

ALBERT PUJOLS: MAJOR LEAGUE BASEBALL SALARY ARBITRATION FROM A UNIQUE PERSPECTIVE

INTRODUCTION

In baseball, there is one in every generation. The 20s had Gehrig. The 30s had DiMaggio. The 40s had Robinson. The 50s had Mantle and the 60s had Jackson. Fast-forward to the new millennium, and his name is Pujols, Albert Pujols.¹ He is a new breed of hitter that defies what could be expected of first and second year players in their class. However, Hall of Fame credentials aside, the difference between the legendary players mentioned above and Albert Pujols is that Pujols exists in a baseball world that revolves around corporations,² money,³ local and national television contracts,⁴ the Major League Baseball Players Association,⁵ a Labor Re-

¹ At 23 years old, Albert Pujols, or "Pujols," is a phenom who completed his first two years of Major League service for the St. Louis Cardinals at the end of the 2002 Major League Baseball season. His positions include first base, third base, and both corner outfield positions. In 2001 he was a unanimous selection for the National League Rookie of the Year. Then, in 2002 he became the first player in Major League Baseball history to hit .300 with 30 home runs, drive in 100 runs, and score 100 runs in each of his first two seasons. He also finished second to the San Francisco Giants' Barry Bonds in the voting for the National League Most Valuable Player award. Pujols turned 23 before the start of the 2003 season. *See generally* The Albert Pujols Fan Page, at <http://www.albertpujols.com> (last visited Mar. 31, 2003); Albert Pujols Player Profile, at <http://sports.espn.go.com/mlb/players/profile?statsId=6619> (last visited Mar. 31, 2003). It should be noted that some distinctions Pujols earned during and before the end of the 2003 season include leading vote-getter for the 2003 All-Star Game with 2,030,703 votes and National League Player of the Month for the months of May and June. Pujols was a leading candidate to win the National League Most Valuable Player award for the 2003 season. *See id.*

² Corporations are currently involved with stadium and club sponsorships, in addition to the endorsement deals they reach with individual players. For a full discussion, *see infra* notes 87-106 and accompanying text.

³ One way that money affects the game of baseball and its players is that the smaller "elite" class of players in baseball have been paid a steadily increasing share of the total dollars paid out by the clubs, which results in more players being paid closer to the low end of the scale. For example, in 2002 the sixty percent of players in the center of aggregate Major League Baseball payroll accounted for thirty-five percent of the total dollars paid, as opposed to 1988 when they made forty-one percent of the total dollars paid. *See* Tom Weir & MaryJo Sylwester, *Baseball Salaries Top-Heavy*, USA TODAY, Oct. 17, 2002, at 1C.

⁴ In 1939, Columbia and Princeton Universities played a meaningless baseball game for fourth place in the Ivy League. However, the game was of monumental significance to society as "the first athletic event ever to be shown on television." *See* LIONEL S. SOBEL, PROFESSIONAL SPORTS AND THE LAW 575 (1977). Television broadcasting remains significant today. For example, even though it had the lowest ratings in television history for a World Series, the 2002 World Series still had fifty eight million people watching Game 7, the final game of the series. *See* Rudy Martzke, *Series' TV Ratings Plunge to All-Time Low*, USA TODAY, Oct. 29, 2002, at 4C. For a full discussion on television and its impact on baseball, *see infra* notes 73-83 and accompanying text.

⁵ The Major League Baseball Players Association ("MLBPA") was formed in 1954 after several attempts at forming a players' association. *See* Latour R. Lafferty, *The Tampa Bay*

lations Department,⁶ endorsement deals,⁷ elaborate statistics⁸ and more money.

While some of those players of legendary status did play in a day with a player union, the union was in its early stages,⁹ and the avenues available to them to settle salary disputes were not what they are today.¹⁰ Nowadays, there are specific criteria that can be considered by arbitrators in salary arbitration,¹¹ which have been

Giants and the Continuing Vitality of Major League Baseball's Antitrust Exemption: A Review of Piazza v. Major League Baseball, 21 FLA. ST. U. L. REV. 1271, 1280-81 (1994); see also SOBEL, *supra* note 4, at 267-73 (discussing the development of baseball's early player-representative systems into present-day players' associations).

⁶ The Labor Relations Department of the Office of the Commissioner of Major League Baseball is the former Player Relations Committee. It is responsible for directing the Commissioner's labor policies, objectives and engaging in negotiations with the MLBPA. See generally Daniel C. Glazer, *Can't Anybody Here Run This Game? The Past, Present and Future of Major League Baseball*, 9 SETON HALL J. SPORT L. 339, 344-45 (1999).

⁷ An endorsement can be defined as "[t]he act of endorsing: The athlete was highly paid to do endorsements of products." THE AMERICAN HERITAGE DICTIONARY 590 (4th ed. 2000). See, e.g., Gary Gately & Jay Apperson, *Road to Future Has Fast Lane to Aberdeen*, THE BALTIMORE SUN, June 20, 2001, at 8D (discussing Cal Ripken's continuance of endorsement deals with Chevrolet and Century 21 even in retirement).

⁸ Traditionally, baseball statisticians have focused on batting average, home-runs, runs batted in and runs scored for everyday players, and earned run average, strikeouts, wins and losses for pitchers. These statistics have developed into the more intricate OPS (on-base percentage plus slugging percentage), as opposed to batting average, and WHIP (walks and hits per inning pitched) as a complement to earned run average. See, e.g., The Baseball Page, at <http://www.thebaseballpage.com/stats/classroom.htm> (last visited Mar. 31, 2003) (providing explanations for various statistics used in baseball).

⁹ See Lafferty, *supra* note 5.

¹⁰ Not until the 1960s did professional sports leagues begin to use arbitration as a means of settling disputes. See MICHAEL J. COZZILLO & MARK S. LEVINSTEIN, SPORTS LAW: CASES AND MATERIALS 747 (1997). The National Hockey League was the first professional sports league to use arbitration in settling salary disputes in 1970. See Roger I. Abrams, *Interdisciplinary Program Series: Inside Baseball's Salary Arbitration Process*, 6 U. CHI. L. SCH. ROUNDTABLE 55, 57 (1999).

¹¹ Under Major League Baseball's current collective bargaining agreement ("CBA" or "2003-2006 Basic Agreement"), salary arbitration is available to players with at least three, but fewer than six, years of Major League service. See Article VI, § F(1) of the 2003-2006 Basic Agreement. The specific criteria to be considered in the arbitration are set forth by Article VI, § F(12) of the CBA:

- (a) The criteria will be the quality of the Player's contribution to his Club during the past season (including but not limited to his overall performance, special qualities of leadership and public appeal), the length and consistency of his career contribution, the record of the Player's past compensation, comparative baseball salaries. . . , the existence of any physical or mental defects on the part of the Player, and the recent performance of the Club including but not limited to its League standing and attendance as an indication of public acceptance. . .
- (b) Evidence of the following shall not be admissible:
 - (i) The financial position of the Player and the Club;
 - (ii) Press comments, testimonials or similar material bearing on the performance of either the Player or the Club, except that recognized annual Player awards for playing excellence shall not be excluded;
 - (iii) Offers made by either Player or Club prior to arbitration;
 - (iv) The cost to the parties of their representatives, attorneys, etc.;
 - (v) Salaries in other sports or occupations.

Id.

part of the collective bargaining agreement (“CBA”)¹² between Major League Baseball and the Major League Baseball Players Association (“MLBPA”) since 1973.¹³

Baseball has a unique salary arbitration process, final-offer arbitration, in which an arbitration panel¹⁴ *must* select the number offered by one of the parties, with no middle ground.¹⁵ This restriction forces a great deal of settlement pressure because both the club and the player have an incentive to submit an offer-and-demand closer to real market value¹⁶ than the number offered by the other side.¹⁷ To demonstrate, a player eligible for salary arbitration might demand six million dollars and his club may offer four million. The resulting midpoint would be five million. Assuming that five million dollars is close to his actual market value, the panel will use that number as the “break point” between the two offers. The break point is the median number in between the two final offers. If the panel determines that the player is worth a penny more than the break point, then they will award the *player* his final offer.¹⁸ However, the club and the player both realize that

However, these factors are not weighted.

¹² A collective bargaining agreement is “a contract that is made between an employer and a labor union and that regulates employment conditions.” BLACK’S LAW DICTIONARY 257 (7th ed. 1999).

¹³ See Marc Chalpin, *It Ain’t Over ‘Til It’s Over: The Century Long Conflict Between the Owners and the Players in Major League Baseball*, 60 ALB. L. REV. 205, 218 (1996) (“Perhaps the most important victory for the players in the 1973 Basic Agreement was the institution of salary arbitration. If a player met the eligibility requirements, and he could not reach an agreement with his team owner, an outside arbitrator would resolve the dispute.”) (footnote omitted).

¹⁴ Beginning in 1998, baseball implemented a new panel system using three arbitrators, as opposed to one, to hear cases. In 1998, three-arbitrator panels heard fifty percent of the cases; in 1999 they heard seventy five percent; and in 2000 they heard all cases. See Abrams, *supra* note 10, at 65.

¹⁵ See Elissa M. Meth, *Final Offer Arbitration: A Model for Dispute Resolution in Domestic and International Disputes*, 10 AM. REV. INT’L ARB. 383, 384-85 (1999)

[With regard to] final offer . . . arbitration, the dispute resolution procedure limits an arbitrator to choosing the final offer made by one of the parties. It is designed to motivate each party to negotiate in good faith and genuinely attempt to compromise in order to create a final offer that an arbitrator will select as most reasonable. (footnotes omitted).

Id.

¹⁶ Fair market value is “[t]he price that a seller is willing to accept and a buyer is willing to pay on the open market and in an arm’s length transaction; the point at which supply and demand intersect.” BLACK’S LAW DICTIONARY 1549 (7th ed. 1999).

¹⁷ Since each party has the knowledge that the arbitration panel must select only one of the two salary proposals put in front of them, both sides are provided incentive to propose a monetary figure to the panel that is as close to real market value as possible. See Meth, *supra* note 15, at 384-85, 388.

¹⁸ See Abrams, *supra* note 10, at 62; see, e.g., Baseball Primer, On Salary Arbitration, at http://www.baseballprimer.com/articles/eugene_freedman_2002-11-27_0.shtml (last visited Mar. 31, 2003):

[The arbitrator] concluded by explaining how he decided the Andruw Jones case. He said that since the Braves offered \$6.4M and Jones requested \$8.2M,

they are below and above the real market value respectively, and therefore will come closer to the median figure on their own.¹⁹ A similar hypothetical entitled “The Settlement Imperative” is played out in an article by Roger I. Abrams.²⁰

As a player that has completed only two years of Major League service,²¹ Albert Pujols is not yet eligible to avail himself of the arbitration process.²² Although he is the leading hitter on his team²³ and one of the most versatile and valuable players in his league,²⁴ he is grossly underpaid in comparison to other, albeit more proven, baseball superstars.²⁵ The focus of this note will be how baseball’s salary arbitration system works, its implications on the future of the game, and how this system and certain externalities affect one of the most unique players of his generation, Albert Pujols. Further, because of Pujols and his “career contribution”²⁶

the question he and the other members of the panel asked was, “Is Andruw Jones worth a penny more than the midpoint, more than \$7.3M?” They concluded that he was, and he was awarded \$8.2M.

Id.

