" powers to remove an owner under the holding of *Charles O. Finley*.

The policy of judicial deference and recent amendments to the Major League Agreement also imbue Commissioner Selig with the power to remove McCourt through his "best interests of baseball" powers. The court in *Atlanta National League Baseball Club* reaffirmed the policy of judicial deference to decisions made by the Office of the Commissioner stating, "[w]hat conduct is 'not in the best interests of baseball' is . . . a question which addresses itself to the Commissioner, not [the] court."[152] The court reasoned that what is in the "best interests" of baseball is a subjective evaluation best left to the expertise of the Commissioner. The 1994 amendments to the Major League Agreement also broaden the Commissioner's power to determine what is and is not in the "best interests" of baseball through an exception: if the integrity or public confidence in baseball is at issue.[153] Thus, when an act, practice, or transaction implicates the integrity or public confidence in baseball, the Commissioner has broad

150 *Charles O. Finley*, 569 F.2d at 539.

151 *See* Behrendt, *supra* note 11. On October 24, 2004, in filings to United States Bankruptcy Court, Major League Baseball alleged that McCourt siphoned over $ 190 Million from the Dodgers for personal use. *See* Bill Shaikin, *MLB Accuses Frank McCourt of "Looting" $189 Million from Dodgers*, LA TIMES, Oct. 25, 2011, http://www.latimes.com/sports/la-sp-mccourt-bankruptcy-20111025,0,5183203.story [hereinafter *MLB Accuses Frank McCourt of "Looting" $189 Million from Dodgers*]. In its filings, Major League Baseball describes McCourt's conduct as "looting" the Dodgers franchise. *Id.* Moreover, the Office of the Commissioner alleged that McCourt broke ten MLB rules—all of which were grounds for terminating his ownership rights—the most damning being the "siphoning" of team revenues for non-baseball use. *Id.*

152 Atlanta Nat'l League Baseball Club, Inc. v. Kuhn, 432 F. Supp. 1213, 1222 (N.D. Ga. 1977).

153 *See* Major League Agreement, Art. I § 4.

authority under the "best interests of baseball" clause. Here, McCourt threatened the public confidence in and the integrity of baseball through his financial mismanagement of the Los Angeles Dodgers.[154] The fans' trust that franchise owners are investing in putting the best possible product on the field, rather than lining their pockets, was shaken considerably by McCourt's conduct. The fact that McCourt drove one of Major League Baseball's most valuable franchises to bankruptcy, leveraged the teams future in order to pay his personal debts and fund an extravagant lifestyle, and lowered public confidence in the game by breaking Major League rules, triggers the Commissioner's "best interests of baseball" clause authority to remove McCourt and assume control of the Dodgers.

Thus, the history and usage of the "best interests of baseball" clause, and the fact that the Major League Agreement protects any action by the Commissioner regarding public confidence and integrity issues would make any challenge to a Major League takeover and sale futile. The precedent of judicial deference, the broad scope of powers established in *Charles O. Finley*, and the upholding of disciplinary action by the Commissioner for misconduct point towards judicial support for a Major League Baseball takeover and sale of the Los Angeles Dodgers. The "best interests of baseball" clause is a powerful tool, and both sides, the Commissioner's Office and McCourt, were well aware that it could be wielded by Commissioner Selig. The fact that precedent favors action by the Commissioner so heavily was likely a prominent factor in McCourt's decision to finally yield and sell the team.

C. *Establishing Precedent Through the "Best Interests of Baseball" Clause to Deter Future Financial Misconduct by Owners*

Frank McCourt's financial mismanagement of the Dodgers is type of conduct, *inter alia,* that the Commissioner of Baseball must punish and prevent in his role as guardian of the national pastime. The use of a franchise's assets—such as the team's stadium, parking lots, and ticket revenues—as collateral for personal loans by McCourt set an example of franchise management that threatens the future health and integrity of Major League Baseball. The terms of the sale of the franchise only further underscore that Commissioner Selig should have verbally asserted his authority through the "best interests of baseball" clause to punish McCourt's abuse of the Dodger's assets—thereby establishing a precedent and deterring similar conduct by owners in the future. Claiming authority to sanction owner mismanagement of assets falls

[154] In its filings with U.S. Bankruptcy Court, Major League Baseball claimed that Frank McCourt "completely alienated" the Dodgers' Fan Base. *MLB Accuses Frank McCourt of "Looting" $189 Million from Dodgers*, *supra* note 151.

squarely within the Commissioner's role as the guardian of the health and integrity of the game of baseball. Moreover, it is the Commissioner's responsibility to expand his power and institute a deterrent precedent when new dangers to the prosperity of Major League Baseball arise, such as McCourt's fleecing of the Dodgers. Thus, Commissioner Selig's failure to sanction McCourt in order to establish a deterrent precedent and the exorbitant sum of money paid to McCourt as a result of this debacle can only be seen as a missed opportunity to safeguard the future of Major League Baseball.

