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APPROPRIATE OPPORTUNISM OR BAD BUSINESS PRACTICE? STAKEHOLDER THEORY, ETHICS, AND THE FRANCHISE RELOCATION ISSUE

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I. INTRODUCTION

The operation of professional sports leagues and their member teams has been a frequent site of economic, financial, and legal analysis.¹ One aspect of these operations is the placement of franchises in new or existing markets. Such initiatives have been shown to have a profound impact on the communities that host teams, and ultimately the leagues and franchises themselves. This impact is twofold, as there are economic² and non-economic benefits³ that can be accrued through affiliating with

1. In addition to an established body of literature concerning sports and the law, there have been numerous books that look at the financial, economic and business aspects of the professional sports industry. *See, e.g.*, *THE BUSINESS OF PROFESSIONAL SPORTS* (P.D. Staudohar & J.A. Mangan eds., 1991); *DIAMONDS ARE FOREVER: THE BUSINESS OF BASEBALL* (P.M. Summers ed. 1992); *GOVERNMENT AND THE SPORTS BUSINESS* (R. Noll ed. 1994); *THE NAME OF THE GAME: THE BUSINESS OF PROFESSIONAL SPORTS* (J. Gorman & K. Calhoun eds., 1994); *THE MARKET STRUCTURE OF SPORTS* (G.W. Scully ed. 1995); *PAY DIRT: THE BUSINESS OF PROFESSIONAL TEAM SPORT* (J. Quirk & R.D. Fort eds., 1992); *PLAYING FOR DOLLARS: LABOR RELATIONS AND THE SPORTS BUSINESS* (P.D. Staudohar ed. 1996); *BASEBALL AND BILLIONS: A PROBING LOOK INSIDE THE BIG BUSINESS OF OUR NATIONAL PASTIME* (A. Zimbalist ed. 1995); *SPORTSBIZ: AN IRREVERANT LOOK AT BIG BUSINESS IN PRO SPORTS* (D. Hofmann & M.J. Greenberg eds., 1989).

2. For an overview of this topic, *see* D.V. BAIM, *THE SPORTS STADIUM AS A MUNICIPAL INVESTMENT* (1994); R.A. Baade and R.F. Dye, *The Impact of Stadiums and Professional Sports on Metropolitan Development*, 21 *GROWTH & CHANGE* 1-14 (1990).

3. Perhaps the most significant intangible benefit to a community is status as a "Big League City." According to Shropshire, "noneconomic arguments sometimes are most effective in convincing the citizens of a city that the presence of a sports franchise is important." KENNETH L. SHROPSHIRE, *THE SPORTS FRANCHISE GAME: CITIES IN PURSUIT OF SPORTS FRANCHISES, EVENTS, STADIUMS, AND ARENAS* 4 (1995). While larger urban centers such as New York, Chicago, or Los Angeles do not require a professional sports franchise to claim "Big League City" status, the acquisition and/or success of a major professional sports team by a lesser urban center might be the only distinguishing factor between that city and the other cities in North America similar in size, economic output, and amenities. *See* C. EUCHNER, *PLAYING THE FIELD: WHY SPORTS TEAMS MOVE AND CITIES FIGHT TO KEEP THEM* (1993). Thus, the civic boosterism generated by the tribulations of a local club may be a common bond shared by a city's inhabitants; *See, e.g.*, R. GRUNEAU & D. WHITSON, *HOCKEY NIGHT IN CANADA: SPORT, IDENTITIES, AND CULTURAL POLITICS* 199-221 (1993); JOHN WILSON, *PLAYING*

a team and league. Because of the potential benefits and damages that can occur as a result of a team-community relationship, the operations of professional sports leagues have long been subject to the scrutiny of government bodies and officials.⁴ In addition, the growth of this industry in recent decades has resulted in an even greater concern over the conditions governing the team-community relationship.

Historically, government interest⁵ in professional sports reflected the unique appeal that sports had to the general public,⁶ and increased along with the growth and development of the four major professional sports leagues.⁷ Despite this, leagues and teams have been able to maintain an enviable position when negotiating with communities for the use of facilities to host games.

While the importance of sport in society may partially explain the desire for cities to either acquire or keep existing teams within their borders, the recent growth in the professional sports industry has also increased the financial impact that agreements with teams have on host communities. Over the past few decades, new and greater revenue

BY THE RULES: SPORT, SOCIETY, AND THE STATE 234-264 (1994). This public sentiment often results in cities that pursue or try to retain franchises in lieu of recognizing economic feasibility.

4. See, e.g., WILSON, *supra* note 3; S.R. LOWE, *THE KID ON THE SANDLOT: CONGRESS AND PROFESSIONAL SPORT 1910-1992* (1995).

5. Increased government interest also reflects the entrenchment of sport within our culture, a phenomenon that extends beyond the impact of individual teams on individual communities. For many citizens of both Canada and the U.S., the significance of the World Series, Super Bowl, NBA Finals, and Stanley Cup Playoffs transcends that of a single sporting contest, so much so that these events have established themselves as social institutions. One argument has been that, because these events have become institutions in society, we have a basic right to watch these games on television. As Wilson explained, "the state has some obligation to ensure public access to major sporting events: they are in the public domain and should not be privatized." WILSON, *supra* note 3, at 321. For these reasons, professional team sports have achieved an importance in our society that exceeds that of many other industries of similar economic magnitude, which explains the apparent need for government intervention into the operations of professional sports leagues. Why the government has concerned itself with the operations of professional sport has escaped some government officials, including Senator Howard Metzenbaum, who wondered aloud at why the U.S. Senate would be debating the operations of professional sports franchises. *Id.* at 27.

6. The impact of sport on society has been greatly discussed in the academic literature. See, e.g., *SPORT, CULTURE, AND THE MODERN STATE* (H. Cantelon & R. Gruneau eds., 1982); *A WHOLE NEW BALL GAME: AN INTERPRETATION OF AMERICAN SPORTS* (A. Guttman ed. 1988); GRUNEAU & WHITSON, *supra* note 3; *SPORT IN THE SOCIO-CULTURAL PROCESS* (M. M. Hart ed. 1972).

7. This includes Major League Baseball (comprised of the American and National Leagues), the National Basketball Association, National Football League, and National Hockey League.

sources arising from large television contracts,⁸ increased sales of merchandise,⁹ skyrocketing franchise values,¹⁰ and new corporate interlocks¹¹ have all made the business of professional sport far more lucrative. However, the growth in network television contracts has leveled off in recent years,¹² and the billions of dollars generated through licensing cannot continue to grow.¹³ So, where is all this money coming from? Franchise values continue to soar, but this escalation may not re-

8. For example, in the National Football League, television revenues have risen dramatically since 1960:

National Football League TV Contracts:

Year	Total	Annual income per team
1960-61	\$600,000	\$ 45,000
1962-63	\$ 4.65 Million	\$330,000
1964-65	\$ 28.2 Million	\$ 1 Million
1966-69	\$ 75.2 Million	\$ 1.6 Million
1970-73	\$ 185 Million	\$ 1.8 Million
1974-77	\$ 269 Million	\$ 2.6 Million
1978-81	\$ 646 Million	\$ 5.8 Million
1982-86	\$ 2.1 Billion	\$13.6 Million
1987-89	\$1.428 Billion	\$16.7 Million
1990-93	\$ 3.65 Billion	\$32.6 Million
1994-97	\$ 4.4 Billion	\$39.2 Million

S. Wulf, *Out Foxed: Rupert Murdoch's Upstart Network Snatched the NFL from CBS in a Coup That Will Change the Face of Televised Sports*, SPORTS ILLUSTRATED, Dec. 27, 1994, at 16; Staudohar, *supra* note 1, at 60. Each NFL team received average media revenues of \$39.8 million for the 1995 season. T. Atre et al., *Sport: The High-Stakes Game of Team Ownership—Owning a Pro Sports Team Can Be More Lucrative Than Owning Stocks and Bonds. But Its Becoming a lot Riskier*, FIN. WORLD, May 20, 1996, at 49-65.

9. Retail sales of licensed merchandise for the four major professional sports leagues reached \$8.7 billion in 1993, up from \$2 billion in 1988. M.K. Ozanian, *Following the Money: FW's First Annual Report on the Economics of Sports*, FIN. WORLD, Feb. 14, 1995, at 30.

10. For a detailed look at the estimated values of sports franchises, see Atre et al., *supra* note 8, at 49-65.

11. These interlocks can occur at a number of levels. The first is for a corporation to purchase a sports team, and then to exploit the synergy that is created through the arrangement between the team and the corporation's other business interests. An example is Ted Turner, who televises the games of his baseball team, the Atlanta Braves, on his own cable station. Another way through which corporate interlocks can occur is through the sponsorship of a league, team, or facility by a corporation. Often, arenas will be renamed, or certain products will become known as "Official" products of a certain team or league.

