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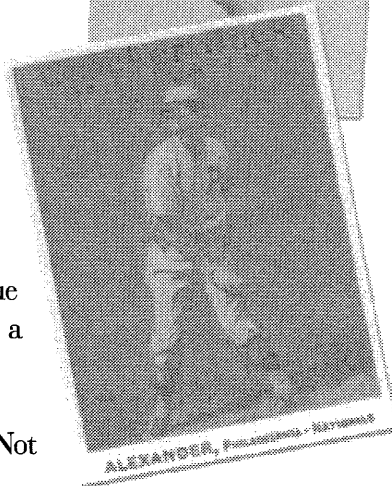
The Catcher, “The Quick Lunch King” and Baseball’s Reserve Clause: Major League Litigation in Grand Rapids

By: Patrick E. Mears

“Weeghman, Weeghman, Federal man
Make me a contract as fast as you can,
Pad it and sign it and mark it O.K.
And I’ll go to the majors and ask for more pay.”

- Anonymous jingle, inspired by the *Killefer* litigation

All of the elements of high courtroom drama were present in the late-winter and early spring of 1914 in what is now known as the Cook Auditorium on the second floor of the Grand Rapids Art Museum. Charles Weeghman and his partners, owners of the Chicago Whales baseball team in the “outlaw” Federal Baseball League commenced an action in equity in the United States District Court for the Western District of Michigan to enjoin William “Reindeer Bill” Killefer from playing catcher for the Philadelphia Phillies of the National League during the upcoming season. Killefer had originally signed a contract with the Phillies for the 1914 season, which contract contained a “reserve clause,” but then jumped to the Federal League to play for the Whales for higher pay. Not



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to be outdone, the Phillies enticed Killefer to rejoin the team for even more money, leaving the Whales beached without a catcher.

The quality of the legal talent litigating this action was immense, all of whom assembled in Grand Rapids to argue the action commenced by the Federal League and the Whales for an injunction against Killefer and the Phillies. The presiding judge was Clarence W. Sessions, who had previously been a state circuit judge sitting in Muskegon, and who had been appointed to the federal bench in 1911 by President William Howard Taft—the same President who inaugurated the practice of the Chief Executive's throwing out the first pitch of the baseball season.¹

Counsel to the Federal League was Edward E. Gates of the Indianapolis law firm of Matson, Gates and Ross, which was a predecessor of the regional firm now known as Ice Miller. Representing the Chicago Whales was the Chicago firm of Winston, Payne, Strawn & Shaw, a predecessor of the national firm now known as Winston & Strawn. The Federal League and the Whales had selected as their local counsel the Grand Rapids firm of Kleinhans, Knappen & Hull, now known as Wheeler Upham, P.C. The attorneys representing Killefer and the Phillies were no slouches, either. The laboring oar in the defense of this equitable action was wielded by George Wharton Pepper of the Philadelphia-based firm now known as Pepper Hamilton, L.L.P. Local counsel for Organized Baseball² was Stevenson, Carpenter, Butzel & Backhus of Detroit. Before discussing this litigation, its outcome and its

legacy, we need to examine the crux of the litigation—baseball's "reserve clause"—and the legal disputes that it generated in the years before the Killefer case was argued and decided.

The Reserve Clause and Organized Baseball

When professional baseball teams began to be organized in the decades after the end of the Civil War, the team owners became concerned about losing their star players to other ball clubs by offers of higher salaries and other enticements. As a means to stop this team jumping, these owners agreed in the National Agreement that they executed in 1889³ to include a "reserve clause" in every player's contract. This clause has been described as follows:

"A singular part of the contract between the baseball clubs and their employees was the reserve clause. It gave the club an exclusive and perpetual option on the player's services. Furthermore, every club in Organized Baseball agreed not to employ or try to employ any player reserved by any other club. They also agreed not to play any team that employed a player who had broken the reserve clause, or even to allow their ball parks to be used by such a team. Their agreement not to compete with each other for players enabled the employers to exercise monopoly control—that is, a buyer's monopoly—over their men."⁴

Over the years, the specific language of the reserve clause changed, but its impact upon professional ballplayers remained constant. Players were joined at the hip with the team that they first signed with until they were traded or retired from the game. As expected, the reserve clause generated severe criticism from ballplayers and from a number of judges who were asked by owners to enforce this clause. One of the most extraordinary players in baseball's pre-modern era, John Montgomery Ward⁵, described the impact of the reserve clause on ballplayers as follows: "[l]ike a fugitive slave law, the reserve rule denies [the player] a harbor or a livelihood, and carries him back, bound and shackled, to the club from which he attempted to escape." In 1949, the noted jurist, Jerome Frank of the United States Court of Appeals for the Second Circuit, continued this theme when writing his separate opinion in Gardella v. Chandler, 172 F.2d 402 (2d Cir. 1949):

"[W]e have here a monopoly which, in its effect on ballplayers like the plaintiff, possesses characteristics shockingly repugnant to moral principles that, at least since the War Between the States, have been basic in America, as shown by the Thirteenth Amendment to the Constitution condemning 'involuntary servitude,' and by subsequent Congressional enactments on that subject."

Id. At 409⁶. See also the language of the New York State Supreme Court condemning the reserve clause in an action commenced by the Chicago White Sox to prohibit their starting first baseman, "Prince Hal" Chase⁷, from jumping to the Buffalo Blues of the Federal League. American Baseball Club of Chicago v. Chase, 86 Misc. 441, 149 N.Y.S. 6 (1914).

Lurking behind all of this litigation was the issue of whether the reserve clause constituted a "contract" or a "combination" or a "conspiracy, in restraint of trade or commerce among the several States" prohibited by Section 1 of the Sherman Anti-Trust Act. This issue was

raised in the Chase litigation, where Judge Herbert Bissell of The Supreme Court of New York, Erie County, declined to find such a violation, although he dissolved a temporary injunction previously obtained by the White Sox on other grounds:

"I cannot agree to the proposition that the business of baseball for profits is interstate trade or commerce, and therefore subject to the provisions of the Sherman Act. . . . The defendant urges that under the National Agreement baseball players are bought and sold and dealt in among the several States, and are thus reduced and commercialized into commodities. . . . We are not dealing with the bodies of the players as commodities or articles of merchandise, but with their services as retained or transferred by contract. . . . Baseball is an amusement, a sport, a game that comes clearly within the civil and criminal law of the State, and is not a commodity or an article of merchandise subject to the Regulation of Congress on the theory that it is interstate commerce."