The Commissioner's powers were intentionally written with a broad scope. An important function of the Office of the Commissioner is to create new and necessary disciplinary authority in the interest of the future health of Major League Baseball. Commissioner Selig should have fulfilled this function through a specific condemnation of Frank McCourt's conduct as owner of the Los Angeles Dodgers. As the Court stated in *Atlanta National League Baseball Club*, "[w]hat conduct is 'not in the best interests of baseball' is . . . a question which addresses itself to the Commissioner, not [the] court."[155] Commissioner Selig failed to utilize this judicial mandate to firmly state that Frank McCourt's practices fall squarely within the purview of the Commissioner's "best interests of baseball" clause powers, and the punishment for such conduct is a Major League takeover of the team and a forced sale. Although McCourt eventually succumbed and sold the team, the Commissioner should have enumerated this takeover power for himself, and for future commissioners, as a deterrent measure.

Article VI of the Major League Agreement further supports such drastic action from the Office of the Commissioner. Article VI, Section 2 states that Major League Clubs and owners are bound by the Commissioner's decisions.[156] Moreover, Article VII stipulates that in signing the Major League Agreement, owners waive their right of recourse in the courts when they disagree with a disciplinary decision from the Commissioner's Office.[157] Thus, McCourt and every owner of a Major League franchise are on notice that the Commissioner can and will take disciplinary action against them or their clubs.[158] In becoming owner of the Los Angeles Dodgers, and thus agreeing to the "waiver of recourse" clause, Frank McCourt acquiesced to the authority of the

[155] *Atlanta Nat'l League Baseball Club*, 432 F. Supp. at 1222.
[156] *See* Major League Agreement, Art. VI, § 2 (2008).
[157] *See id.*
[158] Waivers of recourse clauses are common in a wide range of business contexts. *See* McCann, *supra* note 136. These clauses are generally very difficult for reported aggrieved parties to overcome. This is especially true where, as is the case here, sophisticated business parties—Major League Baseball and franchise owners—freely and voluntarily negotiated the clause. *See id.*

Office of the Commissioner as delineated by the text of the Major League Agreement and judicial interpretation of the document. Therefore, if Commissioner Selig had taken the necessary step of mandating that the punishment for McCourt's actions is a Major League takeover and sale, the owners are required to accept this new disciplinary power due to the "waiver of recourse" clause. Furthermore, such an assertion by the Commissioner would ensure that all current and future owners understand the dire consequences of engaging in conduct similar to McCourt's.

Moreover, the Dodger bankruptcy and legal battle with Major League Baseball created the impetus for Commissioner Selig to dictate the meaning of language in the current Major League Agreement relating to the powers of the Commissioner. Article I, Section 4 of the Major League Agreement grants the Commissioner of Baseball almost unlimited power when the matter involves the "integrity of, or public confidence in . . . [b]aseball."[159] This ambiguous language gives the Commissioner wide latitude to safeguard the game of baseball from fraud, scandal, and corruption. Here, Commissioner Selig should delineate conduct that falls under this "integrity and public confidence of baseball" language by stating that if Frank McCourt had not surrendered and agreed to sell the team, he would have lost his ownership rights. This case directly involves the integrity of the game. Frank McCourt's practice of organizing the Dodgers into corporate subsidiaries in order to extract as much cash as possible is an example of unscrupulous conduct that threatened the future health of the franchise. Thus, Commissioner Selig should frame conduct that threatens the financial security of a franchise, or appears to be financial misconduct, as a matter involving the integrity of the game of baseball to set an example for future cases.

Furthermore, McCourt's conduct harmed the most important component in the business of baseball—the fans. McCourt's mismanagement of the franchise crippled the Dodgers financially; as a result, the product that the Dodgers were able to put on the field for the fans was substandard. This, in turn, threatens attendance—and profits. Most importantly, however, McCourt's conduct harmed public perception of Major League Baseball, its teams, and its owners. Fans of the Dodgers, and fans across the League, were aware of McCourt's misconduct, and the absence of swift and decisive action from the Commissioner may further shake their confidence in the integrity of the game. McCourt's conduct instills fear among the fans that owners can and will use their teams as a "credit card" with rabid disregard for the financial security of the franchise. Consequently, there is a danger of

159 Major League Agreement, Art. I, § 4 (1994).

driving away Major League Baseball's fan base. The "best interests of baseball" clause was written specifically for this type of "public confidence in . . . [b]aseball"[160] issue; Commissioner Selig is obligated by the Major League Agreement to repair the public's faith in the game. Declaring that the "best interests of baseball" clause can be used to oust a financially deviant owner would have sent a clear message to the fans that the Office of the Commissioner and Major League Baseball does not tolerate such conduct. Thus, expanding the Commissioner's authority under the "best interests of baseball" to takeover and sell a delinquent owner's franchise establishes a model of recourse for future commissioners that could restore the public's confidence in Major League Baseball.