12. Ozanian, *supra* note 9, at 30.

13. While this may not yet be evident, the sales of licensed apparel to groups who have no other affiliation to the sports that are portrayed on the merchandise suggests that some of the sales have been caused by a "fad." Growth in North American sales may have already peaked, prompting leagues such as the NBA to focus their attentions on the global marketplace.

flect increased effectiveness in business practices. Rather, increases in team values are often due to moves to new venues,¹⁴ which are frequently funded by a host community. The most obvious example of this is the rise in value of the Baltimore Orioles franchise since their move to Oriole Park at Camden Yards.¹⁵ This Park was built by a community that was desperate to retain its only remaining professional sports team; they had lost their beloved NFL Colts in the 1980s.¹⁶ Thus, professional sports team owners use the threat of moving their franchises in order to increase their market value. The result is a public that must concede to such demands, or risk losing all the apparent benefits that accrue from having a franchise in their community. It is obvious that the communities are caving in; in the 1990s alone, forty-five new stadiums and arenas will be built at a cost of \$9 billion, 80% of which will be from public sources.¹⁷ This leads to two problems: 1) the prominence or importance of having a sports team can result in municipal decisions that are not in the best interests of a community as a whole; and 2) the large amount of money attached to acquiring or losing a team results in a more significant financial risk to the communities. While previous legal literature has focused on the merits of judicial mechanisms set up to control franchise relocation, this article seeks to identify a fundamental problem that underpins this issue. While benefitting the individual team, moving a franchise can have both detrimental effects on the leagues as a whole, and on the host communities that lose a club. Thus, an ethical dilemma is faced by each team owner that seeks to relocate. While it is understandable that a team might need to relocate for financial survival, many teams move from a lucrative position to an even more appealing situation.¹⁸ The onus is then on the team owner to weigh the merits of in-

14. J. Christie, *Value of Franchise Depends on Stadium*, TORONTO GLOBE & MAIL, Nov. 17, 1995, at A16.

15. Because the Orioles generate a lot of revenue through their ballpark, this club is more resistant to changes in revenue that might be caused by less lucrative TV contracts. Thus, the club is a more stable investment and, because of the large revenue it generates through its facility, has a high franchise value. M.K. Ozanian, *How to Buy a Sports Team: Sports Team Values Have Risen Over the Past Six Years. But With Any Investment, Beware of the Pitfalls*, FIN. WORLD, MAY 20, 1996, at 66.

16. NFL football returned to Baltimore in the fall of 1996, when the Cleveland Browns relocated and commenced play as the Ravens.

17. E. Brady & D. Howlett, *Cost to Hit \$9 Billion by Decade's End, But Who's Paying For It?* USA TODAY, Sept. 6, 1996, at 13C.

18. As explained by Cardwell, the franchise relocation game is no longer confined to teams in financial trouble; "even apparently successful franchises are now in 'play.'" D.E. Cardwell, *Local Governments Respond to Franchise Free Agency*, 6 FOR THE RECORD 4 (1995-96).

creasing revenues over the financial and socio-emotional damages caused to a vacated or spurned community. This article analyzes the professional sport-public relationship using an approach from the management literature—stakeholder theory. We use stakeholder theory to explain the nature of this association, and describe the behavior of team owners in terms of business ethics. After a brief explanation of the central tenets of stakeholder theory, we examine three specific groups who are particularly vulnerable to franchise relocation, and show how relocation affects the team-community relationship, and, ultimately, public interest in professional sport. Having recognized these groups, we discuss how league operators have justified their position in exploiting host communities. Following this, we will use stakeholder theory to explain how relocations undermine interest in the league product, resulting in long-term harm to leagues and their franchises. This discussion will reveal how inappropriate franchise relocations can be viewed as unethical, as the interests of the host communities are not adequately weighed. Thus, traditional solutions such as legal intervention may only be a short-term remedy to the problem of unwarranted franchise relocation, as the leagues and their owners must first recognize the underlying damage that their actions can cause. Finally, we make some comments regarding the future of professional sports in North America.

II. STAKEHOLDER THEORY: A FRAMEWORK

Operated as private, for-profit business operations,¹⁹ professional sports leagues have a dramatic effect on many members of society. Similarly, the public (beyond those who follow and support the function of the leagues) has a profound effect on the operations of professional sports leagues. To look at this concept in more detail, we will adopt a stakeholder theory approach.²⁰ In the context of professional sports leagues, the focal firm or organization is the league itself, while the owners, stockholders, management, players, and other personnel act as stakeholders since they have a “stake” in the production of the league product. More specifically, a stakeholder is also defined as “any group

19. While this would seem self-evident, team owners have not always been complete profit maximizers. This is due to the other benefits that owning franchises can bring, such as increased public profile, and ego fulfillment. See, e.g., D. KOWET, *THE RICH WHO OWN SPORTS* (1977); J.J. Brower, *Professional Sports Team Ownership: Fun, Profit, and Ideology of the Power Elite*, 12 *INT. R. OF SPORT SOCIOLOGY* 79-98 (1977). The leagues themselves are set up as non-profit organizations; however, their intent is certainly to generate profits for the clubs.

20. See R.E. FREEMAN, *STRATEGIC MANAGEMENT: A STAKEHOLDER APPROACH* (1984).

or individual who can affect or is affected by the achievement of an organization's purpose."²¹ Stakeholders are obviously those who attend or watch professional sports games on television, or purchase league-related merchandise, and have a direct financial impact on the leagues. However, Starik also suggests that the stakeholder concept has "socio-emotional (spiritual), ethical, and legal, in addition to the traditional political-economic foundations."²² Thus, it is easy to see that the inhabitants of communities that either seek to hold onto or obtain a professional sports franchise, because of their socio-emotional ties to a team, are also significant stakeholders in this industry.

Not only are those who are directly affiliated with a team's operations—employees and fans, in particular—reliant upon the presence of the team, but a significant portion of the rest of a community is also affected. This would include those individuals relocated in order to build facilities, or the taxpayers who assume the financial burden of any public financial assistance to the team. Using this logic, we can see how host communities act as stakeholders. The corporation (in this case the league) is the vehicle through which numerous and diverse groups seek to accomplish different, and not always congruent, functions.²³

Thus, the relationship between the team and the host community can be seen as somewhat reciprocal. It then seems appropriate that decisions made by teams to relocate should consider the interests of the host communities. This is even more apparent today, when the financial impact that a professional sports franchise has on a community continues to grow. In a discussion of the moral obligations facing businesses, Fieser reports that some consider the size of a business as being a factor; as size increases, more lives are affected by a business' decisions.²⁴ Thus, as the professional sports industry becomes a more lucrative and significant industry, the recognition of stakeholder interests must become an integral part of the business strategies of the leagues, teams, and their owners.

However, the behavior of certain team owners suggests that the importance of host communities as legitimate stakeholders has been overlooked in order to realize a profit for themselves. This is in direct

21. M. Starik, *Essay by Mark Starik: the Toronto Conference: Reflections on Stakeholder Theory*, 33 BUS. & SOC. 90 (1994) (citing FREEMAN, *supra* note 20, at 52).

22. *Id.* at 92.

23. T. Donaldson & L.E. Preston, *The Stakeholder Theory of the Corporation: Concepts, Evidence, and Implications*, 20 ACAD. OF MGMT. J. 70 (1995).

24. J. Fieser, *Do Businesses Have Moral Obligations Beyond What the Law Requires?*, 15 J. OF BUS. ETHICS 458 (1996).

contrast to the tenets of stakeholder theory, whose adherents claim that it is the responsibility of management to select activities and direct resources that benefit all stakeholders.²⁵ It is also supported from an ethical point of view by Lozano, who notes that today, more so than in the past, corporations must realize that different interest groups have a stake in their operations.²⁶ In this way, the behavior of owners who relocate to the detriment of the vacated host community can be couched in ethical terms, as moving unnecessarily can be seen as disregarding the needs of a significant stakeholder. In order to understand the dynamics of this interrelationship, we look more closely at one aspect of the league-community dyad, franchise relocation, and in this context the leagues' apparent lack of recognition of the interests of one significant stakeholder group—the host community.