86 Misc. at 459-60; 149 N.Y.S. at 16-17.

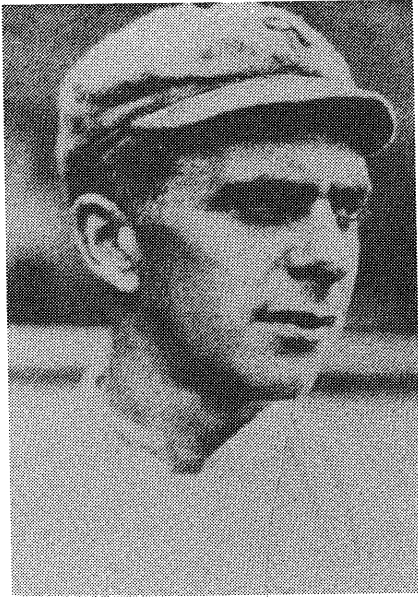
Invasion of the Body Snatchers: Here Come the Federales!

In 1912, the Federal League was founded as the Columbian League with only three teams as members. The next season, the league changed its name and expanded to six clubs located in the following cities: Chicago, Cleveland, Cincinnati, Indianapolis, Pittsburgh and St. Louis. Ironically, the

league's initial plan included a team in Grand Rapids, but this city was later abandoned as a prospect. At first, the Federal League claimed that it would only sign free agents as players. Before the 1914 season began, however, the Federal League announced that it had become the third major league and fielded teams in Brooklyn, Pittsburgh, Chicago and St. Louis in direct competition with



Joe Tinker signs contract as player-manager of the Chicago Whales as Owner Charles Weeghman (left) looks on.



William "Reindeer Bill" Killefer

American and National League teams in those cities. Other cities sporting Federal League teams in 1914 were Kansas City, Baltimore and Buffalo, homes of strong minor-league franchises. The new league began poaching ballplayers from teams in the American and National Leagues by offering them

higher salaries and refusing to respect the reserve clause in their existing contracts. Before the Federal league was disbanded at the end of the 1915 season, it had signed future Hall of Famers Joe Tinker, Johnny Evers⁸, Mordecai Peter Centennial ("Three-Fingered") Brown, Eddie Plank, Chief Bender, Edd Rousch and Bill McKechnie. The league had tried mightily, but failed, to sign Ty Cobb of the Detroit Tigers and Walter "Big Train" Johnson of the Washington Senators.

One of the reasons for the Federal League's aggressive behavior was the character of its team owners. Harry Sinclair, who was later implicated in the "Teapot Dome" scandal of President Warren G. Harding's administration, had organized the Indianapolis Hoosiers, later moving the franchise to Newark for the 1915 season. Philip deCatesby Ball, the "ice king of St. Louis," manufactured ice-making machinery and formed the St. Louis Terriers. Robert Ward and his brother, George, owned Ward's Bakery in Brooklyn, makers of "Tip Top Bread." Not surprisingly, their team was christened the "Brooklyn Tip Tops." The most interesting of these owners, however, was Charles H. Weeghman, the owner of the Chicago Whales.

"Quick Lunch King" Weeghman was born in Richmond, Indiana, on March 12, 1874, and had made his fortune in creating a chain of fifteen restaurants in the Chicago area. These establishments were properly described as "lunchrooms" and, to save space, diners would be seated at one-armed school desks. In early

1914, Weeghman engaged the architect who designed Comiskey Park for the White Sox, Zachary Taylor Davis, to construct Weeghman Park on Chicago's North Side. This project was begun in February, 1914, and was completed in only two months at a cost of \$250,000, just in time for Opening Day of the 1914 season. Before Opening Day, however, Weeghman set his sights on William "Reindeer Bill" Killefer, a catcher for the Philadelphia Phillies, as a potential recruit for the new league.

The Killefer Litigation: Weeghman's Lunch is Handed to Him.

The first question that comes to the mind of a baseball fan is why was there all this fuss about Bill Killefer. During the 1913 season, Killefer batted only .244 with only 17 extra-base hits in 120 games. What made Killefer important to the Phillies, however, was the fact that he was the catcher-of-choice for the team's pitching ace, Grover Cleveland Alexander.⁹ "Pete" Alexander wrote in 1915 that he "worked best with Killefer. He understood me and knew how to handle my peculiarities".¹⁰

At the end of the 1913 season, the Phillies exercised their reserve clause over Bill Killefer and offered him a contract for the next season. Killefer, who had been approached by Weeghman, rejected this tender and, on January 8, 1914, signed a three-year contract with the Chicago Whales for a yearly salary of \$5,833.33. Twelve days later, however, Killefer reneged on this contract and signed a three-year contract with the Phillies for \$6,500.00 per year, announcing his intention to play for the Phils. As a consequence, Weeghman and his partners commenced suit in the United States District court for the Western District of Grand Rapids to stop Killefer from doing so.

Federal District Judge Clarence W. Sessions presided over this action in equity. Sessions was born on February 8, 1859 in the town of North Plains, Ionia County, Michigan. His father, William Sessions, was a farmer and had been elected to the Michigan state legislature. Clarence "was reared on his father's farm in Ionia County, where amid rural surroundings he grew to a robust and sturdy manhood."¹¹ He graduated from the Arts Department of The University of Michigan in 1881 and thereafter studied law at its law school. In 1884, Sessions was admitted to practice in Michigan and thereafter "became a member of the most prominent law

firm in Muskegon and one of the largest in Western Michigan, his associates being Smith, Nims, Hoyt and Erwin.⁷¹² After serving six terms as Muskegon City Attorney, Sessions was elected as Circuit Judge for the Fourteenth Judicial Circuit of Michigan in 1906. Five years later, he was appointed as United States District Judge for the Western District of Michigan by President Taft to fill the vacancy left after Judge Arthur C. Denison was elevated by that same President to the Sixth Circuit Court of Appeals.