¹⁹ As the parties’ positions are brought closer together, settlement becomes more likely. There are two reasons for this. First, the player will avoid an arbitration hearing in which even as a victor he could not secure benefits available only to those that settle, including “bonuses, guaranteed contracts, no trade clauses, single occupancy rooms on road trips and requiring the team to pay for hotel charges initially instead of reimbursing the player.” Meth, *supra* note 15, at 390-91. Second, because players continue to play for the club after arbitration, the club will want to avoid a hearing that would require them to argue against the player’s worth, which could possibly damage their relationship. *See id.*

²⁰ Abrams, *supra* note 10, at 61-63.

²¹ *See supra* note 1. At the time of this writing, the 2003 Major League Baseball season was occurring. Therefore, Pujols had not completed three years of Major League service. However, at the time of this publication, Pujols did complete three years of Major League Service.

²² *See supra* note 11.

²³ *See supra* note 1. For the 2002 Major League Baseball season, Pujols led his team in nearly every major batting category including batting average, home runs, runs batted in, and runs. *See* ESPN.com, St.Louis Cardinals homepage, at <http://sports.espn.go.com/mlb/clubhouse?team=stl> (last visited Mar. 31, 2003). The same can be said for the 2003 season.

²⁴ *See supra* note 1.

²⁵ Two such superstars include Carlos Delgado of the Toronto Blue Jays and Jeff Bagwell of the Houston Astros. For the 2002 season, Delgado earned \$19,400,000, inclusive of salary and prorated shares of his signing bonus. His season statistics included a .277 batting average, thirty-three home runs, and one-hundred-eight runs batted in. Bagwell earned \$11,000,000, also inclusive of salary and prorated shares of his signing bonus. His season statistics included a .291 batting average with thirty-one home runs and ninety-eight runs batted in. Pujols was paid six hundred thousand dollars for the 2002 season. *See generally* ESPN.com Player Search, at <http://sports.espn.go.com/mlb/players/profile?stat-sId=6619> (last visited Mar. 31, 2003); USA Today Baseball Salaries Database, at <http://www.asp.usatoday.com/sports/baseball/salaries//default.aspx> (last visited Mar. 31, 2003).

²⁶ Under the current CBA, career contribution is a factor for a salary arbitration panel to consider. *See supra* note 11. Although at the time of this writing Pujols had played only two seasons for the St. Louis Cardinals organization, his “career contribution” has been great. He was arguably the Cardinals’ most valuable player for each of those two seasons, and although it should be recognized that two seasons does not make a career, his career

to his team during his first two seasons with the St. Louis Cardinals, Part IV proposes changes to the current state of baseball salary arbitration.

I. THE HISTORY OF BASEBALL ECONOMICS

A. *Baseball's Antitrust Exemption and Player Unionization*

Baseball has long enjoyed its status as the only professional sport exempt from the federal antitrust laws.²⁷ This is important because the Sherman Antitrust Act ("Sherman Act"),²⁸ meant to prevent the restraint of trade,²⁹ would have clearly invalidated the owners' use of the reserve system³⁰ because "players were denied the opportunity to freely sell their product (their talent) to potential customers (other teams)."³¹ The reserve system did eventually meet its demise,³² but not until several failed attempts at player unionization³³ prompted the successful rise of the Major League Baseball Players Association in 1954.³⁴

Because of this rich history, the legal backdrop surrounding the owners' use of the reserve system³⁵ and also baseball's antitrust

through the completion of his second season was stellar. Therefore, he deserves pay closer to market value for his services. *See infra* discussion Part IV.

²⁷ *See, e.g., infra* note 35. Professional football, basketball and hockey, among other sports, have all been specifically refused an exemption similar to baseball. *See generally* Haywood v. Nat'l Basketball Ass'n, 401 U.S. 1204 (1971); Radovich v. Nat'l Football League, 352 U.S. 445 (1957); Philadelphia World Hockey Club, Inc. v. Philadelphia Hockey Club, Inc., 351 F. Supp. 457 (E.D. Pa. 1972).

²⁸ 15 U.S.C. §§ 1, 2 (1994). The Sherman Act was passed in 1890.

²⁹ *See, e.g.,* Bruce Little, *A Case of Judicial Backsliding: Artificial Restraints on the Commerce Power Reach of the Sherman Act*, 1985 U. ILL. L. REV. 163, 164-65 (1985) (discussing the Sherman Act as a tool to protect free competition and its growth in proportion to congressional commerce power).

³⁰ Beginning in 1879, baseball operated under the "reserve system," where owners put a clause in every player's contract giving management "the option of renewing a player's contract ad infinitum at a salary determined by the owner." Thomas J. Hopkins, *Arbitration: A Major League Effect on Player's Salaries*, 2 SETON HALL J. SPORT L. 301, 304 (1992) (citation omitted).

³¹ Chalpin, *supra* note 13, at 210 (footnote omitted).

³² *See* Hopkins, *supra* note 30, at 308-09; *see also* Chalpin, *supra* note 13, at 209-10 ("The MLBPA has been the strongest union to date, so strong, in fact, that during its tenure, the reserve system was toppled, and the balance of power in salary negotiations shifted in favor of the players.").

³³ *See supra* note 5.

³⁴ Although it was created in 1954, the role of the MLBPA did not reach its potential until Marvin Miller became the union's director in 1966. *See* Glazer, *supra* note 6, at 343. Marvin Miller became the first union leader willing to work full-time for Major League player interests and created new ways for the players to benefit from their elite status as Major Leaguers. *See id.* at 357.

³⁵ *See* Flood v. Kuhn, 407 U.S. 258, 284 (1972) (adhering to baseball's antitrust exemption as an anomaly to be remedied by Congress and not the Court); Toolson v. New York Yankees, Inc., 346 U.S. 356, 357 (1953) ("Congress had no intention of including the business of baseball within the scope of the federal antitrust laws."); Fed. Baseball Club v. Nat'l League of Profl. Baseball Clubs, 259 U.S. 200 (1922) (holding that baseball games played

exemption³⁶ deserved mentioning. However, baseball's history notwithstanding, a modern day player such as Pujols has many opportunities³⁷ of which he can avail himself that his predecessors could not.³⁸ Aside from negotiating for options such as salary arbitration,³⁹ the MLBPA has used its power⁴⁰ to generate an enormous increase in baseball players' average annual salaries,⁴¹ and in its most recent deal with the owners, the MLBPA ensured the survival of two teams that the owners were trying to eliminate.⁴²

B. *The Current State of the Union*

Since 1972, baseball has endured eight work stoppages.⁴³ However, in the fall of 2002, the owners and the players negotiated

for profit between professional baseball clubs were not within the scope of the federal antitrust laws).

³⁶ For many years, central to the dispute over baseball's antitrust exemption was its scope, and whether the exemption necessitated a narrow application to the reserve system only or a broad application to the sport as a whole. *See generally* Chalpin, *supra* note 13, at 213-17.

³⁷ Specifically for Pujols and other players who have not completed three years of Major League service, one of those opportunities does not include salary arbitration. *See supra* notes 21-22 and accompanying text.

³⁸ For players that have completed three seasons of Major League service, one such opportunity does include arbitration. *See* Hopkins, *supra* note 30, at 306 ("[a] series of legal disasters underscores why the Players' Association eventually turned to the method of alternative dispute resolution known as *arbitration*") (emphasis added).

³⁹ The MLBPA also pursues litigation in protecting the rights of union members. *See, e.g.*, Major League Baseball Players Ass'n v. Steve Garvey, 532 U.S. 504 (2001) (holding that the appellate court erred in vacating an arbitration panel's findings against a former player); Kansas City Royals Baseball Corp. v. Major League Baseball Players Ass'n, 532 F.2d 615 (8th Cir. 1976) (affirming District Court ruling that player grievances were within the arbitration panel's jurisdiction).

⁴⁰ Because of the protection it offers to its members, the MLBPA has been considered the most powerful union in America. *See, e.g.*, ROGER I. ABRAMS, LEGAL BASES: BASEBALL AND THE LAW 2 (1998) (referring to the fraternity of baseball players as "the strongest trade union in America"); Chalpin, *supra* note 13, at 209-10. In his many years as head of the union, executive director of the MLBPA Donald Fehr has been thought of as "the most powerful person in professional sports . . . and the nation's most successful labor leader." Steven Greenhouse, *Coolly, Fehr Plays His Hand*, N.Y. TIMES, Aug. 22, 2002, at D1. According to certain journalists, the union is considered so strong because they are "[b]ound by the principle that they should have the same rights as others in a capitalist system, the players have repeatedly defeated the owners, through negotiating threats, work interruptions, arbitration and lawsuits; the average player salary has increased from \$34,000 in 1969 to nearly \$2.4 million this year." Buster Onley & Steven Greenhouse, *With Labor Woes, Baseball Throws Fans a Brushback*, N.Y. TIMES, July 14, 2002, at 1.

⁴¹ *See, e.g.*, Ralph C. Anzivino, *Reorganization of the Professional Sports Franchise*, 12 MARQ. SPORTS L. REV. 9, 45 (2001); Michael Silverman, *Baseball; Fans Try to Make Cents of it All*, BOSTON HERALD, Apr. 4, 1999, at B20. However, a factor in the increase in player salaries has been the availability of salary arbitration. *See* Chalpin, *supra* note 13, at 233.

⁴² The two teams the owners were trying to eliminate were the Montreal Expos and the Minnesota Twins. While their survival is guaranteed at the moment, there is still the possibility of either club relocating, or being contracted from baseball after the 2006 season when the current CBA will expire. *See* Article XV, § H of the 2003-2006 Basic Agreement; *see generally* David Leonhardt et al., *Season Is Salvaged, But Baseball Still Has Rich Facing the Poor*, N.Y. TIMES, Sept. 1, 2002, at 1.

⁴³ *See* Murray Chass, *Baseball; Last-Minute Deal in Baseball Talks Prevents a Strike*, N.Y.

a last-minute deal,⁴⁴ and accepted a new CBA that began with the 2002 season and runs until December 19, 2006.⁴⁵ For the first time since 1973 the two sides were able to come to an agreement without resorting to a work stoppage.⁴⁶

The new CBA has several provisions that attempt to penalize teams that spend an inordinate amount of revenue on player salaries,⁴⁷ as well as provisions that attempt to help “poorer”⁴⁸ teams attain a bigger share of baseball’s total wealth.⁴⁹ For the first time, there is also a provision allowing for mandatory, random drug testing of players.⁵⁰ As a result of these drug tests administered during the 2003 season,⁵¹ every player on a Major League roster during the 2004 season can be tested for steroids and penalized for testing positive.⁵² Owner concessions included a guarantee that no team

TIMES, Aug. 31, 2002, at A1. Those work stoppages resulted in five strikes and three lock-outs. *See id.*

⁴⁴ The new CBA ratified by the owners and the MLBPA in the fall of 2002 resulted from all-day and all-night bargaining sessions that ended three hours before games would have been cancelled. *See id.*

⁴⁵ *See* Article XXVI of the 2002-2003 Basic Agreement.

⁴⁶ *See* Chass, *supra* note 43.

⁴⁷ This penalization is called a “competitive balance tax,” and is a tax that applies to the difference between club payroll and a pre-determined tax threshold. Article XXIII, §§ A-B of the 2003-2006 Basic Agreement. The tax thresholds change from year to year under the agreement, with the threshold being \$117 million for the 2003 season and going up yearly until 2006, when the tax threshold will be \$136,500,000. *See id.* The tax rate may also increase if a club payroll exceeds the threshold for multiple years during the CBA. *See* Article XXIII, § B (3) of the 2003-2006 Basic Agreement. The competitive balance tax is also known as a “luxury tax.” Murray Chass, *Old Animosities Arise In the New Economics*, N.Y. TIMES, Dec. 10, 2002, at D4 (discussing economic impacts that the new CBA might be having on Major League Baseball).