III. PROFESSIONAL TEAMS AND THE COMMUNITY STAKEHOLDER: FRANCHISE RELOCATION

A review of the franchise relocation issue provides a good illustration of the dynamic relationship between teams and their host communities, because of the dramatic impact that the presence of a professional team has on a given city. In this section, we will present three examples of situations in which the community, as a stakeholder, is particularly vulnerable to franchise relocation. In this way, the development of the team-community stakeholder relationship in professional sports can be shown.

A. *Communities Acquiring Teams*

The first example of a stakeholder group exploited by professional sports teams and leagues is the community that wants to host a professional sports team. With the importance of professional sports teams eclipsing simple economic impact, it is no wonder that many cities have scrambled to acquire professional sports franchises.²⁷ This phenomenon

25. See Donaldson & Preston, *supra* note 23.

26. J.M. Lozano, *Ethics and Management: A Controversial Issue*, 15 J. OF BUS. ETHICS 227 (1996).

27. One such community is the city of Nashville. In many instances, teams will use the threat of relocating to sweeten their own lease agreement, without any serious desire to relocate. After winning the Stanley Cup in the spring of 1995, the New Jersey Devils publicly entertained ideas of moving to Nashville. As explained by Crothers, "it hardly matters whether the Devils are seriously considering a move to Music City, U.S.A., or whether it a bluff; some governmental or quasi-governmental public entity—either in New Jersey or Nashville—is going to shell out millions in civic resources that would be better spent on schools, cops or real job creation." T. Crothers, *The Shakedown: Greedy Owners are Threatening to*

has become even more apparent over the last few decades, as cities have made significant financial investments to lure teams from other cities, or to present themselves as suitable sites for league expansion.²⁸ Both Major League Baseball (MLB) and the National Football League (NFL) have recognized this demand, and have adjusted their selection criteria accordingly, to get even more concessions from these often desperate communities.²⁹ Cities today must almost always provide baseball or football-only venues in order for consideration for an expansion franchise in those sports.³⁰ This is in contrast to the multipurpose facilities that were built during the mid 1960s through the early 1990s,³¹ and makes it particularly difficult for a community to justify a capital expenditure in excess of \$200 million³² in order to house a professional football team that will only use the stadium for a fraction of the dates available in any given year. When this expenditure is actually made, the city is likely to concede to future demands of NFL or MLB franchises, as these large, expensive facilities often have little use outside of hosting professional sports contests.³³ It also makes it difficult for communities to make concessions for one sport and not do the same for another team in another league in the same city.³⁴ Despite these potential problems, politicians recognize the public relations advantages of acquiring a

Move Their Teams if Demands for New Stadiums, Better Lease Deals, etc., Aren't Met, SPORTS ILLUSTRATED, June 19, 1995, at 79. Of course, Nashville will "shell out," only this time it will be for an NFL stadium for the relocating Houston Oilers.

28. The city of Tampa built the Suncoast Dome in order to gain either an expansion team, or to lure an existing franchise to the area; see B. ANDELMAN, *STADIUM FOR RENT: TAMPA BAY'S QUEST FOR MAJOR LEAGUE BASEBALL* (1993).

29. In Denver's bid for an expansion baseball franchise, eventually "the mayor stepped in and made baseball a government priority. [He recognized] that schmoozing and lobbying are not enough, that the only way to win [an expansion team] is with a staggering investment of public funds." D. WHITFORD, *PLAYING HARBALL: THE HIGH-STAKES BATTLE FOR BASEBALL'S NEW FRANCHISES* 47 (1993).

30. One of the reasons that Denver received its baseball franchise was because it intended on building a baseball-only park for the Rockies.

31. Professional sport's obsession with modernity started with the construction of the Houston Astrodome, and has continued through the completion of Toronto's Skydome. Unlike the facilities such as Coors Field, and Oriole Park at Camden Yards, these "space age" facilities were built to be marvels of technology that could be used for a variety of purposes.

32. As explained by Greenberg and Gray, "it is not uncommon for a new facility to cost from \$200 to \$250 million dollars." M.J. GREENBERG & J.T. GRAY, *THE STADIUM GAME* 20 (1996).

33. Gray notes that "once a city has committed the resources to constructing and maintaining a stadium designed for professional football, it must have a professional football team as a tenant since alternative uses are limited." J.A. Gray, *Section 1 of the Sherman Act and Control Over NFL Franchise Locations: The Problem of Opportunistic Behavior*, 25 AM. BUS. L. J. 131 (1987).

34. An example would be Baltimore.

franchise while they are in office, but this can lead to problems where they may not be acting on the wishes of their communities as a whole.³⁵ Inevitably, host communities are either burdened with the possibility of financially supporting private enterprise, or tormented by a missed opportunity to become a "Big League City."

Thus, communities that seek professional sports teams are significant stakeholders in the business of professional sports leagues; teams either obtain large inducements to relocate, or can renegotiate sweetheart deals with their existing communities' sports authorities by threatening to move.³⁶ In this manner, the aspiring host community has a strong effect on the revenue-generating capabilities of professional sports teams, even when it does not manage to seduce team owners with guaranteed revenues and concessions. However, as will be discussed later in this article, the power that this stakeholder group has will ultimately determine the long-term viability of the very leagues that these communities seek affiliation with.

B. Communities Losing Teams

Just as acquiring a franchise can be a significant boost to the image of the political groups that oversee a particular region and the people who inhabit their constituencies, losing a franchise can have an equal, if not more significant impact on public opinion.³⁷ Thus, politicians are leery about losing a franchise while they are in office. This fact is not lost on the professional sports teams and leagues, who exploit this leverage when negotiating with stadium authorities.³⁸ The community, however, is the hardest hit by the departure of an established team. In Cleveland, the recent loss of the NFL Browns has left a void in the lives of many inhabitants of that city. According to Ron Glasenapp, producer of a local radio talk show, "Football is a religion in Cleveland, and people aren't going to know what to do with their Sundays."³⁹ The resulting environment created by the desire for sports franchises, as well as the

35. See, e.g., EUCHNER, *supra* note 3.

36. Communities in search of teams seem more inclined to try to induce an existing franchise from another city, rather than run the risk of trying (usually without success) in obtaining an expansion franchise. J. Christie & L. Millson, *Wooing Franchises a U.S. Pastime*, *TORONTO GLOBE & MAIL*, Nov. 17, 1995, at A16.

37. One of the greatest fears that a politician can have would be to lose a professional sports franchise during a term in office.

38. See ANDELMAN, *supra* note 28 to see how baseball's White Sox used Tampa to gain a new facility in Chicago.

39. K. Allen, *Cleveland Must Find Alternatives to Football*, *USA TODAY*, Aug. 30, 1996, at 20E.

fear of losing teams to relocation, has resulted in a large disparity in bargaining power between sports teams/leagues and communities.

This is not to say that communities have not sought every possible option to stop franchises from relocating. Perhaps the most visible example of this occurred with the move of the National Football League's Raiders team from Oakland to Los Angeles in the early 1980s. Ultimately, both the NFL and the city of Oakland were unable to stop the move; however, the efforts of Oakland to try to keep the franchise in that city revealed the significant effects that a professional sports team has on a community. In attempting to retain the team, the city tried to claim ownership of the club in using the concept of eminent domain.⁴⁰ While it is not the purpose of this article to review the legal aspects of this concept, it provides an example of how the city of Oakland viewed the team as a public asset of which it tried to retain control.

C. *The Small Market*

Perhaps the best example of a stakeholder group that has been traditionally abused by the operations of professional sports leagues is the small market community. Being considered a small market puts additional pressures on host communities seeking to avoid losing a team to relocation. These communities have already developed a strong relationship with the sports team and the league, but for reasons to be discussed, have become inadequate as a site for hosting games. The result is a community that, because of its established relationship with the team, ends up "hanging on" to try to stop the team from moving. Almost without exception, the team eventually moves to another city, but not before placing a significant financial burden on the taxpayers of the region.

Before a discussion of the tribulations of this stakeholder group can be achieved, a closer look at what constitutes a small market is required. A small population and/or surrounding television market makes this type of community less desirable to the leagues, who wish to ensure large revenues. These communities are typically the most desperate to be considered a "Big League City," as often the only defining difference between it and other communities of similar size and economic output is the existence of—and perhaps success of—a professional sports franchise. In some instances, a community may have had a professional

40. See, e.g., EUCHNER, *supra* note 3; G.J. Brumback and A.R. Heyman, *Eminent Domain: Condemnation of Professional Football Franchises and the Commerce Clause Defense*, 28 HOWARD L. J. 773-794 (1995).

team for many years, but due to changing economic conditions, no longer seems suitable for hosting a financially competitive team. Thus, many communities who are encountering economic hardship may be further burdened by efforts to retain a team that the city can no longer support.