Representing Organized Baseball in this litigation was George Wharton Pepper, a blue-blood Philadelphia lawyer. Pepper was born in the City of Brotherly Love on March 16, 1867 and graduated from The University of Pennsylvania, earning a bachelor's degree in 1887 and a law degree in 1889. Upon being admitted to the Pennsylvania Bar that same year, he associated with the Philadelphia firm of Biddle and Ward and, in 1894, was appointed a professor of law at his alma mater. During the second and third decades of the Twentieth Century, Organized Baseball called upon Pepper to represent its interests in a number of courts, including the federal district court in Grand Rapids.

The signing of Killefer by the Chicago Whales generated great publicity throughout the nation. On January 8, 1914, Killefer signed a three-year contract with the Whales. The Chicago Daily Tribune announced this event in a story entitled "Four Stars Sign With Joe Tinker for Chicago Feds", published in its January 10, 1914 edition. The author of this piece rhapsodized about Killefer's talents:

In this quartet, Manager Tinker has corralled one of the best catchers in the National League, and a youngster at that. Killefer already has made reputation enough under "Red" Dooin in the last two seasons to provoke the prediction that he would become, with experience, the leading backstop artist of the old league.

By January 20, 1914, however, Killefer had repudiated his Whales' contract and signed with his old team, the Philadelphia Phillies.

In a story titled "Federal Got Poor Players" printed in its January 27, 1914 edition, *The New York Times* quoted the then-President of the National League, John K. Tener, as welcoming a "test case to prove that William Killefer, the catcher, is the property of the Philadelphia Club and that

whatever agreement the player made with [the Chicago Whales] was not binding." Tener also had the following observations of the Whales' owner, Charles Weeghman:

"The mainstay of the Federals is Weegham [sic] of Chicago. He is immensely popular, they tell me, and is not in baseball for the money. He is simply a real fan, and when he couldn't get a major league franchise he allied himself with the outlaws. Weegham is the live wire of the league. . . ."

On March 20, 1914, Edward Gates of Matson, Gates & Ross of Indianapolis, Indiana, filed a Bill of Complaint on behalf of "Charles Weeghman and W. M. Walker, co-partners as Chicago Federal League Baseball Club" against Killefer in the United States District Court for the Western District of Michigan. The Bill of Complaint requested the entry of a "temporary restraining order *pendente lite* without notice" prohibiting Killefer from playing baseball with any team other than the Whales. That same day, the District Court Clerk issued a Chancery Subpoena directing Killefer to attend the hearing on the Bill of Complaint. Thereafter, the Whales filed Affidavits executed by its manager, Joe Tinker, Federal League President, James A. Gilmore, Charles Weeghman and his co-partner, William M. Walker, in support of its request for an injunction.

On April 4, 1914, Killefer filed his Answer to the Bill of Complaint through his counsel, the Detroit law firm of Stevenson, Carpenter, Butzel & Backus, requesting cancellation of his contract with the Whales. That same day, the Stevenson firm filed a Motion for Leave to Intervene on behalf of the Phillies, which motion was granted by Judge Sessions, and a proposed Answer to the Bill of Complaint. Killefer also signed and filed an Affidavit in opposition to the Whales' request, as did William F. Baker, the Phillies' owner.

On Saturday, April 4, 1914, Judge Sessions entertained arguments in the *Killefer* litigation at an all-day session conducted in the federal courthouse in Grand Rapids. Representing Killefer and the Phillies were George Wharton Pepper and Samuel M. Clement, both of Philadelphia, and former Detroit judge, William L. Carpenter. Aligned on the side of the Whales and the Federal League were Silas H. Strawn of Chicago, Edward Gates of Indianapolis and Stuart Knappen of Grand Rapids (son of Loyal Knappen, a previous federal district

judge in Grand Rapids). Attending the hearing were also Charles Weeghman, Bill Killefer, James A. Gilmore, the Federal League's President, and William F. Baker, the owner of the Phillies and a former New York City Police Commissioner.¹³ In an interview with the Grand Rapids Press, Killefer expressed regret for being the cause of the litigation but made it clear that his heart was with the Phillies. At the hearing, the Court considered the Complaint, Answers and Affidavits filed in the litigation and listened to oral argument by all counsel present.¹⁴

After the all-day hearing, Judge Sessions took the case under advisement¹⁵ and three days afterward, was prepared to issue his decision. On April 7, however, counsel to both sides requested an extension to file additional briefs, which request Judge Sessions granted.¹⁶

On April 10, 1914, Judge Sessions issued his written decision and order denying Charles Weeghman's request to enjoin Bill Killefer from playing for the Phillies during the 1914 season. Sessions identified the two legal issues that he was called upon to decide:

"First, are the provisions of the 1913 contract between [Killefer and the Phillies], relative to the reservation of the player for the succeeding season, valid and enforceable?, and, second, are the plaintiffs by their own conduct barred from seeking relief in a court of equity?"

Weeghman v. Killefer, 215 F. 168, 170 (W.D. Mich 1914).

Sessions answered the first question in the negative, concluding that the 1913 contract lacked sufficient "definiteness, certainty and mutuality" to be enforceable in equity. *Id.* The contract was found to be "uncertain and indefinite with respect to salary and also with respect to terms and conditions of the proposed employment." *Id.* The contract lacked mutuality because the Phillies could "terminate it at anytime upon 10 days' notice" while Killefer lacked any corresponding rights. *Id.* At 170-171.

Sessions, nevertheless, refused to enjoin Killefer because Weeghman and his partners lacked "clean hands." In support of this determination, Sessions wrote as follows:

"Knowing that the defendant, Killefer, was under a moral, if not a legal, duty to furnish his services to the [Phillies] for the season of 1914, they sent for him, and by offering him a longer term of

employment and a much larger compensation induced him to repudiate his obligation to his employer. In so doing, a willful wrong was done to the [Phillies], which was none the less grievous and harmful because the injured party could not obtain legal redress in and through the courts of the land."