⁴⁸ Certain teams that play in small markets are considered poor in comparison to other, richer teams that play in bigger markets. *See generally* Kevin E. Martens, *Fair or Foul? The Survival of Small-Market Teams in Major League Baseball*, 4 MARQ. SPORTS L. J. 323 (1994).

⁴⁹ Revenue sharing among Major League Baseball teams is provided for in Article XXIV of the 2003-2006 Basic Agreement. “A principle objective of the revenue sharing plan is to promote the growth of the Game. . . each [payee] Club shall use its revenue sharing receipts in an effort to improve its performance on the field.” Article XXIV, § B (5)(a) of the 2003-2006 Basic Agreement. Revenue sharing is implemented by each club contributing thirty-four percent of net local revenue into a pool, which is then redistributed equally amongst the clubs. Clubs that take in net receipts from the pool are “payee” clubs, and clubs that make net payments to the pool are “payor” clubs. *See* Article XXIV, §§ A (7)-(8) of the 2003-2006 Basic Agreement.

⁵⁰ Owners have sought mandatory random drug testing of their players before. In 1985, there was a proposal for a drug program that utilized a team of doctors who would make recommendations in regard to specific players suspected of drug abuse. However, in lieu of that proposal, owners attempted to force players to accept mandatory, random drug testing. *See* Chuck Johnson, *Unionist Sees Commissioner’s Expansion Plan Too Limited*, USA TODAY, Dec. 6, 1989 at 4C.

⁵¹ Between five and seven percent of Major Leaguers tested during the 2003 season tested positive for steroids, which triggered a provision in the CBA requiring testing and penalizations beginning during the 2004 season. *See* Jack Curry and Jere Longman, *Results of Steroid Testing Spur Baseball to Set Tougher Rules*, N.Y. TIMES, Nov. 14 2003, at A1.

⁵² Penalizations include treatment for first time offenders and discretionary suspensions and/or fines for second, third, fourth time offenders, with fifth time offenders facing

would be contracted from baseball through the 2006 season,⁵³ and additionally, minimum player salaries increased.⁵⁴

The new CBA has been met with some criticism.⁵⁵ It has been suggested that the new agreement, although designed to enhance competitive balance in baseball,⁵⁶ might even *help* rich teams like the New York Yankees,⁵⁷ despite the belief that the Yankees were considered the number one target for the luxury tax imposition set forth by the new CBA.⁵⁸ Nonetheless, players and fans alike welcomed the new CBA as one that saved not only the 2002 season,⁵⁹

possible one year suspensions. The World Anti-Doping Agency was quoted as calling baseball's drug policy a "complete joke" because of its lax punishments for steroid users. *See WADA's Pound: Policy on Steroid's 'Complete Joke'*, THE WASHINGTON POST, Nov. 15, 2003, at D09.

⁵³ Under Article XV, § H of the 2003-2006 Basic Agreement, the Office of the Commissioner and club owners agreed not to reduce the number of Major League teams during the life of the agreement.

⁵⁴ Minimum player salaries went up fifty percent, from two hundred thousand dollars per season leading up to the 2002 season, to three hundred thousand dollars beginning in the 2003 season and through the 2006 season. There are also cost-of-living adjustments for the 2005 and 2006 seasons. *See* Article VI, §§ B (1), (3) of the 2003-2006 Basic Agreement.

⁵⁵ Baseball is a game fundamentally embedded in American society. *See infra*, notes 65-69 and accompanying text. It is difficult to imagine a negotiated deal between owners and players that would not be scrutinized by fans, the media and law students. However, some of its critiques include a drug policy that does not do enough "policing," and a myriad of other issues to which observers have opined. *See, e.g.*, George Vecsey, *Sports of the Times; Baseball Has Failed to Confront Drugs*, N.Y. TIMES, Feb. 19, 2003, at D1 (discussing a player's death and baseball's new drug policy that does not test for as many drugs as other sports).

⁵⁶ Baseball Commissioner Bud Selig issued a press release on September 5, 2002 praising the ratification of the new CBA by owners and the MLBPA. In his statement, Mr. Selig set forth his belief that "[the] historic agreement will significantly contribute to restoring competitive balance and economic stability to the game." Press Release, Major League Baseball, Clubs Ratify Collective Bargaining Agreement (Sept. 5, 2002) (on file with author).

⁵⁷ To demonstrate how rich they are, the New York Yankees' team payroll was over \$175 million for the 2002 season. The team with the next highest payroll, the Texas Rangers, spent \$130 million on their payroll for the same season. In comparison, the Montreal Expos had a payroll of \$43 million for the 2002 season. The Yankees were the only Major League franchise to vote against the new CBA and its luxury tax. *See* Hal Bodley, *Yankees In Taxing Situation*, USA TODAY, Nov. 13, 2002, at 1C.

⁵⁸ This theory came to light through CNN/Money Staff Writer Chris Isidore in his weekly Internet column entitled "SportsBiz." The New York Yankees have long been considered baseball's team with the deepest pockets. Because those pockets are so deep, the Yankees might be willing to spend whatever they can in order to get the best players available, regardless of any luxury tax. However, other teams whose pockets are deep, but not New York Yankee deep, will be restricted from bidding on many of the best players available because of the luxury tax. This will lead not only to fewer New York Yankees competitors in the bidding process, but also to more elite players on the New York Yankee roster. *See generally* Owners Still Taking Swings at Game, at http://money.cnn.com/2002/08/30/commentary/column_sportsbiz/baseball_labor/index.htm (last visited Mar. 31, 2003).

⁵⁹ The 2002 baseball season would have ended on August 30, which was the strike date set by the MLBPA. Had the season ended on that day, the Anaheim Angels would have been a surprise qualifier as the American League Wild Card in the American League playoffs. However, the season went on and the Anaheim Angels wound up as winners of the 2002 World Series. *See generally* Mike Penner, *What a Wonderfully Wacky Time It Was*, L.A. TIMES, Dec. 31, 2002, at 4 (discussing the unlikely 2002 World Series champion being the Anaheim Angels).

but also the sport of baseball.⁶⁰

II. THE EXTERNALITIES THAT AFFECT PLAYERS AND THE ARBITRATION PROCESS

A. Money – Where Exactly Does it Come From?

Before baseball's long overdue transformation of power from management to the players,⁶¹ the division of power was quite lopsided.⁶² The player unions functioned more to negotiate issues such as working conditions and pensions,⁶³ and not so much to realize pecuniary interests for their members.⁶⁴ Of course, that did not stop the torrid love affair that our nation developed with the game.⁶⁵ Because it was known as "America's pastime,"⁶⁶ some players were drawn to the baseball diamond by the lure of fame and glory,⁶⁷ others for the lifestyle,⁶⁸ and others still out of love for the

⁶⁰ Baseball's 1994 work stoppage, which lasted for 230 days and resulted in the cancellation of the 1994 World Series, has been described as one of the worst labor confrontations in the history of American sports. Had there been another work stoppage during the 2002 season, many fans of the game would have been lost for good. See generally J. Philip Calabrese, *Recent Legislation: Antitrust and Baseball*, 36 HARV. J. ON LEGIS. 531 (1999); Dan Messeloff, Note, *The NBA's Deal with the Devil: The Antitrust Implications of the 1999 NBA-NBPA Collective Bargaining Agreement*, 10 FORDHAM INTELL. PROP. MEDIA & ENT. L. J. 521, 560 n.215 (2000) (analyzing professional basketball in light of baseball's history of labor relations including the Hundred Years War of 1994).

⁶¹ The transformation was long overdue because in its early years, baseball had been operating under a set of heavy-handed owners who even required some of their players to serve as groundskeepers and turnstile attendants. See Hopkins, *supra* note 30, at 303.

⁶² Through the reserve system, which prevented players from leaving for another team, owners forced unhappy players to either "continue to play for [their] current owner[s], or retire from baseball, permanently." See *id.* at 304 (citation omitted).

⁶³ It is important to note that the rise of baseball coincided with an explosion in the growth of American industry. See generally ABRAMS, *supra* note 40, at 16. During this time, unions took over American marketplaces along with large-scale industry. See *id.* In order to protect themselves, "[u]nions gave laborers the means to protect their wages and working conditions in an environment where employers focused only on maximizing profit." *Id.* However, because of the reserve system, baseball's early player unions focused on working conditions for their members. *Id.* at 17-18; see also Glazer, *supra* note 6, at 341-44.

⁶⁴ See ABRAMS, *supra* note 40, at 17-18.

⁶⁵ It is a love affair that "has been central to American culture for over one hundred years." Michael J. Yelnosky, *If You Write It, (S)he will come: Judicial Opinions, Metaphors, Baseball, and "The Sex Stuff"*, 28 CONN. L. REV. 813, 821 (1996) (quoting Chad M. Oldfather, *The Hidden Ball: A Substantive Critique of Baseball Metaphors in Judicial Opinions*, 27 CONN. L. REV. 17, 30 (1994)). One legal commentator has even theorized that virtually every American would have a working understanding of baseball, and one would have to make a committed "lifelong effort" to not understand the basic tenets of the game. See Charles Yablon, *On the Contribution of Baseball to American Legal Theory*, 104 YALE L.J. 227, 229 (1994).

⁶⁶ Babe Ruth was known as the man who restored the game of baseball as America's pastime after the game suffered as a result of players throwing the World Series in 1919. See Bill Madden, *Babe Still Making His Mark*, N.Y. DAILY NEWS, Sept. 13, 1998, at 83. Recently, there have been parallels made between Babe Ruth and Mark McGwire, who is credited with "sweeping away the last ashes of the '94 [baseball] strike and restoring the game to 'America's Pastime' status." *Id.*

⁶⁷ See, e.g., THE NATURAL (Columbia/Tristar Studios 1984).

⁶⁸ See, e.g., THE BABE (Universal Studios 1992).

game itself.⁶⁹

Today, some of those same reasons might validate one's decision to go pro – but it would be difficult to ignore the substantial salaries that Major League ballplayers earn.⁷⁰ Even in the arbitration process, a player who loses could still leave the table a millionaire.⁷¹ However, not all of the money that each club doles out to its players is generated from the traditional sources of yesteryear.⁷² In 2003, to name several examples, clubs will generate revenue via lucrative television contracts,⁷³ corporate sponsorships,⁷⁴ and the worldwide sale of team merchandise.⁷⁵

B. *Televisions Contracts and Corporate Sponsorship*

Many Major League ball clubs have a well-established presence in the market in which they play,⁷⁶ and are properly compensated by local television networks⁷⁷ that wish to broadcast their games.⁷⁸ Granted, some clubs are compensated by a much wider margin

⁶⁹ See, e.g., *FIELD OF DREAMS* (Universal Studios 1989).

⁷⁰ See, e.g., USA Today Baseball Salaries Database, *supra* note 25.

⁷¹ See Abrams, *supra* note 10, at 56.

⁷² Today, most of the wealthy teams in baseball have become “wealthy” as opposed to other teams because of local television revenue that does not have to be shared with the other clubs. See Glazer, *supra* note 6, at 362-63. Since revenue generated from contracts between Major League Baseball and national broadcasters is shared equally amongst the clubs, the growth in revenue generated by each team locally resulted in teams in large media markets becoming increasingly wealthier. See *id.*

⁷³ *Id.*; see also Hopkins, *supra* note 30, at 301 (discussing an increase in player salaries due to the large sums of money received by ball clubs through television contracts).