The window for creating a deterrent precedent likely closed when the Dodgers sold to Guggenheim Baseball Management for $2.15 billion. Unfortunately, the circumstances of the sale is indicative of the same problems and practices that allowed Frank McCourt to drive the Dodgers to bankruptcy. Instead of a deterrent precedent being set, the dangerous patterns of overpaying for a franchise,[161] paying for a franchise with other people's money,[162] and relying on television revenues to offset costs and pay off debt[163] were perpetuated by the Commissioner's inaction. Moreover, the Commissioner failed to establish any kind of disciplinary precedent to protect the league from the dubious financial conduct that led to this situation. Commissioner Selig attempted to mandate that revenues derived from lucrative television deals were to be spent on improving franchises, rather than for personal use, for paying off debts, or for offsetting the costs of overpaying for a franchise; this was done through his veto of the proposed television rights deal between the Dodgers and Fox Sports in June 2011.[164] The fact the Guggenheim Baseball Management intends to use proceeds from a new $3 billion to $5 billion television rights deal to offset the costs of overpaying for the Dodgers by nearly $800 million dollars is directly contrary to the message Commissioner Selig attempted to send with his veto in 2011 and creates confusion as to what is and is not acceptable in the future. Furthermore, Commissioner Selig allowed McCourt to emerge from the financial mess he created for the Dodgers with impunity—and even worse—with a profit.[165]

[160] Major League Agreement, Art. II, § 4.
[161] *See* Markazi, *supra* note 129.
[162] *See* Sorkin, *supra* note 123.
[163] *See* Markazi, *supra* note 129.
[164] *See id.*
[165] Andrew Zimbalist believes it is absolutely incredulous that McCourt made a profit on the sale and maintained an ownership stake in the Chavez Ravine real estate: "[h]ere's a guy who borrowed practically all the money to buy the team for $430 million and now he's selling it for $2.15 billion and he's coming out with a healthy capital gain—it's repulsive. This is someone

Commissioner Selig would fail in his duties as the guardian of baseball's prosperity and integrity if he did not, in the aftermath of this scandal, implement some type of disciplinary procedure for ownership conduct similar to McCourt's. Without a clear disciplinary framework for punishing financially devious ownership practices and the apparent spoils to be had for owners that can fall back on lucrative television deals, the future financial health and integrity of Major League Baseball is uncertain.

CONCLUSION

Owners of professional sports franchises possess the right to manage their teams in any manner they choose. This right, however, is not without limits. Leveraging a franchise's assets in order to extract cash and strip the organization of any value is a form of management that threatens the integrity and future prosperity of every professional sports league. If an owner such as Frank McCourt is allowed to plunder his franchise—only to turn around and sell the team at a profit—without reprimand, owners around the league and across the professional sports landscape may be tempted to do the same. The financial details of the sale of the Dodgers to Guggenheim Baseball Management serve to underscore the perilous example that has been set by this situation. McCourt mismanaged his team's assets and drove the team to bankruptcy but managed to escape unscathed and with a profit no less. This hefty profit can be attributed not to the financial health or success of the Dodgers—which at the time of the sale was non-existent—but to the billions of dollars to be made by the new ownership group through a regional sports contract in one of the largest metropolitan areas in the country. It is highly unlikely that a similar situation would have turned out favorably for an owner or franchise in one of baseball's smaller markets that do not command the same kind of massive television rights deals as Los Angeles. It is small market franchises such as Kansas City, Tampa Bay, and Minnesota that are left vulnerable to similar ownership practices as a result of this precedent. Without a model of recourse for the Commissioner of Baseball, the league will never be safe from this form of misconduct.

Ousting an owner of a Major League Franchise is by every account a drastic and undesirable measure. On the other hand, a Major League Baseball takeover of an organization, whose owner or ownership group engages in conduct detrimental to the league, is within the purview of the Commissioner of Baseball's authority under the "best interests of baseball" clause. The Commissioner is justified in using his "best interests" powers to take such recourse if he believes the owner's conduct threatens the honor, integrity, and public confidence in the

who doesn't deserve to walk away with a healthy profit after eight years of running the Dodgers in the most egregious, the most inefficient, the most self-interested, and the most vainglorious, idiotic way possible. It really is repulsive that he will still be making a profit in some way." *Id.*

game of baseball. The continued financial success of Major League Baseball and its franchises depends on its perceived integrity and fan confidence in the game. Therefore, a clear disciplinary model for a Major League takeover and sale is necessary as a measure to deter future misconduct by owners that may devalue franchises or drive away fans. Thus, it is Commissioner Selig's duty to declare that he can and will expel an owner, such as Frank McCourt, from ownership, both as the guardian of the honor of the game of baseball and the director of the business enterprise of Major League Baseball. Selig's failure to take such action represents a missed opportunity that opens the door for predatory financial management of franchises and leaves the future financial safety of Major League Baseball—especially smaller market teams—uncertain.

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