Id. At 172-173.

The reactions to Judge Sessions' decision divided along league lines. Garry Hermann, Chairman of the National Baseball Commission, argued that the 1914 standard contract between the owners and players had remedied the legal problems in the 1913 contract discussed in Sessions' opinion. John K. Tener was quoted as being "pleased" with decision as was George Wharton Pepper. Federal League President James Gilmore declared to the press that the League "possibly would appeal the case" and Edward Gates, the Federal League's general counsel, declared that the decision was a "victory" for his client because of Sessions' ruling on the reserve clause contained in Killefer's contract.¹⁷ Charles Weeghman, interviewed in Knoxville, Tennessee the day the decision was issued, expressed "sour grapes" at Sessions' ruling:

"I anticipated such a decision. The loss of Killefer will in no way injure the Chicago Club because we have just as good catchers. If the reserve clause is not valid, why did we come into court with 'unclean hands'? I cannot understand such a decision."¹⁸

The day after Judge Sessions' ruling, the Grand Rapids Press ran an editorial praising his decision as a "model of clarity." The writer noted that:

"many people are suspicious of legal procedure and acquire distrust of law itself because the facts and arguments are submerged beneath a flood of technicalities."

According to the author of the editorial, Judge Session had written an opinion that "every humble fan" could understand and quote therefrom.¹⁹

Weeghman appealed this decision to the Sixth Circuit Court of Appeals, which affirmed the holding below on June 30, 1914. Weeghman v. Killefer, 215 F. 289 (6th Cir. 1914). The three-judge panel, consisting of

Judge John W. Warrington, Judge Arthur C. Denison, and United States District Judge Arthur J. Tuttle, in its decision concluded as follows:

"Is it to be said then that the complainants are in a position rightfully to invoke the process of injunction in aid of the enforcement of their contract? We are thus led to agree with Judge Sessions that the complainants' suit could not be sustained under the maxim: 'He who comes into a court of equity must come with clean hands.'"

215 F. At 294.²⁰

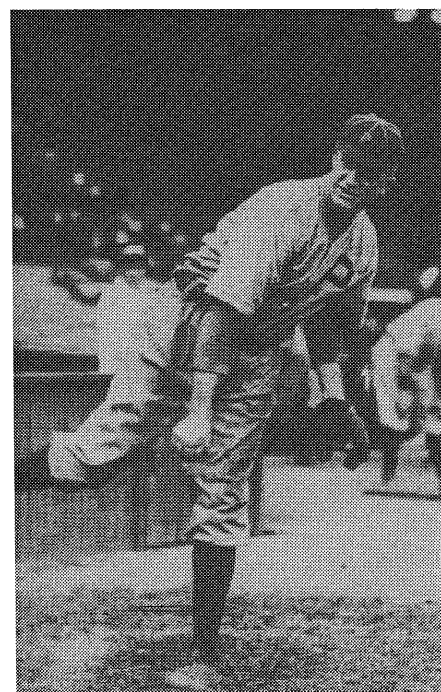
In Killefer's Wake

Weeghman v Killefer was not the only litigation that arose from the attempts of Federal League teams to entice professional ballplayers to jump to the new league. As previously mentioned, the Chicago White Sox were unsuccessful in their attempts to enjoin Hal Chase from playing first base for the Buffalo Blues. Organized Baseball was more successful in litigation against Armando Marsans,²¹ a lithe and speedy outfielder for the Cincinnati Reds who in 1914 signed with the St. Louis Terriers of the Federal League. In Cincinnati Exhibition Co. v. Marsans, 216 F.269 (E.D. Mo. 1914), the federal district court sitting in St. Louis entered a preliminary injunction prohibiting Marsans from playing in the Federal League. In his decision, Judge Walter Sanborn noted that the Cuban outfielder's services that he contractually owed to the Reds were "unique and extraordinary and . . . may not be rendered by another." *Id.* The court, after stating that a temporary injunction should be issued to preserve the *status quo* to avoid inflicting irreparable damage on the other party to the contract, concluded as follows:

"This case falls under this rule of law, and the order of the court will be that an injunction issue against [Marsans] forbidding him from rendering his services as a ball player to any one other than the complainant until the final decision [and] that [the Reds] give a bond in the sum of \$13,000 with ample security to pay any damages that may result to [Marsans] from the issue of this injunction."

216 F. 269

The most important lawsuit involving the Federal League and the senior circuit, however, was one that was ultimately dismissed on consent of the parties. In January, 1915, the Federal Baseball League filed a complaint against Organized Baseball in the United States District Court for the Northern District of Illinois and the future Commissioner of Baseball, Kenesaw Mountain Landis, was assigned to the case. The complaint alleged that Organized Baseball constituted a combination, conspiracy and monopoly in violation of federal antitrust laws. Representing Organized Baseball in this litigation was George Wharton Pepper, seasoned by his experience in the Killefer case. Pepper gives an account of this litigation in his autobiography:



Grover Cleveland Alexander

"The prayers for relief [in the complaint] included a declaration that the Major Leagues constituted a conspiracy and monopoly in violation of the common law, statute law and all laws whatsoever. An injunction was sought, preliminarily until hearing and final thereafter, which if granted would have brought the mechanism of organized baseball to a standstill. Argument on the motion for the preliminary injunction was to be heard by Judge Kenesaw Mountain Landis. I suspect that his jurisdiction had been selected by the plaintiff because the judge had acquired the reputation of a trust-buster and it was thought that he would find satisfaction in busting this one."²²

During the hearing on the Federal League's motion for a preliminary injunction, it became clear to the litigants that Landis, although a trust-buster, was also a

serious baseball fan. At the hearing, Landis expressed shock that the Federal League's counsel would equate baseball with "labor" and asked that attorney, "Do you realize that a decision in this case may tear down the very foundations of this game, so loved by thousands, and do you realize that the decision must also seriously affect both parties?" Landis also remarked during the hearing that "any blows to the thing called baseball would be regarded as a blow to a national institution."²³

Judge Landis did what many judges often do when faced with potential Armageddon – he took the Federal League's motion for a preliminary injunction under advisement. In the meantime, Charlie Weeghman, Philip Ball, and other owners of Federal League teams entered into peace negotiations with Organized Baseball.

