

BASEBALL'S RESERVE CLAUSE

Speech given by the Honorable Dennis W. Archer at the Annual Luncheon of the Michigan Supreme Court Historical Society on April 13, 2000.

I am proud to welcome the Michigan Supreme Court Historical Society to the City of Detroit for our annual meeting luncheon. I am pleased to meet again with so many friends and former colleagues. I consider it a privilege to be asked to deliver this year's legal vignette, and I'd like to thank Wallace Riley for the invitation.

Today, we meet in the shadow of a new Detroit landmark, Comerica Park – the new home of the Detroit Tigers. The new stadium gives fans a great view of the Detroit skyline. The start of the 2000 baseball season and the welcome presence of Comerica Park make baseball a good subject for this year's legal vignette.

Baseball's reserve clause, standard baseball contract language years ago, bound players to one team for life. The removal of that clause opened the door to free agency – the system that has made a millionaire of nearly every ballplayer, and allowed superstars like Juan Gonzalez to move to the Tigers.

Few realize that a case decided in Grand Rapids in 1914 helped to preserve the reserve clause as a governing principle of professional baseball until it was successfully challenged in 1976. I wish to review the Grand Rapids case, its impact on succeeding decades of major league baseball, and the colorful history that preceded and followed the decision.

Baseball's reserve clause had its origins in early agreement among the owners of the National League teams, who sought to keep player salaries – which were their highest expenses – to a minimum. When I speak of an early agreement, I'm referring to one that goes back to September of 1879. The owners agreed that each team should reserve five players who could not be signed by any other team. There would even be penalties against teams that played exhibitions against "reserved" players who appeared in non-league games for extra money.

Players didn't object to the policy initially, because at first, being "reserved" meant that you were a highly valued player. But eventually, the reserve concept was written into the standard contract for all players, as a clause that bound every player to the first team with which he contracted – unless he were traded, released,

or his contract were sold to another team.

As early as 1887, John Montgomery Ward, president of the Brotherhood of Professional Baseball Players, described the reserve clause this way: “Like a fugitive slave law, the reserve rule denies him a harbor or a livelihood, and carries him back, bound and shackled, to the club from which he attempted to escape.”

The imagery used evokes Curt Flood’s descriptions of the reserve clause – when he took his challenge of the clause to the U.S. Supreme Court in 1972. Curt Flood said, “I think it alienates my right as a human being.”

The Grand Rapids case that put the reserve clause on trial came before the Western Michigan Federal District Court in June 1914. The case was *Weeghman v. Killefer*.

Plaintiff Charles Weeghman and his unnamed partner or partners were suing defendants William L. Killefer and the owners of the Philadelphia Phillies baseball team.

Charles Weeghman was the owner of the Chicago Whales baseball team, which belonged to the recently formed Federal League. Weeghman also owned a chain of cafeterias, and he was a confident, self-made millionaire. Bill Killefer was a major league catcher, and Weeghman had offered him a three-year contract to leave the Phillies and sign with the Whales. Killefer *did* sign with the Whales, but soon afterward he changed his mind and accepted a new contract with the Phillies.

Weeghman filed his lawsuit to enforce the contract between Killefer and the Chicago Whales, although he was well aware of the reserve clause in Killefer’s original Philadelphia contract that gave the Phillies a legal claim on his services indefinitely. Weeghman’s lawsuit was an important test of the validity of the reserve clause. But its main purpose was to strike a blow at the Phillies and the dominance of the National and American Leagues, which had cooperated with one another and played an annual World Series championship since 1903.

Weeghman and other wealthy businessmen felt there was a room for a third major league, so they started the Federal League in 1913 in six cities. Teams operated in Chicago; St. Louis; Kansas City; Brooklyn; Indianapolis and Pittsburgh. Apparently they didn’t do much marketing research before they chose the team nicknames: most just added “Fed” to the name of the city. So in Chicago, the Whales were also known as the Chi-Feds; there were the St. Lou-Feds, the Buffalo-Feds, and so on. In Brooklyn, the team

was called the Tip Tops, because the team owner also owned Tip Top Bread – apparently a major brand in New York City.

The Federal League was not much more than another minor league in 1913. But the league had an aggressive strategy for 1914. New Federal League teams were added in Baltimore and Buffalo for the 1914 season, and eight new Federal League ballparks were completed during the first three months of the year.

As a matter of fact, the ballpark Charles Weeghman built for the Chicago Whales – or Chi-Feds – eventually became Wrigley Field. So we can see that the value of a new ballpark has always been evident to team owners and the cities where they live.

Most importantly, the Federal League wanted top-notch players for the 1914 season. They intended to raid the National and American Leagues for the best talent, and thereby become a popular alternative league with baseball fans. The old USFL, the ABA, and the American Football League had a lot of success with this kind of focus on premier talent.

Therefore, Charles Weeghman's battle with the Phillies over Bill Killefer was one of many contract struggles Federal League teams engaged in before, during and immediately after the 1914 season. The Chicago Whales signed Hall of Fame pitcher Walter Johnson, but lost him back to the Washington Senators.

After winning the American League championship in 1914, Philadelphia As manager Connie Mack saw two of his top pitchers – Chief Bender and Eddie Plank – move to the Federal League in 1915. The contract battles ended up raising salaries for American and National League players. For instance, the Detroit Tigers' Ty Cobb had produced controversy by demanding \$10,000 in 1910; he held out for \$15,000 in 1913, in a bitter struggle with management. By 1915, however, he signed with the Tigers for an unheard-of \$20,000 a year.