⁷⁴ See discussion *infra* Part II. B.

⁷⁵ See discussion *infra* Part II. C.

⁷⁶ See, e.g., Steven Greenhouse, *Baseball's Labor Twist*, N.Y. TIMES, August 27, 2002, at A1 (describing the New York Yankees' presence in New York and their generation of revenue through ticket sales and local television and radio contracts). However, there are some “small-market” teams, such as the Kansas City Royals or the Milwaukee Brewers that do not have as much of a presence in their respective areas compared with the larger market teams. This lack of presence could be the natural result of playing in a small market, but because of tools such as revenue sharing, it is likely that some Major League ball clubs are poor because they are not well managed. See generally *id.*; Stephen F. Ross, *Symposium: Batter Up!: From the Baseball Field to the Courthouse: Contemporary Issues Facing Baseball Practitioners: Light, Less-Filling, It's Blue-Ribbon!*, 23 CARDOZO L. REV. 1675, 1686 (2002). For a discussion on revenue sharing, see *supra* note 49 and accompanying text.

⁷⁷ All Major League baseball teams share their national television contracts, however larger market teams generate a significant amount of their revenue from local television contracts. See Jon S. Greenwood, *What Major League Baseball Can Learn From Its International Counterparts: Building a Model Collective Bargaining Agreement for Major League Baseball*, 29 GEO. WASH. J. INT'L L. & ECON. 259, 290 (1995); see also *supra* note 69.

⁷⁸ For instance, the New York Yankees were formerly broadcast on the MSG Network in New York. In a deal that started in 1989 and lasted for 12 years, the MSG Network paid the Yankees a \$50 million signing bonus and \$443.5 million through the year 2000 in exchange for the right to broadcast Yankee games. The Seattle Mariners, the Major League Baseball club of the Pacific Northwest, have a deal with the Fox Television Network that pays them \$37 million annually. See generally Leonhardt et al., *supra* note 42.

than others,⁷⁹ but that might be attributed to their respective market sizes.⁸⁰ For instance, the St. Louis Cardinals have a \$12 million contract with both the FOX Midwest Network [Fox] and the KTRL network to broadcast their games for the 2003 season.⁸¹ Fox and KTRL's effect on the Cardinals can be considered in multiple respects;⁸² each network is not only a direct source of revenue for the club,⁸³ but in essence also have become an agent⁸⁴ for the club, despite fiscal interests in the success of the team.⁸⁵ The better the team does, and the better the television broadcaster promotes the team, the more viewers will watch the game, resulting in more opportunities for the television network to collect from advertisers due to higher ratings.⁸⁶

Many clubs also have corporate sponsorship deals,⁸⁷ ranging from the brand of soft drink used by stadium vendors⁸⁸ to selling

⁷⁹ See *id.* In comparison to the New York Yankees and Seattle Mariners, the Pittsburgh Pirates receive about \$9 million per year in local television revenue. *Id.*

⁸⁰ Some of baseball's teams can be categorized as visibly "big market" or visibly "small market." See *supra* notes 76-78 and accompanying text. However, under the new CBA, with revenue sharing and the new luxury tax in effect, hundreds of millions of dollars will move from teams like the Yankees to teams like the Pirates over the life of the agreement. See discussion *supra* Part I B; see also Leonhardt et al., *supra* note 42.

⁸¹ Fox and KTRL have a deal with the St. Louis Cardinals to broadcast on television approximately 100 of the team's 162 regular season games. The remaining games are either broadcast on national television or radio. Telephone Interview with John Mozeliak, Director, Baseball Operations, St. Louis Cardinals (Mar. 19, 2003).

⁸² A broadcast network's relationship with a Major League Baseball Club goes beyond merely buying the right to broadcast the team's games.

⁸³ The \$12 million that the St. Louis Cardinals received in exchange for the broadcasting rights to their games during the 2003 season is team revenue and is not divided up between all Major League Baseball Clubs. Telephone Interview with John Mozeliak, Director, Baseball Operations, St. Louis Cardinals (Mar. 19, 2003).

⁸⁴ An agent is "[o]ne who is authorized to act for or in place of another; a representative." BLACK'S LAW DICTIONARY 64 (7th ed. 1999). Since a television broadcaster is authorized to promote the baseball games being played and broadcast on their station, they are virtually representing the team they have contracted with.

⁸⁵ A broadcaster has a direct fiscal interest in the success of the team they are affiliated with because they can charge potential advertisers more money for commercial airtime during games that draw from a larger fan base. See generally James R. Devine, *The Legacy of Albert Spalding, the Holdouts of Ty Cobb, Joe DiMaggio, and Sandy Koufax/Don Drysdale, and the 1994-95 Strike: Baseball's Labor Disputes are as Linear as the Game*, 31 AKRON L. REV. 1, 68-71 (1997).

⁸⁶ See *id.*

⁸⁷ A corporation is a "legal entity, consisting usually of a group of people who have a charter granting it perpetual life, that is invested with many of the legal powers given to individuals: a corporation may enter into contracts, buy and sell property, etc." WEBSTER'S NEW WORLD DICTIONARY 311 (3rd College ed. 1988). A sponsor is "a person or agency that undertakes certain responsibilities in connection with some other person or some group or activity. . ." *Id.* at 1296.

⁸⁸ For instance, Pepsi, a unit of the Pepsi-Cola Company, has signed agreements with the New York Mets and Detroit Tigers, along with twelve other Major League baseball teams, in which Pepsi products are the only ones served in each team's home stadium. Likewise, Coca-Cola has an exclusive contract to serve only Coke soft drinks in Yankee Stadium. See Constance L. Hays, *The Media Business: Advertising; Pepsi Takes Aim at Young Baseball and Soccer Players*, N.Y. TIMES, July 6, 2000, at C8.

the naming rights of the team's ballpark.⁸⁹ These corporate externalities, or corporate sponsors also have a stake in the success of the club, but in a different way than the television broadcasters do.⁹⁰ They differ from television broadcasters in that reciprocity⁹¹ does not exist in the corporation/ball club relationship as it does in the broadcaster/ball club relationship.⁹² In fact, as far as corporations go, the bigger the stake,⁹³ the less reciprocity there is between them and the ball club.⁹⁴ For example, Qualcomm, Inc., the corporation that the San Diego Padres' stadium is named for,⁹⁵ does not promote the San Diego Padres, and they do not directly generate any more or less revenue based on the club's performance.⁹⁶ However, if the club does not play well, the result might be a negative public perception⁹⁷ of the sponsoring corporation, and

⁸⁹ For example, San Diego's baseball and football teams, the San Diego Padres and the San Diego Chargers, respectively, play in Qualcomm Stadium, the stadium for which Qualcomm, Inc. obtained naming rights through the year 2020. See Quinton A. Kruse, *San Diego's Future and the Chargers*, SAN DIEGO UNION-TRIBUNE, July 6, 2002, at B-9.

⁹⁰ Television broadcasters have a personal stake in the amount of success that the team with which they have a relationship achieves. These broadcasters generate revenue from advertisers buying commercial airtime during their programming, and a better team with more followers will result in higher rated programs and premium rates for commercial airtime during the games being broadcast. See *supra* notes 76-86 and accompanying text.

⁹¹ Reciprocal relationships exist where there is mutuality, or an exchange "present or existing on both sides." WEBSTER'S NEW WORLD DICTIONARY 1120 (3rd College ed. 1988).

⁹² As opposed to the revenue that a television broadcaster can generate as a direct result of the ball club playing the games being broadcast, a corporate sponsor receives more of an intangible exchange from the ball clubs that they sponsor. The sponsoring corporation can hope to "build connections in people's minds" with respect to their company or product and the sport of baseball or the team that they sponsor. Hays, *supra* note 88; see also Jack Achiezer Guggenheim, *The Indians' Chief Problem: Chief Wahoo as State Sponsored Discrimination and a Disparaging Mark*, 46 CLE. ST. L. REV. 211, 218 (1998) ("Certainly a symbiotic relationship exists to some degree between a privately owned sports team and its host city . . . the city obtains marquee exposure, a source of entertainment, a source of civic pride, and an enterprise that can draw fans as well as businesses that compliment such a stadium.").

⁹³ When referring to a bigger "stake," the example that comes to mind would be obtaining naming rights in a stadium, as opposed to merely placing an advertisement for a company within the stadium, which would not build as much of a "[connection] in people's minds" between the ball club and the corporation as would naming the entire stadium after that corporation. See, e.g., Guggenheim, *supra* note 92, at 218.

⁹⁴ Once a corporation has established a connection in people's minds, the stronger that connection is, or the bigger the stake the corporation has in the team's success, the more the corporation might be at risk of a negative public perception if the ball club does not perform well. Cf. *supra* notes 76-86 and accompanying text.

⁹⁵ See *supra* note 89.

⁹⁶ As opposed to a television broadcaster, which has a direct fiscal interest in the success of the team. See *supra* notes 76-86 and accompanying text. The broadcaster's fiscal interest is more direct than a corporate sponsor's is because if no one watched the games, the broadcasters could not charge advertisers as much for commercial airtime. The corporate sponsor still needs consumers to go out and buy their products in order to generate revenue.

⁹⁷ Public perception is important not only to individual teams, but also to the collective sport of baseball. See Ross, *supra* note 76, at 1678-79 ("[P]ublic perception has an indirect effect on the short term future of baseball in the context of the pending labor negotiations

likewise to a positive public perception⁹⁸ if the team does play well.⁹⁹

Despite the disparate nature of the relationships that corporate sponsors and television broadcasters have with Major League Baseball teams,¹⁰⁰ both corporate sponsors and broadcasters can affect *individual players* in a similar manner.¹⁰¹ Concepts that are integral to the arbitration process, such as market value,¹⁰² can be driven in part by both of these externalities.¹⁰³ Where a corporate sponsor strikes an exclusive endorsement deal with an individual player,¹⁰⁴ that private relationship would lead to an increase in the

between the clubs and the Major League Baseball Players Association.”). When public support is in favor of the management, owners usually remain steadfast, and when there is public opposition to management they are usually more yielding to the players. *See id.*

⁹⁸ *See id.*

⁹⁹ In the same context that public perception is important to the entire sport of baseball, when a corporation has an affiliation or has established a connection in people’s minds with an individual team, how the public perceives the individual team might therefore be how they perceive the sponsoring corporation. *See, e.g., supra* note 86; *see also* Stuart Elliott, *Marketers and Agencies Make Contingency Plans For a Baseball Strike and Worry About Fan Loyalty*, N.Y. TIMES, Aug. 29, 2002, at C8.

¹⁰⁰ *See supra* notes 76-99 and accompanying text.

¹⁰¹ Individual players separately comprise a team. *See* Matthew J. McPhillips, “*Girls of Summer*”: A Comprehensive Analysis of the Past, Present, and Future of Women in Baseball and a Roadmap to Litigating a Successful Gender Discrimination Case, 6 SETON HALL J. SPORT L. 301, 337 (1996) (discussing the components of a team being the best players available to play). Quite often, individual superstar players play on teams that do not finish at the top of their division or make the playoffs. *See, e.g.,* Gerry Fraley, *Nice Scoop: Tejada Wins MVP; A’s Shortstop Favored A-Rod, But Voters Find More Value in Miggy*, DALLAS MORNING NEWS, Nov. 13, 2002, at 5B (discussing superstar shortstop Alex Rodriguez and his losing out on the American League MVP because he played for a last-place club). However, that does not change their status as superstar players and so a corporate sponsor that signed a superstar player to an endorsement deal would benefit even if the player’s team were in last place. Therefore, since the relationship between a corporation and an individual player they sign to an endorsement deal is more reciprocal than the relationship between a corporation and a Major League ball club, it is more akin to the relationship that a television broadcaster has with the team. *See supra* notes 76-99 and accompanying text.