The Federal League and Organized Baseball Settle Their Differences

At the close of the 1915 season, many Federal League team owners were suffering significant financial losses resulting from their competition with Organized Baseball. The Brooklyn Tip-Tops alone had a deficit in excess of \$800,000 at the end of the season. In addition, Robert Ward, a co-owner of the Tip-Tops, passed away in October of 1915. He was described as one of the wealthiest and most enthusiastic backers of the new league. On December 22, 1915, after a series of meetings involving representatives of owners of teams in all three leagues, a peace agreement was signed by the three leagues. The broad terms of this agreement were as follows:

1. Organized Baseball paid \$400,000 to the Wards in twenty annual payments of \$20,000 each. Harry Sinclair, the owner of the Newark Federal League team, received \$100,000 in ten annual payments and Edward Gwinner, owner of the Pittsburgh Feds, was paid \$50,000 in five annual installments.
2. Charles Weeghman and his associates were permitted to purchase the Chicago Cubs in the

National League from its owner, Charles W. Murphy. The National League paid \$50,000 of the Cubs' purchase price.

3. Philip Ball and his partners were permitted to purchase the St. Louis Browns in the American League from Robert Hedges.
4. Organized Baseball would not ban any ballplayers who had jumped to the Federal League in violation of the reserve clause, and their contracts with Federal League teams were recognized as valid.

5. All pending litigation between the two leagues would be dismissed except that the Reds' owner, Garry Herrmann, agreed to pay Philip Ball the sum of \$2,500 in damages for enjoining Armando Marsans from playing for the St. Louis Terriers.
6. The Federal League would be disbanded.



Edward Gates, Attorney for Federal Baseball League

This agreement was signed after Judge Landis was first privately sounded out concerning his view of the proposed settlement. Landis thereafter dismissed the Federal's antitrust suit upon the parties' consent. Charles Weeghman moved the Cubs into Weeghman Park and instituted the practice of permitting fans to keep baseballs hit into the stands during a game. Prior to this,

fans were expected to return balls to an usher or face expulsion from the park. Weeghman also was the first owner of a professional baseball team to create special stalls for food vendors to ply their wares behind and out of the line-of-sight of fans attending a game.

In accordance with this settlement, the Killefer litigation was dismissed by a written stipulation of the parties with the United States District Court for the Western District of Michigan on October 17, 1916. The terms of this stipulation read as follows:

This cause having been settled, it is stipulated that the same be and is hereby discontinued, each

party to pay his own costs which are agreed to be as follows:

\$8.75 to be paid by the complainants
over and above all sums heretofore paid;
and

\$16.00 to be paid by the defendants.

Denouement

The peace agreement did not resolve the issue of whether the reserve clause violated federal antitrust law, however. The Baltimore Terrapins of the disbanded Federal League received virtually nothing from the peace agreement and, later, commenced a separate civil action in the District of Columbia against Organized Baseball alleging, once again, violations of federal antitrust law. After a trial, the Baltimore club was awarded \$80,000 plus treble damages based upon a determination that these statutes had been violated. This judgment was reversed on appeal by the Court of Appeals for the District of Columbia. On appeal to the United States Supreme Court, the high court, in an opinion authored by Justice Oliver Wendell Holmes, affirmed the judgment below, concluding that Organized Baseball was not engaged in interstate commerce. Federal Baseball Club of Baltimore, Inc. v. National League of Professional Baseball Clubs, 259 US 200 (1922). Representing Organized Baseball once again in this litigation was George Wharton Pepper.

Even though the Supreme Court reaffirmed the validity of Justice Holmes' decision on two separate occasions,²⁴ the reserve clause eventually became an anachronism in 1976. That year, as a result of arbitrations involving Andy Messersmith of the Los Angeles Dodgers and Dave McNally of the Montreal Expos, the Basic Agreement between Organized Baseball and professional ballplayers was amended to exempt ballplayers from the reserve clause after six years of service in the major leagues.

Epitaphs and Monuments

After signing the peace agreement and purchasing the Cubs, Charles Weeghman moved the team to Weeghman Park where the Cubs' home games were now played. Thereafter, in 1918, Weeghman sold his interest in the team to William Wrigley and his group of investors. Then, Weeghman's luck began to run out because of his profligate spending habits. In August, 1920, his chain of restaurants was placed into receivership by creditors and, later, he became the subject of an involuntary bankruptcy petition. Trying to make a new go of it, Weeghman moved to New York City in 1927 and, with the financial

backing of Jacob Ruppert of the New York Yankees, Harry Frazee of the Boston Red Sox, and his old Federal League pal, Harry Sinclair, Weeghman opened a restaurant on Fifth Avenue and East 22nd Street. That venture failed, as did two others that followed. Charles Weeghman died of a stroke on November 2, 1938, at the Drake Hotel in Chicago. At the time, he was the associate manager of Ben Marden's Riviera Restaurant in Ft. Lee, New Jersey.