As for Bill Killefer – he was a catcher with average statistics as a batter. He hit .238 lifetime, knocked in 240 runs, and hit 4 home runs during his 13-year career with the Philadelphia Phillies and the Chicago Cubs. But he worked often with Hall of Fame pitcher Grover Cleveland Alexander, and one observer said he was a catcher of “unique, exceptional, and extraordinary skill.” They called Killefer “Reindeer Bill,” – maybe because he was from Paw Paw, Michigan, on the Western side of the state – an area associated with

wilderness and wildlife by East Coast residents.

Killefer made \$3,000 with the Phillies in 1913. After the season, the Phillies promised him a raise, but by early winter, no agreement had been reached. The Chicago Whales offered Killefer \$5,833 and 33 cents for the next three seasons. He signed the contract, but the Phillies countered with their own three-year deal for \$6,500 a year. Twelve days after agreeing to the Whales' terms, Killefer became a Philly again.

Fighting for players like Bill Killefer in court was encouraged by the Federal League's chief attorney, Edward E. Gates. Gates was willing to try anything to bring down what he considered to be an illegal trust between the American and National Leagues. The lawsuit against Killefer and the Phillies sought an injunction to prevent Killefer from playing the 1914 season with Philadelphia.

But U.S. District Judge Sessions ruled in favor of the defendants. Using Judge Sessions' own language, Clyde J. Robinson – as Deputy City Attorney of Battle Creek in 1996 – offered the following analysis of the decision in a letter to the Michigan Bar Journal:

“The case presented two questions to the Court: Was the reserve clause valid and enforceable? And were the plaintiffs barred by their own conduct from obtaining equitable relief?”

“As to the former question, the Court, relying upon precedent from other Federal Courts construing the language, held the reserve clause to be an unenforceable executory contract, indicating it was ‘nothing more than a contract to enter into a contract in the future – if the parties can then agree to contract.’

“The Court noted that while a contract existed – if broken by either party, the courts were helpless to either enforce its performance or to award damages for its breach – because it lacked the ‘necessary qualities of definiteness, certainty and mutuality.’

“The second issue was resolved against Weeghman. The Court stated that the plaintiffs knew the defendant was under a ‘moral, if not the legal obligation to furnish his services to the Philadelphia Club’ for the 1914 season when they ‘induced him to repudiate his obligation to his employer,’ thereby doing a willful wrong to the Philadelphia baseball club. Being without ‘clean hands,’ the plaintiffs were denied equitable relief. On appeal, the District Court was affirmed.”

So we see that a Michigan case that left the status quo intact, and helped to preserve the reserve clause in baseball for another 62 years, was not a ringing endorsement of the reserve clause at all. In the aftermath of the 1914 Grand Rapids reserve clause ruling, Charles Weeghman and Federal League President James

Gilmore in 1915 asked for a nine-count, federal antitrust injunction against major league baseball for allegedly denying the Federal League access to the player market. Many believed that federal Judge Kenesaw Mountain Landis, who had fined Standard Oil \$29 million for violations of antitrust law, would rule in favor of the Federal League. But he was of the opinion that baseball would be better served by a settlement between the two sides.

That's what happened in December 1915, when the Federal League agreed to shut down, but won generous concessions for its owners. Charles Weeghman gained control of the Chicago Cubs and another Federal League owner won control of the St. Louis Browns, the franchise that became the Baltimore Orioles.

Judge Landis later became the first commissioner of major league baseball.

A subsequent court ruling that really solidified owner-dominated economics in the big leagues came in 1922, when U.S. Supreme Court Justice Oliver Wendell Holmes ruled that baseball was not subject to antitrust laws, because it did not involve interstate commerce.

Fifty years later, when Curt Flood's challenge of the reserve clause reached the U.S. Supreme Court, the Court – by a 5 to 3 majority – essentially upheld Justice Holmes' ruling that baseball was exempt from antitrust law.

But Flood's challenge struck a nerve that ultimately produced dramatic change. After a highly successful, 12-year career with the St. Louis Cardinals, he had refused to report to the Philadelphia Phillies after being traded following the 1969 season. Flood's antitrust lawsuit against major league baseball was supported by the Major League Players' Association. During the litigation, the owners argued that the reserve clause question should be part of collective bargaining, not an issue for the courts.

Consequently, Andy Messersmith of the Los Angeles Dodgers and Dave McNally of the Montreal Expos put the reserve clause on the collective bargaining table in 1975.

The two players played the '75 season without contracts, then declared themselves free agents. Since the owners had already declared that the reserve clause was an issue for collective bargaining, Messersmith and McNally filed labor grievances over the reserve clause that arbitrators had to decide, when all was said and done.

The arbitrators ruled that the two players could become free agents. The Basic Agreement between the

players and owners signed in 1976 called for freedom from the reserve clause for players after six years in the major leagues.

The resulting era of free agency has produced what many feel are outrageous salaries. But it has also affirmed the power of a free market and the right of all individuals to professional freedom.

The 1914 showdown in Grand Rapids became an intriguing highlight of 20th Century economic and social history. Few remember the names Weeghman and Killefer, but a Michigan Legal Milestone recalling the event was placed at the Grand Rapids Art Museum in 1986 by the State Bar of Michigan and the Grand Rapids Bar Association. The Milestone was rededicated in 1995 at Old Kent Park, where the West Michigan Whitecaps play minor league ball – and most likely dream about the riches now available in the major leagues.