¹⁰² Market value is “[t]he price that a seller is willing to accept and a buyer is willing to pay on the open market and in an arms-length transaction; the point at which supply and demand intersect.” BLACK’S LAW DICTIONARY, *supra* note 16. *See supra* note 11 for criteria that can be considered by an arbitration panel in baseball salary arbitration, amongst which are comparative baseball salaries.

¹⁰³ Corporate sponsors invest hundreds of millions of dollars in endorsement deals with Major League clubs and players, and television broadcasters generate millions more for themselves in annual revenue from advertisers that want to reach consumers during baseball games. *See generally* notes 87-99 and accompanying text. *See also* Peter Kafka, *Goldman Sachs Takes One for the Team in the Yankees/Cablevision Brawl*, FORBES, May 27, 2002, at 44; Kurt Badenhausen et al., *Double Play*, FORBES, Apr. 15, 2002, at 92 (discussing the record-setting seven hundred million dollar purchase of the Boston Red Sox that included an eighty percent interest in the New England Sports Network).

¹⁰⁴ Three of baseball’s best players, Alex Rodriguez of the Texas Rangers (RadioShack, Colgate, Mennen Speed Stick, Nike), Derek Jeter of the New York Yankees (Nike, Gatorade, Fleet Bank, Skippy Peanut Butter, Acclaim Video, Rawlings, Kellogg’s, Steiner Sports, Fleeer) and Nomar Garciaparra of the Boston Red Sox (Adidas, Fleet Bank, Microsoft, Dunkin’ Donuts, Rawlings, Louisville Slugger, Bell Atlantic, Twizzlers, Amtrak) have many individual endorsement deals with large corporations. *See* Mel Antonen & Cesar Brioso, *Top Shortstops Long on Talent*, USA TODAY, September 18, 2002, at 3C.

individual player's wealth,¹⁰⁵ regardless of the salary he receives from his team.¹⁰⁶

C. *Worldwide Sale of Team Merchandise*

Aside from their presence in their individual cities,¹⁰⁷ Major League Baseball teams have benefited from the impact that "America's game"¹⁰⁸ has had on the international market as well.¹⁰⁹ More frequently, teams are signing players that begin their careers playing in foreign countries, such as Japan,¹¹⁰ which helps the team's marketability¹¹¹ in terms of relating to fans, both within and outside the bounds of the United States, who seek to identify with a player of their own ethnicity.¹¹² In addition, Clubs not only sell merchandise in their stadiums and sporting goods stores,¹¹³ but

¹⁰⁵ See Bruce Horowitz, *KFC Hopes Bonds Hits a Home Run With Diners*, USA TODAY, May 6, 2002, at 7B (discussing the potential for baseball superstar Barry Bonds to make tens of millions of dollars in endorsement income in comparison to golf's Tiger Woods and basketball's Michael Jordan). See generally Mike Wise, *Pro Basketball; For One Night, the Legend Rules the Court*, N.Y. TIMES, Nov. 29, 2001, at S1 (discussing basketball player Allen Iverson signing a lifetime deal with Reebok that will provide him with a lifetime of financial security).

¹⁰⁶ It should be mentioned that aside from establishing relationships with individual players, corporate sponsors sign endorsement deals with Major League Baseball as well. See, e.g., Elliott, *supra* note 99 ("Spending by the 18 companies and brands that are corporate sponsors of Major League Baseball is estimated at \$170 million for the 2002 season.").

¹⁰⁷ See *supra* note 76.

¹⁰⁸ Baseball is considered America's game because it "resonates with America's self image: a contest of skill, acumen, and, occasionally, trickery between individuals who are members of teams. Baseball is a beautiful enterprise that flashing spikes, occasional brawls, insatiable greed, and various scandals can sully-much like the American nation." ABRAMS, *supra* note 40, at 1.

¹⁰⁹ Major League Baseball has seen the big picture with respect to the global economy, and they have been heavily marketing their products overseas. See Arturo J. Marcano & David P. Fidler, *The Rule of Law in the Era of Globalization: The Globalization of Baseball: Major League Baseball and the Mistreatment of Latin American Talent*, 6 IND. J. GLOBAL LEG. STUD. 511, 518-19 (1999). In particular, since television-broadcasting rights are such a great source of revenue for Major League Baseball, the addition of foreign players to Major League rosters has resulted in a greater demand for Major League Baseball broadcasts in other countries. Major League Baseball generated \$1.7 billion in revenue in 1995 from the sale of television broadcasting rights. See *id.*; see also discussion *supra* Part II B.

¹¹⁰ See, e.g., Bob Sherwin, *Baseball Imports Ichiro, Sasaki Give Homeland, Mariners World of Hope Made in Japan*, SEATTLE TIMES, Mar. 30, 2001, at D3.

¹¹¹ A marketable product is one "[f]it to be offered for sale, as in a market" or "in demand by buyers or employers." THE AMERICAN HERITAGE DICTIONARY 1072 (4th ed. 2000).

¹¹² American fans of baseball frequently have a favorite team, and try to find ways to identify with that team or with its best players. Cf. Guggenheim, *supra* note 92 (discussing the naming of the Cleveland baseball franchise as the "Indians" resulting in the alienation of Native Americans). Since baseball is now a game that is popular in countries other than the United States, Major League Baseball now has a global community of baseball fans that it can reach. See Marcano & Fidler, *supra* note 109, at 512 ("As foreign players have successfully penetrated [Major League Baseball], baseball fans in many other countries follow the successes of their 'native sons' in the Big Show.").

¹¹³ The individual clubs only retain their in-stadium sales. Any other sales go to the

also on their team websites on the Internet.¹¹⁴ Further, Major League Baseball is also capitalizing on the possibility for increased revenue through Internet-based ventures.¹¹⁵ All of this increased marketability helps the Major League teams increase their revenues, but does not benefit players, such as Pujols, until they are eligible for baseball salary arbitration,¹¹⁶ or to a greater extent when they are eligible for free agency.¹¹⁷ Although Pujols is a native of the Dominican Republic¹¹⁸ and can reach a fan base that other players might not,¹¹⁹ his popularity¹²⁰ does not help him in the here and now of the spectacular seasons he has put together for the St. Louis Cardinals.¹²¹

III. THE "PUJOLS PERSPECTIVE"

Despite the positive results of the owners and the MLBPA coming to agreement,¹²² none of the obstacles relating to Albert Pujols and salary arbitration were addressed in the most recent CBA.¹²³ The unique situation Pujols has found himself in should

Central Office of the Commissioner of Major League Baseball and are divided equally among the 30 Major League teams.

¹¹⁴ See, e.g., Official Site of the New York Mets, at <http://newyork.mets.mlb.com> (last visited Mar. 31, 2003) (offering ticket sales and sale of New York Mets team paraphernalia over the Internet).

¹¹⁵ Building on the success of offering online audio broadcasts of baseball games, Major League Baseball has implemented a plan that offers on-demand and live access to video feeds of games that would normally be out of market. These games would be purchased on a pay-per-view basis, or with a monthly or season pass. See, e.g., Ryan Naraine, *MLB.TV Puts Live Games Online*, INTERNETNEWS.COM, Mar. 11, 2003, at <http://www.internetnews.com/ec-news/article.php/2107831> (last visited Mar. 31, 2003); Dan Richman, *RealNetworks Steps Up Baseball Coverage*, SEATTLE POST-INTELLIGENCER, Mar. 12, 2003, available at http://seattlepi.nwsourc.com/business/112068_streaming12.shtml (last visited Mar. 31, 2003).

¹¹⁶ It would benefit him at that point because in baseball salary arbitration, criteria that the arbitrator can consider includes "special qualities of leadership and public appeal." Article VI, § F (12) of the 2003-2006 Basic Agreement, *supra* note 11.

¹¹⁷ Once Pujols is a free agent, he will be able to offer his services to the team that he is either most comfortable with or that offers him the most money. The more marketable he is, the more options he will have when that time comes.

¹¹⁸ See The Albert Pujols Fan Page, *supra* note 1.

¹¹⁹ Pujols is one of many Major League Baseball players that hail from the Dominican Republic, who, despite not being from the United States can relate to a growing fan base in a way that American players cannot. "America's pastime is growing – and most of that growth is happening outside of the United States." Marciano & Fidler, *supra* note 109, at 512.

¹²⁰ Aside from having his own fan page, a word search for "Albert Pujols" on "Google" yields thirty four thousand nine hundred results. See Google, at <http://www.google.com> (last visited Mar. 31, 2003).

¹²¹ Notwithstanding his impressive 2003 (third season) statistics, Pujols' first two seasons in the Major Leagues are without comparison in the history of Major League Baseball. See *supra* note 1.

¹²² See *supra* notes 59-60 and accompanying text.

¹²³ See discussion *supra* Part I.B. for the changes that were made for the 2003-2006 CBA between Major League Baseball owners and players. However, with respect to salary arbitration, the language in the CBA remained the same as it was in the 1996 agreement be-

be considered a source of future debate.¹²⁴ There are those that believe a twenty-two or twenty-three year old man should be grateful for earning a six-figure salary to play a game.¹²⁵ However, the reality is that Pujols is one of the best players in Major League Baseball.¹²⁶ Because the enormous success he has found so early in his career is notably inconsistent with the careers of many Hall of Fame players,¹²⁷ from an objective economic standpoint his services are being sold well below par value.¹²⁸

One reason for the aberration of Pujols' salary might be better understood by comparing baseball to other professional sports, such as football or basketball.¹²⁹ Unlike baseball, in football and

tween owners and players. *See, e.g.*, MLB Collective Bargaining, at http://mlb.mlb.com/NASApp/mlb/mlb/news/mlb_labor.jsp (last visited Mar. 31, 2003):

Language [with respect to salary arbitration] remains the same as in the 1996 collective bargaining agreement. Any player with three years of service and less than six years of service at the Major League level can file. An arbitrator picks the dollar figure submitted [sic.] by the player or the one submitted by the club. The decision is binding.

Id.

¹²⁴ *Cf.* George Vecsey, *Sports of the Times; Yanks Keep Low Profile Temporarily*, N.Y. TIMES, Dec. 7, 2001, at S1 (discussing baseball commissioner Bud Selig blaming the \$232 million loss suffered by baseball owners in 2001 on high player salaries resulting from free agency and salary arbitration); Bowie Kuhn, *How to Enliven the Field of Dreams*, N.Y. TIMES, Aug. 26, 2001, §3, at 7 (argument from a former baseball commissioner that baseball's problems are mainly economic and could be solved by implementation of a salary cap); Chalpin, *supra* note 13, at 233-35 (arguing for removal of or for change to baseball's salary arbitration system).

¹²⁵ *See generally* Peter M. Maçaluso, *Bang the Gavel Slowly: A Call For Judicial Activism Following the Curt Flood Act*, 9 B.U. PUB. INT. L.J. 463 (2000) ("Go to any local bar and you will hear a number of patrons complaining that one player 'is not worth the money he makes,' or that it is unfair for the star quarterback to leave the home team and pursue bigger money elsewhere."); Thomas A. Piraino, Jr., *A Proposal for the Antitrust Regulation of Professional Sports*, 79 B.U. L. REV. 889, n.3 (1999) ("It is the fans who pay when the ticket price goes up to support the massive payrolls. It is the fans who pay when the price of a hotdog goes up a buck, a parking spot rents for five, and the county commission votes a tax increase to build the entrepreneur a new stadium, complete with sky boxes and closed-circuit TV.") (quoting JOHN UNDERWOOD, *SPOILED SPORT* 11-12 (Little, Brown & Company 1984)).