Examples of this problem can be found in the recent moves of two NHL teams. The Quebec Nordiques were perennial cellar-dwellers; between 1987 and 1995 the team managed to make the NHL playoffs only twice.⁴¹ Despite the fact that the team enjoyed relatively stable attendance, the team's arena, the Colisee, lacked the luxury boxes and other revenue-generating amenities available in other NHL arenas. In addition, the small population base, devalued Canadian dollar, and higher Provincial taxes made it more difficult to lure high-caliber players to play in the city.⁴² Thus, Quebec City had all the qualities of a "small market," which made it difficult to compete on an even level with other league clubs. The team's owners sought the financial aid of the local and provincial governments;⁴³ however, the team was eventually sold and moved to Colorado.⁴⁴ The team has since won the Stanley Cup, which is perhaps a bitter pill to swallow for the fans who supported the club through its lean years in Quebec.⁴⁵

Similarly, the Winnipeg Jets moved to Phoenix for the 1996-97 season. For years, the teams had found it difficult to compete in Winnipeg; the local and Provincial governments often intervened to help cover team losses.⁴⁶ Despite such assistance, the team needed a new arena in

41. Making the NHL playoffs is not considered a difficult task; 16 of the 26 clubs make post season play each spring. However, in both instances that the team made the playoffs, the team did not survive past the first round. NATIONAL HOCKEY LEAGUE GUIDE & RECORD BOOK, 1995-96, at 33.

42. In addition, Quebec City has one of the lowest average income rates, and the highest taxed sports fans in North America. A. Picard, *Fans, Economy Suffer From Loss of Nordiques*, TORONTO GLOBE & MAIL, Sept. 19, 1995, at A2.

43. Quebec Premier Jacques Parizeau had agreed to support the team with taxpayers' money; however this was only on the condition that the Nordiques agree to cap players' salaries, and guarantee the sale of 100 luxury boxes, at \$100,000 each. R. Seguin, *Quebec Government to Offer Nordiques Bailout*, TORONTO GLOBE & MAIL, May 5, 1995, at A15.

44. At one point, the Provincial government also entertained ideas of creating a lottery fund to finance a new arena for the Nordiques. *Nordiques Will Have New Look In 1996-97*, HOCKEY NEWS, Apr. 14, 1995, at 5.

45. According to Picard, the loss of the Nordiques put "a real hole in the local economy." Picard, *supra* note 42, at A2. The Nordiques moved to Colorado, despite claims that team owner Marcel Aubut and his ownership group "never lost a dime on the club." M.C. Auger, *Tale of Two Professional Sports Clubs*, EDMONTON J., May 5, 1995, at A14.

46. See J. SILVER, *THIN ICE: MONEY POLITICS AND THE DEMISE OF AN NHL FRANCHISE* (1996). The city and provincial governments had already agreed to cover team losses from

order to be competitive,⁴⁷ which the government and other local investors ultimately could not finance. After an emotional "farewell" season, the team finished its final year with a playoff loss to the Detroit Red Wings.⁴⁸ Memories of the Jets are not the only thing to remain in Manitoba; the Province and city must cover the forty million dollars that the team lost over its final seasons,⁴⁹ which may make many in the area wonder if such a tearful good-bye season was really justifiable. Perhaps the saddest part of the story of the Jets and the Nordiques is that there will likely never be NHL hockey played again in those cities; although both clubs were reasonably supported.⁵⁰ Without revenue sharing, the disparity in revenues generated by the different clubs makes it very difficult for small markets in this league to compete.⁵¹

The examples of the two recently relocated NHL teams reveal the fundamental problem associated with franchise relocations in professional sports; instead of recognizing the problems encountered by a significant stakeholder group, and attempting to make changes to represent the interests of these communities, professional sports teams rely on

1991 to 1997. J. Deacon with J. MacGillivray, *A Team in Trouble*, MACLEANS, Feb. 6, 1995, at 66-67.

47. A new, publicly funded \$111 million arena was required. *Id.*

48. T. Campbell, *Jets End Era With Battle*, HOCKEY NEWS, May 17, 1996, at 32.

49. SILVER, *supra* note 46, at 67. This is a considerable sum for the taxpayers of the province and city, which combined have a total population of less than one million.

50. While the Nordiques regularly enjoyed good crowds for games, attendance for Jets games dropped dramatically during the 1995-96 season, from 13,013 per game in 1994-95, to 11,316 in 1995-96. B. Costello, *New Rinks Raise NHL Attendance*, HOCKEY NEWS, May 3, 1996, at 3. However, the fans knew that their club would be leaving at the end of the season, which would explain the lack of interest in attending. Unfortunately, the lower attendance did not deter the club from paying high salaries; despite having the worst attendance in the league in 1995-96, the Jets had the ninth highest payroll in the league at \$21,781,800. *NHL Team Payrolls*, HOCKEY NEWS, Apr. 5, 1996, at 8. Of course, the team would not need to be as fiscally responsible knowing that the city of Winnipeg and the Province of Manitoba would be covering any losses that the team would suffer during the season. This was evidenced during the 1994-95 lockout, where, unlike every other NHL team, the Jets kept all but two of their forty-five employees on payroll. SILVER, *supra* note 46, at 104 (citing Winnipeg Free Press, Dec. 13, 1994).

51. J. Simpson, *Hockey Deal Does Nothing to Address Canadian Teams' Problems*, TORONTO GLOBE & MAIL, Jan. 12, 1995, at A18. Although revenue sharing seems to be an ideal solution to the problems encountered by the small market teams, NHL Commissioner Gary Bettman informed the mayors of Edmonton, Calgary, Winnipeg, and Quebec that the support of local government was paramount to keeping NHL hockey in those cities. Thus, the onus is on the cities to ensure that revenues are substantial enough for teams in smaller markets to compete. S. Feschuk, *Mayors Told They Must Help Teams: League Boss Says That Small-Market Cities Must Be Major-League to Keep Clubs*, TORONTO GLOBE & MAIL, Jan. 8, 1994, at A19. However, it would be inappropriate to assume that the NHL be responsible for small-market clubs that did not receive a reasonable level of support in their communities.

government bodies to offset financial disadvantages of being located in small markets. Thus, instead of making decisions that reflect the needs of all stakeholder groups, teams and leagues are further burdening this stakeholder group, without whose support the leagues cannot operate.

D. The Unique Nature of Professional Sports as a Rationale for Community Exploitation

The power imbalance between the community and team is not lost on the leagues, teams, host communities, public, and governments. While the difference in bargaining power is obvious, one has to wonder how the leagues and their teams have been able to maintain such an enviable position over recent years. The answer lies in the manner through which professional sports have evolved. In many cases, the operations of professional sports leagues have received recognition as having unique characteristics by the Courts, public, and scholars alike. While it is not the purpose of this article to debate or justify this recognition, it is important to review the nature of professional sports team operations, in order to explain how teams have established such a powerful bargaining position with host communities, by enforcing "necessary" constraints that limit franchise numbers and keeping demand for franchises high.

While the four leagues commenced operations at various times since the late 1800s,⁵² they have several factors in common. Today, all four leagues operate as a monopoly in providing the highest caliber of sporting experience in each of their respective sports.⁵³ In addition, the likelihood of a rival league emerging to challenge one of the established league's market is highly unlikely.⁵⁴ This is due to a number of factors,

52. For background information on the development of the major professional sports leagues, we would recommend reading H. SEYMOUR, *BASEBALL: THE EARLY YEARS* (1960); L. LOWENFISH, *THE IMPERFECT DIAMOND: A HISTORY OF BASEBALL'S LABOR WARS* (1991); R.F. BURK, *NEVER JUST A GAME: PLAYERS, OWNERS, AND AMERICAN BASEBALL TO 1920* (1994); R. W. PETERSON, *FROM CAGES TO JUMPSHOTS: PRO BASKETBALL'S EARLY YEARS* (1990); D. CRUISE & A. GRIFFITHS, *NET WORTH: EXPLODING THE MYTHS OF PRO HOCKEY* (1991); C.L. COLEMAN, *THE TRAIL OF THE STANLEY CUP, VOLS. 1-3*; D. HARRIS, *THE LEAGUE: THE RISE AND DECLINE OF THE NFL* (1986).

53. The legality of this monopoly has been scrutinized; *see, e.g.*, J.A. Gray & S.J.K. Walters, *Is the NFL an Illegal Monopoly?*, 66 U. DET. L. REV. (1988); Stephen F. Ross, *Break up the Sports League Monopolies*, in *THE BUSINESS OF PROFESSIONAL SPORTS* 152-174 (1991).