Judge Clarence W. Sessions remained a federal district judge in Grand Rapids until his death although, due to ill health, he acted on a part-time basis beginning in 1925 when Fred M. Raymond was appointed to the federal bench. After moving from Muskegon to Grand

Rapids in August, 1914, he lived on a six-acre estate in the Grandville area. Judge Sessions held many board positions during his lifetime, including those with Nelson Tanning Corporation of Muskegon, American Brass Novelty Company of Grand Haven, and American Michigan Pipeline Company of Muskegon. Judge Sessions also served as a member of the Board of Trustees of Mercy Hospital and was a director of the Crippled Childrens' Society. Judge Sessions is best remembered for his role as the trial judge in the federal prosecution of former United States Senator Truman H. Newberry for illegal practices in his election to the Senate. Although convicted and sentenced to federal prison, Newberry obtained a reversal on his appeal to the United States Supreme Court. In

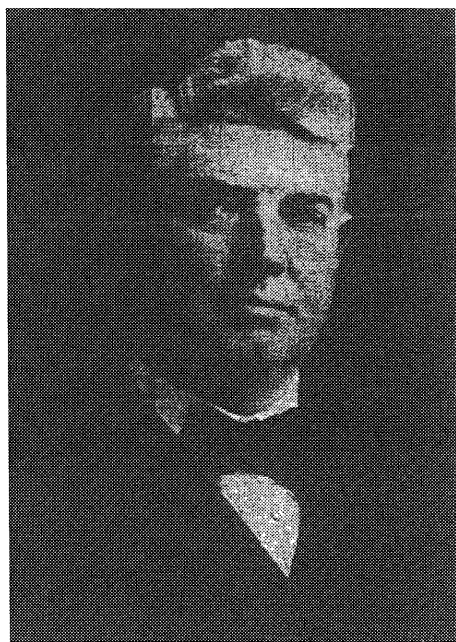


*George Wharton Pepper, Attorney for
Organized Baseball*

failing health for more than seven years, Judge Sessions passed away on April 1, 1931, in the home of his daughter at 130 College Avenue, N.W. in Grand Rapids. Upon his passing, the then-President of the Grand Rapids Bar Association, John M. Dunham determined that the Grand Rapids Bar would attend the funeral "in a body." Tributes to Judge Sessions after his death may be found in the introductory pages of Volume 255 of the Michigan Reports.

George Wharton Pepper, post-Killefer, continued his rising career in law and politics. As previously noted, he argued the first baseball antitrust case before the United States Supreme Court in 1922. On January 9, 1922, Pepper was appointed by Pennsylvania's governor to the United States Senate as a Republican upon the death of Boies Penrose and served until his term expired in March, 1927. While in the Senate, Pepper was the Ranking GOP Member of the Senate Naval Affairs Committee and Chairperson of the Committees on the Library and on Printing. After losing the race for the Republican nomination for the Senate in 1926, Pepper returned to the private practice of law with his good friend and neighbor, John D. Hamilton. Senator Pepper passed away on May 24, 1961 in Devon, Pennsylvania. At the time, he was a Trustee of the University of Pennsylvania, a position that he had held since 1911.

But what became of Reindeer Bill? He had come a long way from his boyhood homes in Bloomington and



Federal District Judge Clarence W. Sessions

Paw Paw, Michigan, although his ascent to the major leagues had not been a swift or easy one. Killefer broke into the majors with the St. Louis Browns in 1909, but he did not set the American League on fire. After failing to hit over .200 in his first two seasons, he was

demoted to the minors. Killefer's big break came when he joined the Phillies in 1911 and began to catch for Grover Cleveland Alexander. A late-season injury kept Killefer from starting in the 1915 World Series; he had only one plate appearance as a pinch-hitter in the fifth and final game of the Fall Classic, when he failed to get on base.

At the close of the 1917 season, both Killefer and Alexander were traded by the Phillies to Weeghman's Cubs. Following America's entry into World War I, Alexander was drafted by the U.S. Army and sent to fight in France, thereby shortening his 1918 season. Killefer, however, played that entire season with the pennant-winning Cubs and started in all six games of the World Series against Boston. His Series play was unremarkable; he batted only .118 against tough Boston pitchers such as Babe Ruth and Carl Mays.

In August, 1921, the Cubs fired their manager, Johnny Evers, and placed Killefer at the helm. Four years later, Cubs' management, tired of the team's mediocre performance, set Killefer adrift in midseason. Reindeer Bill caught on with the St. Louis Cardinals as a coach in 1926 and convinced Branch Rickey and Rogers Hornsby of that team to claim his old battery-mate, Pete Alexander, on waivers. As a result, Alexander was instrumental in the Cards taking the 1926 National League Pennant and defeating the Babe Ruth-led New York Yankees in the seven-game World Series that October. In 1930, the St. Louis Browns hired Killefer as manager, where he remained until 1933. Thereafter, he coached for the Cardinals, the Brooklyn Dodgers, and the Phillies. Killefer retired from professional baseball in the 1940's and passed away on July 2, 1960, in Elsmere, Delaware. His character appears in the film biography of Grover Cleveland Alexander, "The Winning Team," released by Warner Bros. in 1952.

The Killefer litigation was commemorated in 1986 by the State Bar of Michigan's installation of a plaque in the Cook Auditorium of the Grand Rapids Art Museum, the former federal courthouse. An identical plaque was installed and dedicated in 1995 in Grand Rapids' Old Kent Park, now Fifth Third Park, home of the West Michigan Whitecaps, a Class A minor league team associated with the Detroit Tigers. However, a more enduring monument to the struggles between the Federal League and Organized Baseball lies at the intersection of Clark and Addison Streets in Chicago – the friendly confines of Wrigley Field, neé Weeghman Park. This Field

of Dreams is where players the likes of Hippo Vaughn, Hack Wilson, Gabby Hartnett, Ernie Banks and Ryne Sandberg have pursued their dream of capturing the Cubs' first World Series title since 1908.²⁵

Endnotes

1 President Taft unwittingly inaugurated the custom of the "seventh-inning stretch" by standing up and stretching at a Pittsburgh Pirates home game in the middle of the seventh inning. The fans at Forbes Field noticed Taft and followed suit. I have forgotten the source of this information but, as Casey Stengel used to say to news reporters after one of his outlandish stories, "You could look it up."

2 "Organized Baseball" means the integrated system of baseball comprised of the two major leagues and the minor leagues. The players are "professional" in that they are paid salaries to play for their teams.

3 Harold Seymour, *Baseball: The Golden Age*, p. 6, Oxford University Press, New York (1989).

4 The National Agreement was executed by all teams in the National League and the American Association in 1889 and was expanded in 1901 to include minor league teams.