¹²⁶ *See supra* notes 1, 23.

¹²⁷ Pujols is the first player in Major League Baseball history to hit .300 with 30 home runs, drive in 100 runs, and score 100 runs in each of his first two seasons. *See supra* note 1. In comparison, Hall of Famer Carl Yastrzemski failed to hit 20 home runs, drive in 100 runs, score 100 runs or bat .300 in either of his first two seasons. *See* Baseball Reference Statistical Database, at <http://www.baseball-reference.com/y/yastrca01.shtml> (last visited Mar. 31, 2003); *see also* Statistics for Mickey Mantle, at <http://www.baseball-reference.com/m/mantlmi01.shtml> (last visited Mar. 31, 2003).

¹²⁸ The median player salary on the St. Louis Cardinals for the 2002 season was \$2,125,000. *See* USA Today Baseball Salaries Database, at <http://www.asp.usatoday.com/sports/baseball/salaries/> (last visited Mar. 31, 2003). Albert Pujols' salary for the 2001 season was \$200,000 and he earned \$600,000 for the 2002 season. *See id.*; *see also supra* note 26. Since his statistics and his value to the St. Louis Cardinals organization exceeded that of most other players on the team, his services for the 2003 season were being offered at less than market value.

¹²⁹ The National Football League, or "NFL" and The National Basketball Association, or "NBA," each have their own separate CBAs that they abide by. *See, e.g.*, Holly M. Burch, *A Sports Explosion: Intellectual Property Rights in Professional Athletic Franchises*, 5 SPORTS LAW J. 29

basketball there is no such thing as the “minor leagues.”¹³⁰ This distinction is important because when amateur football or basketball players sign a professional contract, they will normally become members of the parent organization, or “major league” team and contribute to the team immediately.¹³¹ However, when an amateur baseball player signs a professional contract, his future as a Major Leaguer is not nearly as certain.¹³² He might have to struggle through multiple levels of minor league activity before being offered the chance to try out for a position on the Major League team.¹³³ This distinction is, for the most part, reflected in the signing bonuses and salaries¹³⁴ of amateur players signing their first professional contracts in these different sports.¹³⁵ In baseball, the

(comparing players’ intellectual property rights under the different CBA’s of professional sports leagues).

¹³⁰ For example, NFL teams do not have a minor league affiliate in the way that Major League Baseball teams do. If a player is lucky enough to be drafted by an NFL franchise, he still needs to make the team, and cannot be sent down to the minor leagues as a baseball player might be. Many of those who do not make the team go on to other pro-leagues not affiliated with the NFL, or leave the game. See, e.g., Laura Hilgers, *Hard Road to Glory; Getting to the Top in Sports is Hard. Meet Four Athletes Who Took the Hardest Road of All*, SPORTS ILLUSTRATED FOR KIDS, December 2000, at 80 (discussing St. Louis Rams quarterback Kurt Warner’s rise to the top after he spent time packing groceries while playing in the Arena Football League because he was cut by the Green Bay Packers). Similarly in the NBA there are no minor leagues. However, many NBA players come from either college or high school, and the few that do come from other professional basketball leagues usually come from overseas. See, e.g., Selena Roberts, *Pro Basketball; Stern Questions the Outrage Over Early Entry to N.B.A.*, N.Y. TIMES, May 20, 1996, at C4.

¹³¹ Even if the NBA or NFL player in question is not a starter, he will still contribute as a member of the professional franchise. If he is drafted by the team and they want to keep him as part of their organization, he cannot be sent down to the minor leagues and must remain on their NBA or NFL franchise roster. See generally *supra* note 126.

¹³² Cf. Lee J. Rosen, *Proposition 16 and the NCAA Initial-Eligibility Standards: Putting the Student Back in Student-Athlete*, 50 CATH. U. L. REV. 175, 213 (2000) (discussing the lack of a minor league system in football and basketball resulting in players who leave college early without developing skills they will need to survive outside the world of sports).

¹³³ See, e.g., Irv Moss, *Double-A Threats after choosing the diamond over the gridiron, outfielders Choo Freeman and Matt Holliday are on the fast track to Coors Field*, DENVER POST, Aug. 4, 2002, at C-19 (discussing the growth of two 1998 Colorado Rockies draft picks over the course of five years and their most recent season at the Double-A minor league level). See also Rod Beaton, *Dream of Big Leagues Never Gets Old Durham Star, 36, Hopeful*, USA TODAY, May 19, 1998 at 1C (discussing career minor leaguer Russ Morman as the most prolific active power hitter in the minor leagues with 191 home runs in 1,152 games played).

¹³⁴ Cf. Tom Pedulla, *Weinke Faces Age-Old Query Will His Age (29) be an Issue for Teams Looking for a Quarterback in NFL Draft?*, USA TODAY, Apr. 17, 2001, at 1C (discussing the \$375,000 signing bonus that Florida State quarterback Chris Weinke received from baseball’s Toronto Blue Jays six years before playing football for Florida State); *Weinke Finally Signs With Panthers*, ST. PETERSBURG TIMES, July 22, 2001, available at http://www.sptimes.com/News/072201/Sports/NFL_briefs.shtml (last visited Mar. 31, 2003) (discussing the NFL Carolina Panthers and the \$4.1 million signing bonus they gave to their first selection in the 2001 draft and the \$500,000 signing bonus they gave to 2001 fourth round selection Chris Weinke). Since many first and second round players in the NFL draft are expected to make an impact on the team that selects them, they are given much larger bonuses than players taken later on in the draft who will have to compete for roster spots.

¹³⁵ Signing bonuses given to early draft picks in baseball’s amateur draft are much closer in value to the ones received by players taken in the NFL and NBA amateur drafts. How-

result is lower compensated players¹³⁶ who might find success in their first years as a professional at the Major League level, but who cannot earn the right to see an arbitration panel until they have completed their third season with the Major League team.¹³⁷

Hypothetically, had Pujols been a professional basketball or football player, he would be able to fully capitalize on his extraordinary talents in half¹³⁸ the amount of time that reality will present him with.¹³⁹ For example, a player in the National Basketball Association, in addition to avoiding the minor leagues,¹⁴⁰ is also able to become a free agent after his third professional season.¹⁴¹ After his

ever, the monetary value of the bonuses decreases as the expectations of late draft picks decrease. The NBA draft consists of 2 rounds, the NFL draft consists of 7 rounds, and the Major League Baseball draft consists of 50 rounds. *See generally* Steve Wieberg, *Baseball Likely Beneficiary of Div. II Pro Rule*, USA TODAY, Feb. 7, 2001 at 6C ("There are 50 rounds in the professional baseball draft, and obviously not all of those [selected] are going to make it to the Major Leagues"); Tom Weir, *Too Young to Play? Analysis Finds Players Who Join NBA Early Reap Big Benefits*, USA TODAY, June 30, 1999 at 1C:

[There are] seven-figure annual salaries that await many [NBA] first-round picks. This season that scale ranged from \$ 2.679 million a year for the first player chosen to \$ 535,600 for the 29th, or last pick, of the first round. And first-round contracts are guaranteed for three years.

Id.

¹³⁶ That baseball's system results in lower compensated young players may not prove to be true with players taken *early on* in the Major League Baseball draft. *See id.* *See, e.g.*, Murray Chass, *Gonzalez Selected as Top Draft Pick*, N.Y. TIMES, June 6, 2000, at D5 (discussing the number one pick in the 2000 amateur draft Adrian Gonzalez and his \$3 million signing bonus from the Florida Marlins); Murray Chass, *Wheeling and Dealing Cardinals Put Drew in His Comfort Zone*, N.Y. TIMES, July 4, 1998 (Sat. late ed.), at C2. However, baseball's draft consists of 50 rounds and many players taken later on do not receive such substantial signing bonuses. Pujols was taken in the 13th round of the 1999 draft and received a \$65,000 signing bonus. For his first professional season spent with the St. Louis Cardinals' single-A affiliate, the Peoria Chiefs, Pujols was paid the standard \$850 per month. Telephone Interview with John Mozeliak, Director, Baseball Operations, St. Louis Cardinals (Mar. 19, 2003).

¹³⁷ *See supra* note 11.

¹³⁸ Pujols spent only one season in the minor leagues, whereas most Major Leaguers spend more than one season in the minor leagues. *See, e.g., supra* note 133.

¹³⁹ In many cases, it would be more like one-third the amount of time, and not one-half. A player in the NBA is eligible for free agency at the end of three seasons in that league. If Pujols, like most others, had played three or four seasons in the minor leagues before beginning his time in the Major Leagues with the St. Louis Cardinals, he would have then been eligible for salary arbitration at the end of three seasons with the Cardinals. That would be six or seven total professional seasons before even being eligible for arbitration, as opposed to three professional seasons before attaining free agent status for the NBA player.

¹⁴⁰ *See supra* note 130. Notwithstanding that an NBA player avoids the minor leagues, many NBA players do play at a major college before getting drafted by an NBA team. *Id.* However, there are even those that get drafted and go professional right out of high school. *See* David DuPree, *Ohio Teen Doesn't Disappoint*, USA TODAY, Dec. 13, 2002, at 3C (comparing high school basketball sensation LeBron James to other NBA stars such as Kobe Bryant, Tracy McGrady and Kevin Garnett that were drafted directly out of high school).

¹⁴¹ The NBA was the first professional sports league to implement a salary cap, however there are several exceptions to the salary cap with which a team can operate above the cap. One of those exceptions is allowing teams to sign their own free agents for any amount they wish, provided that the player has been with the team for at least three seasons. *See*

third Major League season, Pujols will be able to see an arbitrator.¹⁴² However, because of the variety of factors considered in a salary arbitration hearing,¹⁴³ most baseball players have thus far not fared well against the owners in that setting.¹⁴⁴ Pujols will then be eligible for free agency after his sixth season,¹⁴⁵ and if you include his year of minor league service, that is seven professional seasons before attaining free agent status, as opposed to three for an NBA player.¹⁴⁶

Arbitration is a process that has arisen in order to resolve conflicts¹⁴⁷ over such recurring themes as salary caps,¹⁴⁸ free agency,¹⁴⁹

Sean D. Johnson, *Wage Discrimination in the National Basketball Association: Is There Discrimination Based on Race?*, 6 VILL. SPORTS & ENT. L. J., 27, 32-33 (1999):

In the summer of 1996, the NBA players and owners came to terms on the current collective bargaining agreement. While some of the loopholes have been closed by the new agreement, there are still several salary cap exceptions that permit teams' salaries to exceed the cap. In fact, only five of the NBA's 29 teams were under the salary cap for the 1996-1997 season. Most significantly, the so-called "Larry Bird" exception permits teams to sign their own free agents for any amount they wish, regardless of whether the team's payroll exceeds the salary cap, provided that the player has been with the team at least three years. (footnotes omitted).

Id.

¹⁴² See *supra*, note 11.

¹⁴³ *Id.* One factor under a salary arbitration panel's consideration is "career contribution." *Id.* Pujols' career contribution to the St. Louis Cardinals has been unquestionably great.