54. This is due to the amount of revenues that are generated. A new league would have to establish that it provided a high caliber of the sport in order for fans to pay the high prices for tickets, and for television networks to make large bids to show league games. Thus, it would take well-heeled owners of a new league to acquire the services of the top players, and suffer the ensuing financial losses that would occur as the league competed with the established league for players and markets.

including the availability of premium talent to stock the new league,⁵⁵ the amount of money needed to finance such a venture⁵⁶ (and withstand the resulting financial burdens of increased player salaries),⁵⁷ the number of remaining cities suitable for hosting professional teams, and the number of cities that, at least in the short term, could host teams from both leagues.⁵⁸

In order to prevent the emergence of a rival league, the established league must maintain a suitable number of league franchises. Ideally, a league will want to have enough cities desiring teams so as to keep them bidding for the right to receive relocated franchises, and keep the bidding for expansion clubs high. However, the amount of cities in search of a new franchise should never exceed the minimum number of sites that a new league would require to begin operations.⁵⁹ This problem is further complicated by the problem of "watering down" the existing playing talent, which could potentially undermine interest in the league product as a whole.⁶⁰ This reason is frequently used by sports leagues to

55. Another problem that would arise concerns the amount of talented players available to fill out rosters in the new league. The acquisition of players from the established league might overcome this, but this might result in "watering down" the caliber of play in both leagues which could be disastrous to public opinion of both circuits. This argument follows Scully, who explains that "if the supply of high-quality playing talent were perfectly elastic, the number of major leagues or teams within a league would have no effect on absolute quality of play." Scully, *supra* note 1, at 23. However, this is not the case in professional sports leagues, which have a very low elasticity of supply of prime athletic talent.

56. Until such time as either the established or new league folded, or the two leagues merged, financial losses would be significant for both sides. In the cases of the American Basketball Association, American Football League, and World Hockey Association, this was eventually achieved.

57. For example, the creation of the World Hockey Association for the 1972-73 resulted in large salary increases for players who decided to sign with the new league, or were paid higher salaries to remain in the NHL. Some estimates have claimed that the WHA resulted in as much as a 65% increase in hockey players' salaries during its first season alone. Quirk & Fort, *supra* note 1, at 330.

58. Quirk and Fort contend that a new league's best bet for instant success would be to put franchises in the centers that do not yet feature professional teams in that particular sport, rather than go through the difficulty of moving into an established big-city market. *Id.* at 297-98.

59. Gray and Walters, *supra* note 53. They explain that if the minimum number of teams required in order to launch a legitimate rival league were eight, then the established league need only keep the number of suitable sites for expansion to less than that number in order to create a barrier to entry into the market. *Id.* at 30.

60. See *supra* note 55. This problem also concerns established leagues when they are considering expansion, and can be a convincing argument for leagues who are reluctant to expand their number of teams. "More teams require the spreading of existing talent among the various league franchises, possibly damaging the entertainment value of the league product to consumers." T. Rosenbaum, *The Antitrust Implications of Professional Sports Leagues Revisited: Emerging Trends in the Modern Era*, 41 U. MIAMI L. REV. 765 (1987). However, league

explain why more cities do not receive franchises, while conveniently keeping demand for teams high.

The product itself is a series of sporting contests that each league produces and sells to distinct groups: 1) fans who pay to attend games, and consume facility-related products such as concessions and parking; 2) television and cable networks who bid for the right to televise league games; 3) corporations who seek increased revenues through either the synergy of owning sports teams as part of a larger entertainment empire, or through affiliating their own products with that of teams or a league; 4) purchasers of league-licensed apparel; and 5) cities, represented by sports authorities, who bid for the right to host league games in their communities and venues.⁶¹ Thus, although producing a single league product—a series of games with an uncertain outcome—leagues sell this product in a variety of ways to a variety of different consumers.⁶²

Although teams are separate legal and business entities,⁶³ most decisions that affect the production and marketing of the league product are (and should be) made at the league level.⁶⁴ Each team is represented on a board who makes such decisions, thus allowing for each team to have an equal say in the operations of the league as a whole.⁶⁵ Without the cooperation of the other league members, teams could not produce the league product, and do not have any function outside of their arrangement with the league.⁶⁶ Any changes to approaches to team relocation

expansion could be justified when the benefits that a new location brings to new fans and consumers of the league product exceeds that of the reduced enjoyment that "watering down" may cause to the league and its fans as a whole. S.F. Ross, *Monopoly Sports Leagues*, 73 MINN. L. REV. 707 (1989). Unfortunately, it would be difficult to determine, let alone measure, exactly what these benefits are.

61. This list has been adapted from Gray and Walters, *supra* note 53, at 9.

62. D.S. Mason, *What is the Sports Product and Who Buys It? The Marketing of Professional Sports Leagues* (working paper, 1997).

63. Alan J. Ostfield, *Seat License Revenue in the National Football League: Shareable or Not?*, 5 SETON HALL J. OF SPORTS L. 603 (1995).

64. This apparent contradiction has led to much debate since the early 1980s. Teams must create the appearance of competition in order to maintain interest in the league product; therefore, they are able to act independently in terms of activities that effect on-the-field performance. Gray, *supra* note 33, at 127; G.A. Roberts, *Sports Leagues and the Sherman Act: The Use and Abuse of Section 1 to Regulate Restraints on Intraleague Rivalry*, UCLA L. REV. 263 (1984). In addition, because teams are part of a greater entity, they must cooperate on many issues in order to produce the league product. L. Goldman, *Sports, Antitrust, and the Single-Entity Theory*, 63 TULANE L. REV. 754 (1989).

65. Major League Baseball consists of two separate entities, the American and National Leagues.

66. Roberts, *supra* note 64, at 247. Gray supports this concept, claiming that "unlike members of a classic cartel, none of the clubs alone has the capability of producing and marketing the product." Gray, *supra* note 33, at 127.

must also be made and implemented at the league level. However, problems exist when teams attempt to relocate without the consent of their respective leagues.

The unique nature of professional team sports—a group of independently owned teams uniting to produce a league product—has resulted in unique treatment of sports leagues in the courts, while making it difficult for the leagues themselves to police the behavior of certain owners. This only confirms that the responsibility of stopping unnecessary franchise relocation cannot and should not be left only to legal channels; owners must consider the financial and economic damage that is inflicted upon the communities. In addition, the need to avoid diluting the caliber of the league product, enforced by the monopoly position held by the leagues themselves, has ensured that there will be a surplus of communities without professional sports teams that are suitable host sites. This will only serve to sustain the unequal bargaining position between teams and communities, and provides another reason why the problem of franchise relocation must be viewed in ethical terms; owners must simply recognize when the greater good of the league and its stakeholders outweighs personal financial gain. Finally, because the teams unite to produce a single league product, team owners must also curtail unwarranted franchise movement in order to sustain interest in the league product as a whole.

This section has examined the relationship between three examples of a significant stakeholder group—the host community—and professional sports leagues, and reveals the manner in which teams have used both the desires of local communities to host teams, and the argument of the unique nature of professional sports operations to exert bargaining leverage over many communities. While media and other sources provide large revenues for leagues and their clubs, it is ultimately the communities and their fans that will determine the long-term viability of the professional sports leagues. As discussed above, communities seeking to either obtain or retain franchises, and small market communities are invaluable stakeholders within the operations of professional sports leagues. The fact that this stakeholder group has been neglected, if not exploited in recent years, has been the result of an enviable position that professional sports leagues have in obtaining playing facilities, but, how long can this continue? What will be the long-term effects of such behavior on demand for the league product?

IV. DISCUSSION

In this section, we use stakeholder theory to show how frequent franchise relocations ultimately harm the leagues, by undermining interest in the league product, and argue that the solution to this problem must be couched in terms of business ethics, rather than legal intervention. This is because the leagues and the league clubs must first recognize the problems that continued relocations will have on host communities; legal restraints may reduce such behavior, but do not address the underlying problem itself.

A. How Franchise Relocations Will Undermine League Operations

We have already determined that the communities that host professional sports teams are stakeholders within the professional sports industry, as they have a direct impact on—and are directly affected by—league and team operations. As discussed in the previous section, communities that vie for but do not receive teams also act as significant stakeholders, by both increasing the revenues of professional sports teams, and affecting the relationship between teams and their existing communities. The term community includes the members of the area who directly pay to watch, listen, or wear anything affiliated with the local team and the league itself. Without such support, the team could not operate in that city. However, any person who is affected by indirect economic or psychological interaction with the team or its fans (such as increased public sentiment), is also, by definition, a stakeholder in the operations of professional sports. Thus, almost every member of a community must be considered a part of this stakeholder group. In addition, the local government, representing the entire community, also has a direct impact on the team through its interactions with the local club. Thus, this group is a legitimate stakeholder whose needs must be recognized, as without public interest, professional sport could not operate.