"Among the provisions to which all clubs pledged themselves, were agreements respecting the reserve rights of other clubs, providing for an enforcement mechanism for that respect, and providing for a uniform players contract that prohibited a waiver of the reserve rule without permission from a National Commission."

James R. Devine, *Baseball's Labor Wars in Historical Context: The 1919 Chicago White Sox as a Case Study in Owner-Player Relations*, 5 Marq. Sports L.J. 1, 46 (1994). The terms of the National Agreement were enforced by a National Commission which consisted of the Presidents of the American and National Leagues and a third person selected by them. The National Commission also adopted a set of written rules that interpreted the National Agreement and provided a mechanism for its enforcement.

5 John Montgomery Ward (1860 – 1925) played professional baseball from 1878 to 1894 and is credited with inventing the pitcher's mound and the intentional walk. He received a degree from Columbia Law School in 1885 and, throughout his life, employed his lawyering skills to fight the owners' imposition of the reserve clause. As a part of this battle, Ward was one of the founders of the Player's League, which was a separate league of eight teams that competed against the National League and the American Association during the 1890 season. Ward managed the Brooklyn team that year which came in second in the final standings to King Kelly's Boston club. Ward's former employer, the New York Giants, unsuccessfully sought to enjoin Ward and his former teammate, Buck Ewing, from playing in this upstart league. *Metropolitan Exhibition Co. v Ward*, 9 N.Y.S. 779 (Sup. Ct. N.Y. Co. 1890); *Metropolitan Exhibition Co. v Ewing*, 42 F.Supp. 198 (S.D.N.Y. 1890). The Players League disbanded the next year after arriving at a settlement with Organized Baseball. After retiring from professional baseball, Ward established a thriving law practice in New York City and became a part-owner of the Boston Braves. John Montgomery Ward was inducted into Baseball's Hall of Fame in Cooperstown, New York, in 1964.

6 This litigation was commenced by Danny Gardella, a reserve outfielder for the New York Giants after he had jumped to the newly-formed Mexican League in 1946 along with other major leaguers such as Fred Martin and Max Lanier of the St. Louis Cardinals. As a result, Gardella was declared by the National Commission as ineligible to play in Organized Baseball for a period of five years. Gardella thereupon commenced a civil action against the Commission, the American and National Leagues and others alleging violations of the Sherman and Clayton Acts and seeking treble damages. The United States District Court for the Southern District of New York dismissed Gardella's complaint for lack of jurisdiction. On appeal, in a 2-1 vote, the Second Circuit reversed the decision below and remanded the case for trial. Judge Learned Hand and Judge Jerome Frank wrote separate opinions concurring in the result.

7 Harold Harris "Prince Hal" Chase (1883-1947) was a slick-fielding first baseman who played first for the New York Highlanders, Chicago White Sox, Buffalo Blues of the Federal League, Cincinnati Reds and New York Giants. Chase has been labeled as one of the "most unsavory characters in the history of the game." *The Ballplayers*, edited by Mike Shatzkin, Arbor House, New York (1990). During his career, Chase was accused by two of his managers, George Stallings of the Highlanders and Christy Mathewson of the Reds, of throwing games. Chase was later indicted by a Cook County grand jury for his participation in the infamous "Black Sox" scandal of 1919. Because Chase was not extradited from his home state of California, he was not prosecuted for his role in "throwing" the 1919 World Series. In 1931, Chase wrote a letter to Kenesaw Mountain Landis, the then Baseball Commissioner, repenting his past misdeeds. When Landis replied by asking Chase for more details, Chase failed to respond upon the advice of his lawyer.

8 Joe Tinker and Johnny Evers were two-thirds of the legendary double-play combination of "Tinker to Evers to Chance". Franklin P. Adams, a New York sportswriter and fan of his hometown New York Giants, penned "Baseball's Sad Lexicon" in 1910 as a tribute to these three infielders for the Chicago Cubs:

"These are the saddest of possible words,
Tinker-to-Evers-to-Chance.
Trio of Bear Cubs fleetier than birds,
Tinker-to-Evers-to-Chance.
Ruthlessly pricking our gonfalon bubble,
Making a Giant hit into a double,
Words that are weighty with nothing but trouble.
Tinker-to-Evers-to-Chance.

Joe Tinker, Johnny Evers and Frank Chance were inducted together into the Hall of Fame in 1946.

9 Grover Cleveland Alexander won 373 games during his 20-year major league career and was elected to the Hall of Fame in 1938. Alexander pitched the 1915 Phillies to their first pennant with a 31-10 record and was the winning pitcher in the Phillies' lone victory over the Red Sox in that year's World Series. Alexander is perhaps best known for relieving the Cardinals' Jesse Haines in the seventh inning of the seventh game of the 1926 World Series and striking out Tony Lazzeri of the Yankees with two out and the bases full. Alexander's life was the subject of the 1952 Warner Bros. film "*The Winning Team*", with Ronald Reagan in the starring role.

10 Grover Cleveland Alexander, "*How I Lost the 1915 World Series*", reprinted in *The Second Fireside Book of Baseball*, Simon and Schuster, New York (1958)

11 Portrait and Biographical Record of Muskegon and Ottawa Counties, Michigan, p. 540, Biographical Publishing Co. (1893).

12 Charles Moore, History of Michigan, Volume II, p.657, The Lewis Publishing Company, Chicago (1915).

13 "Federal League Standing to be Great Question", Grand Rapids Press, April 4, 1914, p.1, col.2; "Leaders Gather Here for Great Baseball Fight", Grand Rapids Press, April 3, 1914, p.1, col.3; "Baseball War in Grand Rapids", Grand Rapids Herald, April 4, 1914, p.6, col.5. The author of the latter article wrote that the Killefer litigation constituted

"the initial move on the checkerboard of mighty events . . . Judge Sessions' ruling will establish a precedent in many important hearings which are to follow . . . [The hearing will be notable because of] the imposing array of legal talent and the number of high dignitaries of baseball it has attracted to this city."

14 "Killefer's Heart is With the Phillies", Grand Rapids Press, April 4, 1914, p.7, col.2.