¹⁴⁴ For example, from 1974-1999, there were a total of four hundred seventeen cases heard in the baseball salary arbitration forum. Of those cases, the clubs prevailed in 236 of them, and the players prevailed in 181. During that time, only five of the years resulted in players prevailing in more cases than the clubs did. See Abrams, *supra* note 10, at 64. This could have been due to player representatives misreading the market more often than the clubs did, or perhaps that arbitrators were wary of awarding increasingly high player salaries. *Id.*; see also Owners Finish 5-2 Against the Players, at <http://espn.go.com/mlb/news/2003/0219/1511266.html> (last visited Mar. 31, 2003) (discussing the owner's victory in five out of seven salary arbitration cases heard after the 2002 season).

¹⁴⁵ See Article VI, § F (1) of the 2003-2006 Basic Agreement, *supra* note 11.

¹⁴⁶ Furthermore, according to the CBA, a baseball salary arbitrator would not be able to consider evidence of "salaries in other sports or occupations." Article VI, § F (12) (b) (v) of the 2003-2006 Basic Agreement. Therefore, the fact that Pujols would have already been a free agent had he been a basketball player would be irrelevant when he is eligible for salary arbitration after his third Major League season.

¹⁴⁷ See Meth, *supra* note 15, at 397-98 (discussing the possibility of using final offer arbitration to settle economic issues and conventional arbitration to settle non-economic issues in complex disputes).

¹⁴⁸ Unlike professional football and basketball, baseball does not impose a salary cap on Major League Baseball teams. In order to minimize spending on player salaries, owners have long wanted to implement one. See, e.g., Chalpin, *supra* note 13, at 225 ("[M]anagement wanted to use the 1994 strike to finally face down the players. They could now declare a bargaining impasse and attempt to impose a new system on their terms - the beginning of a salary cap, the end of salary ARBITRATION and whatever else their hearts' desire.") (footnote omitted).

¹⁴⁹ See Meth, *supra* note 15, at n.4.

Baseball players and owners created salary arbitration during collective bargaining in reaction to Baseball's history of reserve clauses and collusion. Baseball team owners proposed salary arbitration in an effort to retain control over the players' services instead of allowing them to become free agents. The players

player grievances¹⁵⁰ and player salaries,¹⁵¹ which result in strikes and lockouts in professional sports.¹⁵² However, while the process is clearly effective,¹⁵³ obviously it can only work if it is available as an option.¹⁵⁴ Salary arbitration is not an option for players in their first three seasons in the Major Leagues, such as Albert Pujols.¹⁵⁵ Therefore, although he plays in a day where arbitration is utilized to resolve many types of conflicts,¹⁵⁶ with respect to salary arbitration Pujols' rights are more similar to the legendary players mentioned in the introduction¹⁵⁷ than with other players in his own sport¹⁵⁸ and in the other sports leagues.¹⁵⁹

IV. PROPOSALS FOR CHANGE

In an arena that involves unions and astronomical sums of money at stake, such as baseball, there is more than one side that needs to be considered. Therefore, any proposals that are set forth in this section are meant to take into account the perspectives of

agreed to salary arbitration because they wanted some influence over their salaries pre-free agency. They also wanted a system that would ensure that the owners paid them a fair wage.

Id.

¹⁵⁰ See, e.g., Article XI of the 2003-2006 Basic Agreement (providing for impartial arbitration panels as the last step in the filing of player grievances).

¹⁵¹ Under the current collective bargaining agreement, salary arbitration is available to players with at least three but fewer than six years of Major League service. Article VI, § F (1) of the 2003-2006 Basic Agreement, *supra* note 11.

¹⁵² See LEONARD L. RISKIN & JAMES E. WESTBROOK, *DISPUTE RESOLUTION AND LAWYERS* 512 (2nd ed. 1997) (Arbitration is "a substitute for strikes over unresolved grievances. This meant. . . that arbitration should be regarded as an extension of the collective bargaining process.").

¹⁵³ See Joseph T. McLaughlin, *Symposium on Business Dispute Resolution: ADR and Beyond: Arbitrability: Current Trends in the United States*, 59 ALB. L. REV. 905, 940 (1996) (concluding that the arbitration process is effective in light of certain United States Supreme Court rulings favoring arbitration as an equitable and efficient means of settling disputes).

¹⁵⁴ At the time of this writing, Albert Pujols was a player that had completed only two seasons of Major League service. Therefore, he was not eligible for salary arbitration until completion of the 2003 Major League Baseball season. See *supra* note 11.

¹⁵⁵ Salary arbitration is currently available to baseball players with at least three years, but fewer than six years of Major League service. At the time of this writing, Pujols had completed only two Major League seasons playing for the St. Louis Cardinals. See *supra* notes 21-22 and accompanying text.

¹⁵⁶ See *supra* notes 147-52 and accompanying text.

¹⁵⁷ Gehrig, DiMaggio, Robinson, and Mantle played in decades ranging from the 1920's - 1960's. Those players were not able to benefit from the rights that the MLBPA has procured for the baseball players of today. See discussion *supra* Part II.A.

¹⁵⁸ Other baseball players that have already been eligible for salary arbitration, but whose numbers and value to their team are good, but not as great in comparison to Pujols', have salaries exponentially higher than the \$600,000 Pujols earned for the 2002 season. See, e.g., *Royals Zone*, at http://royalszone.com/stories/021903/bas_royalsbeltran.shtml (last visited Mar. 31, 2003) (discussing the 2002 arbitration hearing of the Kansas City Royals' Carlos Beltran and his new \$6 million salary despite the arbitration panel selecting the team's bid).

¹⁵⁹ See *supra* notes 129-46 and accompanying text.

Major League Baseball, the MLBPA and the tiny fraction of players who are in the same position as Albert Pujols.¹⁶⁰

A. *The MLBPA*

Historically, players have not fared well against the owners in Major League Baseball salary arbitration.¹⁶¹ The arbitration hearings after the 2002 season were no different.¹⁶² Because of baseball's final offer model of arbitration¹⁶³ that is conducive to settlement,¹⁶⁴ negotiations between owners and players naturally come closer to the player's market value.¹⁶⁵ Therefore, players who "lose"¹⁶⁶ their salary arbitration hearings have still won.¹⁶⁷ Even though there is no possibility for free agency until completion of their sixth Major League season,¹⁶⁸ arbitration brings a player's salary closer to the real market value.¹⁶⁹

If a player in a similar situation to Albert Pujols was able to utilize the arbitration process, he would win even if he were to lose.¹⁷⁰ If given the option of arbitration, his salary would then reflect his value to the team.¹⁷¹ To that end, there is a two-step process that should be applied to players not eligible for salary arbitration in their first three Major League seasons such as Pujols. The first step for a salary arbitration panel would be to look at

¹⁶⁰ The aim of these proposals is to facilitate a dialogue between Major League Baseball and the MLBPA with respect to salary arbitration. Since the current agreement expires after the 2006 baseball season, any change could be implemented beginning with the 2007 season.

¹⁶¹ See *supra* note 144.

¹⁶² See *id.*

¹⁶³ See Meth, *supra* note 15.

¹⁶⁴ See *id.*

¹⁶⁵ See *id.*

¹⁶⁶ Players who lose their arbitration hearings still leave the table as millionaires. See *supra* note 71 and accompanying text. See also Murray Chass, *Jeter Seeks Record \$18.5 Million in Arbitration*, N.Y. TIMES, Jan. 19, 2001, at D1 (discussing the salary arbitration proposals from both shortstop Derek Jeter and the New York Yankees amounting to \$18.5 million and \$14.25 million respectively).

¹⁶⁷ See *id.*

¹⁶⁸ Free agency would enable the player to command market value for his services in negotiations with any club that would be interested. Under the current CBA, free agency is not available to Major League Baseball players until completion of their sixth season in the league. See Article XX, § B (1) of the 2003-2006 Basic Agreement.

¹⁶⁹ Without being eligible for salary arbitration, Pujols earned \$600,000 for the 2002 season. That figure is a fraction of what players with less impressive statistics earned for the same season. See *supra* note 25. If Pujols had been eligible for arbitration, he certainly would not have been paid in the same class as baseball's highest paid players, however, he would be paid much closer to market value than \$600,000.

¹⁷⁰ See *supra* note 166 and accompanying text.

¹⁷¹ If the St. Louis Cardinals hope to be a competitive baseball team, Albert Pujols must be an integral part of their plans. See *supra* notes 1, 23. Since baseball salary arbitration naturally gives each party the incentive to submit a proposal that is close to market value, the opportunity for salary arbitration would yield a salary that more resembles market value for Albert Pujols. See *supra* notes 14-20 and accompanying text.

Pujols' high level of production in his first two seasons,¹⁷² in order to determine his market value.¹⁷³ In consideration of the concept of market value, the term "career contribution" is one expressly used in the CBA. Application of the "career contribution" clause with more weight would lead an arbitration panel to find for Pujols, considering the significance of his "career contribution"¹⁷⁴ to the St. Louis Cardinals. Therefore, in light of "career contribution" as one of the criteria considered in salary arbitration, a player of Pujols' talent,¹⁷⁵ value¹⁷⁶ and popularity¹⁷⁷ should be given the same opportunity, namely salary arbitration, that is afforded to other players of similar worth to their teams.¹⁷⁸

The second step in the process would be as follows. In contemplation of a system where the CBA's "career contribution" clause would be read with more weight, the CBA currently mandates that a player needs three *Major League* seasons in order to be eligible for salary arbitration.¹⁷⁹ However, if the requirements for eligibility were to become three *professional* seasons, Pujols would have been eligible for salary arbitration after the 2002 season.¹⁸⁰ This would have enabled him to enter his third season for the St. Louis Cardinals playing for a salary much closer to his value.

A possible concern could be that this less stringent require-

¹⁷² In both the 2001 and 2002 seasons, Albert Pujols maintained a .300 batting average, hit 30 home runs, drove in 100 runs and scored 100 runs. *See supra* note 1. His 2003 campaign reflected more of the same as he was a mid-season candidate to win the National League Triple Crown as league leader in home runs, runs batted in and batting average.

¹⁷³ *See supra* notes 14-20 and accompanying text.

¹⁷⁴ Article VI, § (F) (12) (a) of the 2003-2006 Basic Agreement sets forth the criteria of "career contribution" for an arbitration panel to consider in determination of whether to choose the player or the clubs salary proposal. Pujols was a major contributor to his team in each of his first two seasons. *See supra* notes 1, 23. If Pujols were eligible for salary arbitration, the panel might give a more weighted reading to this portion of the clause.

¹⁷⁵ *See supra* notes 1, 23.

¹⁷⁶ *See id.*

¹⁷⁷ *See supra* note 120.

¹⁷⁸ Most players who are able to produce at a level similar to the level that Albert Pujols produces at are not in their first or second seasons in the Major Leagues. Many Major Leaguers who are able to produce at that level do so later in their careers, after having adjusted to the intricacies of the game. *See supra* note 127; *see also* David S. Davenport, *Education and Human Capital: Pursuing an Ideal Income Tax and a Sensible Tax Policy*, 42 CASE W. RES. 793, 856-57 (1992) (discussing the increase in value of a baseball player's talents as his career progresses).

¹⁷⁹ Article VI § (F) (1) of the 2003-2006 Basic Agreement:

Any Club, or any Player with a total of three or more years of *Major League* service, however accumulated, but with less than six years of Major League service, may submit the issue of the Player's salary to final and binding arbitration without the consent of the other party. . . (emphasis added).

Id.