However, when teams seek new locations, the bond that exists between the host community and its heroes on the field, court, or ice, can be irreparably damaged, and although most die-hard fans continue to support their favorite team, many become disgruntled with professional sport. This then spills over to the general public, who sees those involved with professional sport, at a variety of levels, as greedy and self-serving, which becomes apparent when teams act in obvious self interest. For example, Raider's owner Al Davis, who has been called "the patron

saint of stadium extortion,"⁶⁷ placed more value on the lucrative agreement between his club and the Los Angeles Memorial Coliseum Commission in Los Angeles than he did in the public sentiment that the team would be leaving in Oakland.⁶⁸ The move itself was an act of opportunism that would ultimately harm the league as a whole.⁶⁹ Perhaps recognizing the potential harm that the relocation could cause, the NFL tried to stop the move.⁷⁰

There are also some obvious financial drawbacks to unwarranted franchise movement. The relocation of a team to an area wanting a club harms the league as a whole in a number of ways. First, the league will forego any expansion fees that would be obtained by an expansion franchise in the new location.⁷¹ In addition, the void left when the existing franchise moves to a new location can have serious consequences. The most obvious example again lies in the NFL. After more than a decade of play in the Los Angeles Coliseum, the Raiders franchise moved back to Oakland. At the same time, the Los Angeles Rams franchise moved to St. Louis for the beginning of the 1995 season. This resulted in a void in the second largest television market in the U.S., which did not please the Fox television network, who recently signed a lucrative television deal with the NFL.⁷² While these moves have been for the benefit of the individual clubs, they have caused considerable harm to the league as a whole. Although the league could easily replace a vacant host city with a new franchise, what is lost is the affiliation that

67. Crothers, *supra* note 27, at 80.

68. Support for the Raiders in Oakland was phenomenal. Despite the loss of the team, one sports bar in the city continued to maintain its silver and black motif and televised every Raiders game for the thirteen years between the departure of the club in 1982, until its return in 1995. A. Murphy & M. Silver, *Just Move Baby*, *SPORTS ILLUSTRATED*, July 3, 1995, at 27.

69. See D.S. Mason, *Revenue Sharing and Agency Problems in Professional Team Sport: The Case of the National Football League*, *J. OF SPORT MGMT.* (Forthcoming, 1997).

70. A detailed account of the events surrounding the move can be found in HARRIS, *supra* note 52.

71. This amount, which exceeds \$100 million for all leagues except the National Hockey League, would be divided evenly among league clubs, resulting in an increase in wealth to all teams equally.

72. The network signed a four year, \$1.58 billion deal to televise NFC games. E.M. Swift, *Don, Rupert & Howie: Buccaneersing Media Baron Rupert Murdoch Has Enlisted Some Unlikely Partners in his Efforts to Merge Sports and Show Biz at Fox TV*, *SPORTS ILLUSTRATED*, Sept. 25, 1995, at 42. However, this deal was negotiated when the NFL was still scheduling games in the nation's second largest television market. Prior to the departure of both the Rams and Raiders, the NFL had been the most successful of the four major professional sports leagues in placing league clubs in the larger markets in the U.S. With NFL teams now playing in Baltimore and St. Louis, a team or teams in Los Angeles would mean the NFL would be the only professional league that has clubs in the twenty five largest centers in the US. See Quirk & Fort, *supra* note 1, at 296.

the community had with the original team; in addition, the concerns and needs of the communities are neglected in the pursuit of increased revenues.

Some leagues have become increasingly concerned about this practice; the NFL seems to be the most troubled league regarding franchise relocation.⁷³ This is likely due to the fact that revenue sharing practices have made most NFL teams profitable, and teams that decide to relocate are not moving in order to survive; rather, they seem to be moving from a good situation to a great one. In the other three professional sports leagues, particularly the NHL, the relocation of teams is usually condoned, as it saves teams from financial losses that threaten the future of the club.⁷⁴

The threat of relocation has increased the financial wealth of many professional sports teams, and can be directly attributed to the communities who have built new revenue-generating facilities. But will this really help the professional leagues? The answer is yes, but there are other effects that will, in the long run, hurt the league as a whole. Arguably the most successful, and most stable, league to operate over the past three decades has been the National Football League.⁷⁵ One reason for the parity among clubs,⁷⁶ which allows a team from Green Bay to compete for talent on an equal footing with larger urban centers, has been the creation of revenue sharing practices. Ideally, teams that share relatively equal revenues will not have unfair advantages in seeking out players and other personnel to produce a competitive team. This is paramount in retaining interest in the league product, as the public will even-

73. Even so, the NFL has approved several recent franchise relocations, including the Houston Oilers' decision to move to Nashville for the 1998 season. However, this move, only approved after a six-hour meeting, required a \$25 million relocation fee and was contingent upon Congress not enacting "punitive" legislation to penalize such moves, and the completion of a \$292 million stadium. B. Brown, *NFL OKs Oilers' Move to Nashville*, USA TODAY, May 1, 1996, at 1C. According to NFL Commissioner Paul Tagliabue, "we don't relish being in a position such as this, in which we have to choose between communities. If we had our druthers, we would prefer having a team in Houston and finding a way to respond to interest in Tennessee." Ben Brown, *Owners Searching for Method to Limit Franchise Shuffles*, USA TODAY, May 1, 1996, at 9C.

74. This also is justifiable if the local community does not support the team enough in terms of attendance and the sale or rental of luxury suites. In Edmonton, the Oilers Hockey Club was required to meet a certain level of seasons ticket sales in order to obtain some financial support from the NHL.

75. This fact has been partially attributed to the advent of revenue sharing practices in this league.

76. The National Football League has been shown to have the greatest competitive balance. Quirk & Fort, *supra* note 1, at 248.

tually lose interest should one team win or lose all the time.⁷⁷ This practice is undermined by the new facilities being built for NFL teams, as the revenues generated through luxury boxes⁷⁸ and seat licenses are not shared between clubs. Thus, a team such as the Dallas Cowboys, with its large number of luxury suites in Texas Stadium,⁷⁹ can generate far greater revenues than teams playing in facilities with fewer boxes. This puts added pressure on both teams and the local community to change their existing facilities to compete with other league clubs. The strain that this puts on communities may or may not be worth the benefits that having a professional sports team may bring to the community. Thus, a league-wide solution to problems such as small market teams can be obtained through revenue sharing, rather than placing the burden of achieving financial and competitive parity on host communities.

As discussed, the NFL has sought to help teams by increasing revenue sharing practices. While the NHL did not react in time to save NHL hockey in Quebec City and Winnipeg, that league seems to be intent on helping out its remaining smaller markets. Now, if a city such as Edmonton can meet minimum standards of season tickets and luxury suite sales, the NHL is willing to aid the team in order for it to temper financial losses and to ideally acquire a more competitive club.⁸⁰ Similarly, baseball is poised to use revenue sharing as a means to assist smaller markets.⁸¹ This behavior would seem to be a step in the right direction, but what about the fans in Quebec City and Winnipeg? Will

77. If a league became too imbalanced, fan interest would decrease for the weaker franchises, and would decrease for the dominant franchise as the uncertainty of game outcomes would be decreased. *Id.* at 243. This would ultimately harm the league; "sustained incompetence by a number of teams presumably would lead to lowered television revenues - a loss incurred by all teams because broadcast revenues are distributed equally among league clubs." L. Kurlantzick, *Thoughts on Professional Sports and Antitrust Laws: Los Angeles Memorial Coliseum Commission v. National Football League*, 15 CONN. L. REV. 190 (1983).

78. Ostfield, *supra* note 63, at 608.

79. As a comparison, Dallas Cowboys owner Jerry Jones, who also owns Texas Stadium, is able to generate \$40 million a season to operate his club, whereas the owners of the Denver Broncos are unable to generate any revenues through their lease agreement with Mile High Stadium. *Atre et al.*, *supra* note 8, at 57-58.

80. The Oilers are expected to sell a set number of season tickets annually, as well as rent the luxury boxes that are available at the refurbished Edmonton Coliseum. However, some criticize the league for continuing to disregard the needs of the small market teams, particularly those in Canada. According to Simpson, Canadian teams are doomed without revenue sharing in the NHL. Simpson, *supra* note 51.