15 "Killefer Case Submitted to Judge Sessions", Grand Rapids Herald, April 4, 1914, p.1, col.4.

16 "Killefer Decision Put Off a Few Days", Grand Rapids Press, p.15, col.2.

17 "Federal League Denied Injunction in Killefer Case", New York Times, April 11, 1914, p.12, col.1. See also, "Feds to Retaliate Against Americans", New York Times, April 12, 1914, Section 5, p.1, col. 1, where Federal League President Gilmore was quoted as saying that the reserve clause was a "joke". Connie Mack, owner and manager of the Philadelphia Athletics, had perhaps the most thoughtful comment on Judge Sessions' decision:

"I cannot see that it will make any particular difference to baseball for that is only the opinion of one judge and other judges may view the case in an entirely different light. The public wants baseball and the players want baseball just as much as the club owners want them.

Should the players decide to jump to other clubs, they probably would get bigger salaries, but they should remember what happened during the Brotherhood [viz., Players League] struggles. Then, the players got tremendous salaries but at the end of the year the salaries dropped to almost nothing."

New York Times, April 11, 1914, p.12, col.1.

18 "Killefer Stays With Phillies, Court's Ruling", Grand Rapids Herald, April 11, 1914, p.10, col.4.

19 "Judge Sessions Model Decision", Grand Rapids Press, April 11, 1914, p.4, col.1.

20 In his autobiography, George Wharton Pepper describes the Killefer case thus:

"Baseball controversies in the courts have produced some interesting decisions in the domain of equitable remedies. When the civil war in Organized Baseball first began, an 'outlaw' club sought to entice "Reindeer" Killefer to forsake

the Philadelphia Club and enter the service of the enticer. Killefer's playing contract with Philadelphia had expired but by its terms he was bound to give his employer a fair chance to bargain with him for the ensuing season. Tempted by the big salary offered to him he had neglected to do this and had signed up with the outlaw. Thereupon the Philadelphia Club offered him a still larger salary which he accepted, returned to his first love and was ready to play. The outlaw club immediately filed a bill to restrain him from violating his negative covenant. I was retained to represent the defendants. The suit was brought in Michigan, where Killefer lived and was tried in the United States District Court in Grand Rapids. I conceded that Killefer had broken his contract with the plaintiff and that, as a theoretical matter, he could be held liable in a common law action for damages, but urged that the plaintiff had done an inequitable thing in persuading him to disregarding his "reserve clause" and that as the plaintiff came into court with unclean hands no equitable relief should be decreed. The Court took this view and dismissed the bill. The Circuit Court of Appeals for the Seventh Circuit [sic] affirmed the decree and Killefer played with the "Phillies."

George Wharton Pepper, Philadelphia Lawyer: An Autobiography, pp. 359-60, J.B. Lippincott Company, Philadelphia (1944).

21 Armando Marsans was born in Matanzas, Cuba in 1887 and was later discovered by Clark Griffith, the Reds' manager who had a keen eye for Latino baseball talent. He has been described as the "first successful and highly popular" Cuban player in the major leagues:

"Half-black, [Marsans] was light-skinned enough to cross baseball's rigid color line, and could be considered the first black in 20th Century major league ball. . . . A swift outfielder, Marsans could also play the infield when needed. Though only an average hitter, he was an audacious baserunner. His slide was a thing of beauty".

The Ballplayers, *supra* at p.671. Marsans played major league ball from 1911 to 1918 and compiled a .269 lifetime batting average with 2 home runs and 221 runs batted in. Marsans died in Havana in 1960.

22 George Wharton Pepper, Philadelphia Lawyer: An Autobiography, *supra* at p.356.

23 Harold Seymour, Baseball: The Golden Age, *supra* at p. 212.

24 Toolson v. New York Yankees, 346 U.S. 356 (1953); Flood v. Kuhn, 407 U.S. 258 (1972).

25 For more on Organized Baseball's reserve clause and the Federal League challenge, see former Detroit Mayor Dennis Archer's article, "Baseball's Reserve Clause," in the Spring 2000 issue of The Society Update, a publication of the Michigan Supreme Court Historical Society. See also, Federal League by Mark Okkonen, published in 1989 by the Society for American Baseball Research.

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Western District Historical Society Off and Running!

In the last few months the Historical Society has begun one of its primary and most exciting missions, to capture and eventually showcase the history of the Western District of Michigan for lawyers and community members through oral histories of judges and lawyers. And what a history it is. The first video interviews with Senior Judge W. Miles and recently retired Judge D. Hillman are near completion. These are not ordinary interviews; they are truly extraordinary. The videos feature a bird's eye view of World War II, the struggles of the citizens of Michigan as depicted in the recollected lawsuits of seasoned litigators, and an inside glimpse of the Court itself—where it was, how it held sessions, why it moved, and who and what made it tick.

The anecdotes, the judgments, the firms that are no more, the character of the people that passed before the bench and bar of the Western District (for better or for worse), this material forms the heart and soul of the oral histories that are now being professionally collected and preserved by the Historical Society. It is an astonishing journey into the richness of our past that will amaze and educate all that are privileged to view this work.

The work is just beginning to take shape under the direction of Court Historian Judge W. Miles. The plan calls for research into the early days of our Court—its

judges, its bar, its cases—and the collection and archiving of contemporary and historical memorabilia and documents. Think photos of the interior and exterior of former courthouses, vintage gavels, desks, documents, drawings of infamous defendants, letters, and more. Only the imagination and efforts of its members limit the Historical Society's collection.

The membership will be invited to participate in this diverse and important venture in a number of areas—membership recruitment, fundraising, communication, research, and preservation of artifacts, information, and documents.

The Historical Society is proud to invite you to become one of the first members of this fledgling organization—several levels of membership are offered including the opportunity to be recognized as a Founding Member. Don't delay, join this fun and important effort to discover, uncover, protect and preserve our local legal history. A membership application is available in this edition of the Federal Bar and Bench and applications may also be obtained from the U.S. District Court Clerk's Offices in the Western District of Michigan (Grand Rapids, Kalamazoo, Lansing and Marquette).

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