¹⁸⁰ The 2002 season was Pujols' second in the Major Leagues, but including the 2000 season that he spent in the minor leagues, it was his third professional season. *See generally supra* note 1.

ment of three professional seasons for salary arbitration eligibility would be abused by players having completed three minor league seasons before playing in the Major Leagues.¹⁸¹ However, considering the owner's successful arbitration record against esteemed major league players,¹⁸² it would be unlikely that players who completed three professional minor league seasons, with no "career contribution" and before finishing a season in the Major Leagues would risk going to arbitration.¹⁸³ Therefore, the only players that would benefit from such a proposal would be a player in the unique situation of Albert Pujols after the 2002 Major League Baseball season.

Major League Baseball owners blame much of baseball's current economic state on free agency and salary arbitration.¹⁸⁴ However, economics aside, these proposals for change are grounded in fairness to players like Albert Pujols. Certainly methods for compensating owners in light of this proposal for helping extraordinary players in their first three years exist.¹⁸⁵ For example, elimination of the final offer aspect to negotiations is one such possibility, because owners would not face a lose-lose situation in salary arbitration hearings.¹⁸⁶ Another possibility includes allowing the

¹⁸¹ See, e.g., *supra* note 133.

¹⁸² See *supra* note 144.

¹⁸³ Because of the owner's track record, and because of the necessity of making a proposal to the arbitration panel of a figure near market value for the player's services, after their first or second seasons the vast majority of players would not risk going to arbitration where they would likely lose. For a discussion on the risks associated with arbitration, see Meth, *supra* note 15, at 390-91. A first or second year player that went into arbitration under this context would not "win" even if he were to "lose," because for the most part a first or second year player will not have the credentials to make a sound argument as to why he deserves a higher salary.

¹⁸⁴ See John L. Fizel, *Play Ball! Baseball Arbitration After 20 Years*, 49 DISP. RESOL. J. 42, 47 (1994) ("Owners argue that salary arbitration is a system in which they are obligated to participate if a player qualifies, have no control over what they will pay their players, and results in budget-busting salaries."); Chalpin, *supra* note 13, at 233 ("Salary arbitration in baseball has been cited as the number one reason baseball has 'so many overpaid millionaires.'") (footnote omitted). See also *supra* note 124.

¹⁸⁵ See, e.g., Chalpin, *supra* note 13, at 233-35.

¹⁸⁶ In his comment, Marc Chalpin discussed the possibility of eliminating the final offer model in baseball salary arbitration and its potential benefits to owners in Major League Baseball:

[I]nstead of last-best offer arbitration, perhaps more control over the final result should be given to the neutral arbitrator. If one side submits an unreasonable figure, the arbitrator would lean toward the reasonable side. If the arbitrator is not bound by the final offers of each side, the owners would be happy because they are not in a lose-lose situation, and the players would still have the opportunity to receive substantial salary gains.

Id. (footnotes omitted). This possibility would be beneficial to owners in most circumstances. However, in the unique situation of Albert Pujols, because of his "career contribution," and because he is so good so quickly, a salary arbitration hearing would nonetheless lead to a substantial yet "reasonable" increase in his salary and a result therefore closer to market value.

owners a “window” after each party has made their final offer proposals to the panel, so that if they so choose, they can cut the player and make him an unrestricted free agent.¹⁸⁷ This would allow ownership the flexibility to decide whether or not actually conducting the hearing in front of the arbitration panel would be in their best economic interest. Regardless, in light of fairness and “career contribution,” the players, like Albert Pujols, deserve a chance to reap where they have sown.

B. *The Clubs*

From the perspective of the Major League Baseball franchises, the current economic state of the game is, to say the least, not well.¹⁸⁸ Nor will the proposals set forth in this paper be received well by teams that are not in a good financial state.¹⁸⁹ However, it is important for the business of baseball, while it continues to grow in popularity around the world,¹⁹⁰ to demonstrate that it can be horizontally equitable amongst players of similar talent.¹⁹¹ To that end, Major League Baseball has demonstrated a willingness to pur-

¹⁸⁷ See Major League Baseball's The Best Players of all Time, at <http://www.worldzone.net/sports/baseball/strike.html> (last visited Mar. 31, 2003). However, the MLBPA is against this proposal because final offer proposals are made to the arbitration panels in mid-January, and flooding the market with free agents would be harmful to negotiations with other free agents. *Id.* One suggestion that comes to mind is holding arbitration hearings closer to the end of the season, allowing for clubs wishing to make any arbitration-eligible players unrestricted free agents to do so early on.

¹⁸⁸ See, e.g., Murray Chass, *Two Ball Clubs Had a Close Call on Payrolls*, N.Y. TIMES, July 12, 2002, at D1 (discussing two Major League Baseball clubs that needed to secure bank loans in order to meet their payroll obligations).

¹⁸⁹ This is because of the viewpoint that salary arbitration is the cause of economic strife in Major League Baseball. See *supra* note 124.

¹⁹⁰ See, e.g., Marcano & Fidler, *supra* note 109.

¹⁹¹ An analogy can be drawn between providing horizontal equity amongst taxpayers of similar or equivalent economic status and the necessity of providing horizontal equity to baseball players of similar talent. Baseball players have to overcome great odds even to get to the Major Leagues, and to find success at that level is even more unlikely. Therefore, the ones who do find that success deserve higher compensation. See, e.g., John G. Steinkamp, *A Case for Federal Transfer Taxation*, 55 ARK. L. REV. 1, 78-79 (2002):

Baseball players command high pay because they succeed where countless others fail. While millions participate in baseball while growing up, generally only the most talented and dedicated succeed in competing professionally. . . [Further], what is the value of being able to hit a ball thrown at great speed from a close distance with a wooden stick? What was the value of that skill 200 years ago? The answer to the second question, of course, is that 200 years ago that particular skill had little or no value in the marketplace. The sport of baseball had not yet evolved, and television did not exist to broadcast organized sporting events that were then played. But in America in 2002, high admission prices and astronomical amounts paid for national and international radio and television broadcast rights support today's staggering salaries. . . Today's ballplayers command high compensation because they are fortunate to offer their skills at this particular time in the American professional sports market.

Id.

sue more equality amongst its players of similar talent by allowing for “Super Two” status for certain players.¹⁹² Those players who meet the super-two requirements are automatically eligible for salary arbitration after their second Major League season.¹⁹³ However, that option is not available to all players.¹⁹⁴

Further, there are justifiable counterarguments to either implementing the five-day window opportunity or eliminating the final offer aspect to baseball salary arbitration. For example, even if there were a five-day window for owners to make a player an unrestricted free agent because they refuse to pay the player’s demand, there is the possibility that they might lose a player who they have spent millions to develop after just one or two years in the Major Leagues.¹⁹⁵ Moreover, eliminating final offer arbitration might even wind up being harmful to *both* sides.¹⁹⁶ Therefore, in exchange, and in fairness, the MLBPA might have to be willing to agree to certain restrictions on more veteran players in their dealings with the Clubs.¹⁹⁷ This exchange could protect players such as Pujols, who has many restrictions in his dealings with his club.¹⁹⁸

¹⁹² A “Super Two” is a player with less than three but more than two years of Major League service, who is eligible for salary arbitration because his Major League service is within the top 17% of the two-year group. “Super Two” was added in the 1990 negotiations between the MLBPA and the Clubs. See Article VI, § (F) (1) of the 2003-2006 Basic Agreement.

¹⁹³ See *id.*

[A] Player with at least two but less than three years of Major League service shall be eligible for salary arbitration if: (a) he has accumulated at least 86 days of service during the immediately preceding season; and (b) he ranks in the top seventeen percent (17%) (rounded to the nearest whole number) in total service in the class of Players who have at least two but less than three years of Major League service, however accumulated, but with at least 86 days of service accumulated during the immediately preceding season.

Id.

¹⁹⁴ For example, Albert Pujols was not a “Super Two” at the end of the 2002 season because he did not meet the 86 day service requirement during the year 2000. See *id.*

¹⁹⁵ To demonstrate the commitment that Major League Baseball franchises make to some of their young talent, the Florida Marlins gave the number one pick of the 2000 amateur draft a \$3 million signing bonus. See *supra* note 136.

¹⁹⁶ See *supra* note 15 for a discussion on the benefits of final offer arbitration. Elimination of the final offer aspect to the process would result in added discipline to the negotiations and the filing of proposals by each side.

¹⁹⁷ Since a Club might lose a player they have invested time and money in after a short period of time, the MLBPA might agree that owners have more exclusive rights in their dealings with players who are further into their career, or are about to become free agents.

¹⁹⁸ After completion of only two seasons for the St. Louis Cardinals, Pujols was not eligible for salary arbitration and did not have much leverage in salary negotiations with his Club. It should be noted that on March 10, 2003, Albert Pujols and the St. Louis Cardinals came to an agreement on a salary of \$900,000 for the 2003 season. It was the highest one-year contract ever awarded to a Major League player not eligible for salary arbitration. See ESPN Baseball, at <http://espn.go.com/mlb/news/2003/0310/1521413.html> (last visited Mar. 31, 2003); Press Release, St. Louis Cardinals, Cards and Pujols Agree to 2003 Contract (March 10, 2003) (on file with author). However, Pujols’ lucrative contract for the 2003 season notwithstanding, his 2003 salary was still less than half of the Major League Baseball

CONCLUSION

Despite the risks and challenges posed to Major League Baseball owners by allowing players who have completed their first and second seasons in the Major Leagues to be eligible for salary arbitration, such a proposal is necessary in select, "unique" circumstances. Baseball's economic structure has changed drastically over the last 30 years, after not changing at all for most of the game's existence. Undoubtedly, the opportunities available to players in Major League Baseball today are leaps and bounds ahead of what baseball's heroes of yesteryear had available to them. However, as the game continues to grow, not only out of the reserve system, but also in its appeal to fans around the world, the economic structure of baseball needs to grow with it.

The Major League Baseball clubs have various alternatives that they can utilize in return for allowing players in Albert Pujols' position to be eligible for arbitration. The five-day window proposal,¹⁹⁹ allowing owners to release players after salary proposals have been submitted and before their arbitration hearings, is one of them.

To say the least, it is rare that players become elite as quickly as Albert Pujols has. If he would have been eligible for salary arbitration before the end of the 2003 Major League Baseball season, and a panel looked at his career contribution with the St. Louis Cardinals' organization, it would be clear that his salary is an injustice in comparison to other baseball stars of his caliber. It is unfair for the Major League Baseball Clubs, corporate sponsors, television broadcasters and others to benefit economically from a player's success while Pujols cannot reap the benefits of his career statistics thus far. In light of the career contribution clause in the CBA, a proposal such as allowing first and second year players to be eligible for arbitration could not be taken advantage of by young players looking to "cash in," and would only benefit players like

average salary of nearly \$2.4 million. See Onley & Greenhouse, *supra* note 40; see also *supra* note 128.

¹⁹⁹ If the five-day window proposal were to be implemented, the owner's stance is that after salary proposals have been submitted to the arbitration panel, their "window" will last five days. See Major League Baseball's The Best Players of all Time, *supra* note 187.

Albert Pujols, who deserve being paid market value.²⁰⁰

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²⁰⁰ Prior to the 2004 Major League Baseball season, Albert Pujols and the St. Louis Cardinals came to agreement on a seven-year contract extension worth one hundred million dollars. Upon completion of his third season at the end of 2003, Pujols again finished second to the San Francisco Giants' Barry Bonds in the voting for the National League Most Valuable Player award. Pujols also extended his record as the only player in the history of Major League Baseball to hit .300 with 30 home runs, drive in 100 runs, and score 100 runs, this time in each of his first three seasons. *See Roundup: Spring Training; 7-Year Deal with St. Louis Pleases Pujols*, N.Y. TIMES, Feb. 21, 2004, at D2.

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