81. The plan will see teams like the New York Yankees, Cleveland Indians, Baltimore Orioles, and Atlanta Braves support teams from Kansas City, Pittsburgh, Montreal, Minnesota and San Diego. R. Beaton, *Revenue-Sharing Plan Met with Jubilation*, USA TODAY, Mar. 22, 1996, at 10C.

they continue to support NHL hockey? Will they cheer for their own relocated teams, or will hockey assume a less prominent position in their lives?

B. *The Visible Effects of the Stakeholder*

We have shown how the prominence of professional sports leagues in the lives of many community members has allowed leagues to gain new facilities, subsidies, and other financial perks. It is difficult to find fault with the leagues' logic. The teams are only seeking to maximize profit, and are acting within the restrictions of the law.⁸² Although fans and communities have acceded to many of the demands of the sports leagues and their teams, this leverage cannot continue in the future. The biggest mistake that the leagues, through their teams, have made is failing to recognize their most significant stakeholder's interests. A firm should have two criteria for prioritizing the needs of its stakeholders: probability and impact. As explained by Starik, these are "those entities which have the highest probability of interacting with an organization or those which would have the greatest impact on, or greatest impact from, the organization's actions."⁸³ Using this criteria, the fans of the teams and the inhabitants of the communities which host franchises would have to be considered of utmost priority, yet the actions of the teams and leagues would suggest that they do not recognize their significance. Leagues can no longer operate simply to increase their own utility. They must be operated with the interests of all stakeholders in mind, with the host community being of top priority.⁸⁴

In abusing the sentiment and trust of the fans and communities, leagues are making a critical mistake. The business aspects of professional sports have never been more pronounced than they are today. Lockouts, strikes, unsigned collective bargaining agreements, skyrocketing salaries and ticket prices, union decertifications, and other examples of the business side of the leagues are covered by the media in as great a depth as the games themselves. Leagues had always assumed that interest in the game would continue to grow, but the drop in attendance after the recent baseball strike would suggest otherwise.⁸⁵ The public, in not

82. According to Fieser, in a capitalistic society businesses operate under two fundamental conditions: 1) to make a profit; and 2) to obey the law. Fieser, *supra* note 24, at 458.

83. Starik, *supra* note 21, at 91.

84. P. Cochran, *Essay By Phil Cochran*, 33 *Bus. & Soc.* 98 (1994).

85. During the 1995 season, attendance in Major League baseball dropped 20% from the strike-shortened 1994 season. For many, the sport had been "given up for dead." Atr et al., *supra* note 8, at 59.

supporting baseball in as great numbers, is showing the significant power that it wields in the affairs of professional team sports. It seems as though the consumer of professional team sports is fed up, and finally willing to show it. The fan, who creates demand for the league product, is a primary stakeholder, without which professional sports cannot survive. Clarkson "recognizes power as a critical dimension of stakeholder management and suggest that recognizing, and carefully diagnosing and monitoring power relationships seems fundamental to effective stakeholder relationships."⁸⁶ The recent behavior of both the leagues and their respective player's associations would suggest that this process has been overlooked, or at least not highly prioritized. Perhaps only when fans stop attending games, buying league-related merchandise, and encouraging their community leaders to obtain franchises, will the power that this stakeholder group wields become apparent to the team owners.

Should the alienation of fan and community support continue, it may become irreversible. However, the apparent short-sightedness of the leagues and teams that hold communities for ransom, only to relocate, can be partially attributed to the nature of the team-league relationship. Team owners act opportunistically to seek out new facilities and new cities in order to increase their own personal wealth. As discussed earlier, this is often to the detriment of the league as a whole. One solution to this problem would be to have "syndicate sport,"⁸⁷ where one group owns all the clubs. This would allow for a more even distribution of resources that would ultimately result in greater parity, and, hopefully, greater interest in the league product. However, this is not likely to happen in the four major professional sports leagues for two reasons: 1) it is unlikely that team owners would relinquish their established autonomy for the good of the league as a whole, especially when teams are generating such large revenues and team values continue to climb;⁸⁸ and 2) fan support is unlikely to increase if there is the perception of one owner or group controlling all the teams. The latter reason is easily explained; the league product is a series of sporting contests, which requires two teams to produce. The consumer is actually paying to see the players work; the

86. S. Wartick, *Essay By Steve Wartick*, 33 Bus. & Soc. 114 (1994).

87. While uncommon in North American sports today, this format has been used in the past. An example would be the Pacific Coast Hockey Association, which was owned and operated by the Patrick family during the 1910s and early 1920s. Today, this approach closely resembles the operations of Major League Soccer.

88. M.S. Jacobs, *Professional Sports Leagues, Antitrust, and the Single-entity Theory: A Defense of the Status Quo*, 67 IND. L. J. 42 (1991).

product is actually the uncertainty of the game's outcome.⁸⁹ Should one group own or control all the teams, then the fairness and outcomes of the games could be questioned. This would ultimately undermine interest in the league product. Should this occur, the relationship between professional sports leagues and their stakeholders would be compromised, suggesting that this is not a feasible solution.

Teams are then separately owned and operated; clubs control all affairs that are concerned with the on-field operations of the team.⁹⁰ This is paramount in presenting the image of competition among league clubs. Thus, although the leagues function as single business entities to produce and market a single league product, teams must be perceived as competitors. But because they are legally separate, they can challenge a league's ability to govern their behavior, as was seen in the *Raiders* case. This means that although the leagues themselves may recognize the importance of maintaining and encouraging positive public sentiment, individual clubs, such as those that relocate, can undermine interest in the league product as a whole by relocating or forcing communities to ante up for new facilities. This only emphasizes how the solution to the exploitation of stakeholder interests by team owners must be viewed in terms of ethics; it is unlikely that leagues can completely stop unwarranted franchise movements through league governance mechanisms. Only when owners acknowledge that they are acting unethically by not recognizing the interests of the community stakeholder group, and undermining interest in the league product in the long-term, can such behavior be fully controlled.

C. Legal Solutions

Until this occurs, one means through which the public has and will try to stop this behavior is through legal channels. There have been attempts by government entities, at various levels, to try to stop unwanted franchise relocations; however, since the early 1980s, conditions have become worse, particularly in the NFL.⁹¹ Following the *Raiders* decision, the NFL, which had seen relative stability in its franchise locations since

89. It is this uncertainty that is crucial to maintaining interest in League games. "Some degree of uncertainty of outcome is a necessary feature of competitive team sports, and this uncertainty is largely determined by the relative playing strengths of the teams within a league. Greater equality of playing strengths and hence more uncertainty about the outcome of the games, up to some level, is wealth-maximizing." Scully, *supra* note 1, at 25.

90. See *supra* note 63.

91. One suggested solution would be to guarantee cities that have lost an existing team the right to host a future franchise. B. Brown, *supra* note 73, at 9C.

the early 1960s, saw many other club owners seek out new locations to increase their own personal wealth.⁹² While this may seem to be a normal business practice for a franchise in another industry, it can be seen to have had significant detrimental effects to both the league and some of its stakeholders. When Davis ignored league governance mechanisms that controlled franchise relocation, a solution to the problem was sought through legal channels. This dispute, which has been discussed at length in the legal literature, saw Davis win millions of dollars in damages from the league.⁹³ Thus, while the law has traditionally been the means through which societal stakeholders have sought to oversee the behavior of organizations,⁹⁴ professional sports leagues have been able to avoid excessive control.⁹⁵

This explains how professional sports leagues can continue to act in their own self-interest, without concern for the immediate needs of the general public and, in particular, the host communities. According to Sethi and Steidlmeier, this coincides with general business practice: "Instead of defining corporate interests within the larger framework of the public good, [businesses have] often resorted to defining the public interest as if it were a secondary and incidental outcome of corporate interests."⁹⁶ While stakeholder law may one day make it impossible to operate solely to create profits for shareholders,⁹⁷ it seems unlikely that legal intervention in the near future will be able to control unwarranted and unwanted franchise relocations, given the current rash of franchise movement. Lozano also reports that there has been a general trend for

92. Since the Raiders' move to Los Angeles, the following clubs have moved: Baltimore Colts to Indianapolis in 1984; St. Louis Cardinals to Phoenix, 1988; Los Angeles (Anaheim) Rams to St. Louis, 1995; Los Angeles Raiders to Oakland, 1995; and Cleveland to Baltimore (Ravens), 1996. In addition, the Houston Oilers will move to Nashville for the 1998 season.

93. See, e.g., Kurlantzick, *supra* note 77, at 193-208. *Thoughts on Professional Sports and Antitrust Laws: Los Angeles Memorial Coliseum Commission v. National Football League*, 10 ENT. SPORTS LAWYER 1-4, 27-32 (1983); R. Amoroso, *Controlling Professional Sports Team Relocations: The Oakland Raiders' Antitrust Case and Beyond*, 17 RUTGERS L. J. 283-319 (1986); Gray, *supra* note 33 (1987); J.C. Weistart, *League Control of Market Opportunities: A Perspective on Competition and Cooperation in the Sports Industry*, 1984 DUKE L.J. 679-739 (1984); M.A. Wesker, *Franchise Flight and the Forgotten Fan: An Analysis of the Application of Antitrust Laws to the Relocation of Professional Football Franchises*, 15 U. BALT. L. REV. 567-590 (1986).

94. M. Huse and D. Eide, *Stakeholder Management and the Avoidance of Corporate Control*, 35 BUS. & SOC. 216 (1996).

95. *Id.* at 212. According to Huse and Eide, "ex post evaluations have shown that large corporations have been able to avoid undue or excessive control by stakeholders." *Id.*

96. S.P. Sethi & P. Steidlmeier, *The Evolution of Business' Role in Society*, 94 BUS. & SOC. 10 (1995).

97. See Donaldson & Preston, *supra* note 23.

businesses and industries to self-regulate.⁹⁸ Due the unique nature of the operations of professional sports leagues, and the inability of the leagues to fully control team movement through governance mechanisms, the solution must involve affecting the ethical behavior of the leagues and their respective team owners.

D. Teams, Ethics, and Recognizing the Public Stakeholder

As discussed earlier, the short term increased financial wealth of the independent teams will ultimately undermine interest in the league's product. The leagues and their members must realize that their long-term relationships with host communities should only be compromised when absolutely necessary. This means recognizing when markets are still strong enough to support teams, and also seeing when smaller markets are unable to continue to host professional teams, rather than allowing communities to cling to the idea of retaining their team and incurring significant financial losses. One answer to this problem is to increase revenue sharing practices, but foremost, "corporate and business leaders need to be convinced that it is in their long-term interest to be good citizens and to behave responsibly. Responsible corporate behavior—concern for employees, the communities where they are located, their customers, and the general public—is good business in the long run."⁹⁹ Thus, teams and leagues must identify and uphold community interests for two distinct reasons: 1) it is unethical for teams to act opportunistically without concern for the interests of one of, if not the most important, stakeholder groups in the professional sports industry; and 2) should franchise movements continue, thereby undermining interest in the league product, the long term financial well-being of the league and teams will be jeopardized. While these reasons might seem intuitively obvious, it remains to be seen whether or not owners and their teams can adjust to a new rationale for business operations. Can professional leagues shed the need to operate solely for profit,¹⁰⁰ and try to manage multiple stakeholders to achieve "successful corporate performance?"¹⁰¹ To expect owners to forego immediate financial gain in favor of practicing ethical conduct is unlikely. Thus, the owners of the

98. Lozano, *supra* note 26, at 227.

99. Sethi & Steidlmeier, *supra* note 96, at 10.

100. Professional sports team owners do not always act as pure profit maximizers. See S.E. Atkinson et al., *Revenue Sharing in An Agency Problem: An Example from the National Football League*, RAND. J. OF ECON. 29-43 (1988). Other reasons include civic boosterism, and ego fulfillment.

101. L. Weber, *Essay By Jim Weber*, 33 Bus. & Soc. 124 (1994).

individual teams must be more than subjected to an impassioned plea to act more ethically. Instead, they must learn to appreciate how the long-term viability of the leagues as a whole may be damaged. A team can only function if it has another team to produce the league product with; thus the health of other franchises (and their host communities) must be paramount to any league club. This, in the long run, extends beyond ethical behavior; it is simply good business. In this manner, owners who do not see their own opportunistic behavior as being unethical can observe that exhibiting ethical behavior is, in the long term, a sensible business strategy. Unfortunately, for some of the major professional sports leagues, such recognition may only occur after it is too late.

E. The Future?

Stakeholder theory has provided a different way of looking at the traditional team-league-public relationship. Unfortunately, the unique structure of professional sports leagues suggests that further problems will continue in the future. While leagues may recognize the needs of one of their primary stakeholder groups—the consumers of professional team sports—the cooperation of all league members is required; “For farsighted management, increased sensitivity to stakeholder interests will suggest instituting a code of conduct to guide employees, modifying performance measures, integrating these measures into reward structures, and reporting ethical performance both inside and outside the organization.”¹⁰² Rather than employees, the professional sports leagues need to apply these rules to their own teams, to avoid undermining interest in the league product.

It is also impossible to assess how much public sentiment is harmed by franchise relocation. This is difficult to determine, as many cities that lose professional sports franchises, as evidenced by the behavior of those in Baltimore, become even more desperate for sports teams once they lose them. But the response of the fans of Major League Baseball, following a work stoppage in 1994, would suggest otherwise; fans and communities are weary of paying higher prices to support rich owners and their corporations along with the highly-paid athletes they employ. The 1996 All-Star game had the lowest prime-time television rating ever,¹⁰³ and Fox discovered disappointing ratings for the 1996 World Series, despite the presence of the New York Yankees, television’s largest market.

102. L. Brooks, *Essay By Len Brooks (1)*, 33 Bus. & Soc. 118 (1994).

103. *Baseball's All-Star Game Plummets to Lowest Rating*, USA TODAY, July 11, 1996, at 2C.

Thus, the league, a firm which was concerned with accruing profits for its teams, must now re-evaluate its operations to continue functioning. Baseball has done this in recognizing that it needs its fans back, and has begun an appropriate advertising campaign to win back lost supporters, and entice new ones. The NBA needs to lure back those tired of the increasingly individualistic and unsportsmanlike players of its league,¹⁰⁴ and address concerns over a noticeable drop in league scoring.¹⁰⁵ The NFL must stop the rash of franchise relocations that have plagued the league since Al Davis decided to move south to Los Angeles, undermining the governance mechanisms that had helped the league to such an enviable position in professional sports in the 1970s.¹⁰⁶ The resulting franchise movements can only reduce fan support for the teams that many have grown up rooting for and supporting. Finally, the NHL must work to help its own disadvantaged franchises; although relocating franchises to new markets will bring in new fans of the sport, this could be accomplished through expansion, which would result in revenues realized by all league clubs, and avoid the potential loss of public sentiment in the abandoned league communities. Ultimately, leagues and their clubs must recognize the effects that their current behavior has on the long-term viability of their respective sports. To accomplish this is no easy task; the ethical dimension of identifying stakeholder needs must be incorporated into the leagues through institutional, organizational, and individual learning.¹⁰⁷ The likelihood of this fully occurring remains to be seen; however, there may come a time when the leagues have little other choice to maintain financially stable operations.

V. CONCLUSION

According to Brooks, "the debate over the existence of stakeholder rights and claims is . . . virtually over. For both groups [the fans and the leagues], the challenge is now to decide on how to balance the claims of the shareholders [owners] with those of other stakeholders."¹⁰⁸ Leagues cannot ignore the damage that the behavior of clubs and league decisions has had on public support of its product. We have looked specifically at one aspect of this behavior—franchise relocations, and while this damage has not become critical for any of the four major professional

104. See T. PLUTO, *FALLING FROM GRACE: CAN PRO BASKETBALL BE SAVED?* (1995).

105. G. Boeck, *Deflation the Trend on the Court: Scoring Drop Worries NBA*, USA TODAY, Nov. 13, 1996, at 10C.

106. See Mason, *supra* note 69.

107. See D.J. Wood, *Essay by Donna J. Wood*, 33 BUS. & SOC. (1991).

108. Brooks, *supra* note 102, at 118.

team sports leagues in North America, the power that this group of stakeholders wields could have a significant effect on the operations of all four leagues in the future. This could be witnessed through a decrease in support for the league products, or refusal to meet the demands of local clubs, an attempt to overcome the power differentials that teams, leagues and owners have held over the very stakeholder group that the leagues' survival is dependent upon. However, the importance of sport in our society suggests that, despite the perceived negative changes that are occurring in sport that we do not condone, we will probably continue to support our teams and leagues, and accede to the increasing ticket prices and demands for greater facility concessions. However, this cannot continue as it has. Until owners practice corporate responsibility with regards to their stakeholders, the greatest impact that the public, as a stakeholder in this industry, will have on the business of professional sport will be to implement, enact, or remove any legal barriers that will alter the operations of the leagues. Or, sadly, we will simply stop going to games, watching them on television, arguing over our heroes and their statistics, or letting them assume such a prominent role in our lives; by then, no amount of ethical behavior or stakeholder management will save professional sports.