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**THE LAW FIRM AND THE LEAGUE:  
MORGAN, LEWIS & BOCKIUS LLP, MAJOR  
LEAGUE BASEBALL AND MLB.COM**

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# THE LAW FIRM AND THE LEAGUE

## MORGAN, LEWIS & BOCKIUS LLP, MAJOR LEAGUE BASEBALL, AND MLB.COM

*Ross E. Davies*<sup>†</sup>

This is (roughly) the 10th anniversary of the transfer of a unique and valuable baseball property. On September 6, 2000, Major League Baseball and Morgan, Lewis & Bockius LLP (a very big and very prominent Philadelphia-based international law firm)<sup>1</sup> issued a joint press release announcing “that the law firm has transferred its domain name — **mlb.com** — to Major League Baseball.”<sup>2</sup>

From today’s perspective in the current age of the Internet, looking back at a time when the rise of that age (or at least its angle of ascent) was not at all clear, it seems like a bizarrely fortuitous set of coincidences:

- In 1994, the initials of big-time baseball (Major League Baseball = MLB) and the initials of one of big-time baseball’s longtime, big-time outside law firms (Morgan, Lewis & Bockius = MLB) were the same (and still are); and
- In 1994, it was the law firm that had the foresight, or luck, to move relatively early to register the **mlb.com** Internet domain name.

And then . . .

- Several years later, in 2000, when Major League Baseball started to aggressively market itself on the Internet, Morgan Lewis & Bockius was, for a variety of reasons described below, willing to part with **mlb.com** for a song, or perhaps even less.

At the time of its consummation, the **mlb.com** transaction got a lot of attention in the news media, as well it might.<sup>3</sup> Because by 2000, it was obvious that the Internet was big business, and transactions in Internet domain names were sufficiently common and significant to inspire government regulation of that market.<sup>4</sup>

But even in the new and booming and volatile domain-name market, the **mlb.com** deal qualified as unusual in at least two respects. The deal also illustrates the difficulty of placing a value on a favor, at least between lawyer and client, in the context of the business of baseball.

## THE PRICE

First, the price. Morgan, Lewis & Bockius (“Morgan Lewis” for short) reportedly gave, not sold, “**mlb.com**” to Major League Baseball (“MLB” for short). According to *The American Lawyer*, a leading magazine covering the legal profession, “After the league announced that it wanted to make a brand out of its initials, a la the National Basketball

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<sup>1</sup> See [www.morganlewis.com](http://www.morganlewis.com).

<sup>2</sup> Bonnie P. Ciaramella (Morgan, Lewis & Bockius LLP) & Richard Levin (for Major League Baseball), *Morgan Lewis Pitches Web Address to Major League Baseball*, press release (Sept. 6, 2000) (bold type in original) (copy on file with the author).

<sup>3</sup> See, e.g., Jim Oliphant, *Morgan, Lewis Takes One for the Team*, *NEW YORK LAW JOURNAL*, Oct. 10, 2000, at 6; *Big Leagues’ Net Bet*, *NEWSWEEK*, Oct. 2, 2000; Michael Klein, *Major League Baseball Gains Right to ‘MLB’ Internet Address*, *PHILADELPHIA INQUIRER*, Sept. 9, 2000 at C1.

<sup>4</sup> See, e.g., The Anticybersquatting Consumer Protection Act, S. Rep. 106-140, 106th Cong., 1st Sess., August 5, 1999; Anticybersquatting Consumer Protection Act, Pub. L. No. 106-113 (1999), codified at 15 U.S.C. § 1125(d).

Association, Morgan, Lewis turned over its registered domain name, MLB.com, to the league — free of charge, of course.”<sup>5</sup>

It is possible, but unlikely, that *The American Lawyer* got the story wrong. The magazine did not cite a source for its report, and the exact terms of the deal are beyond our reach because it was a “confidential transfer agreement.”<sup>6</sup> As the *Philadelphia Inquirer* explained at the time, “While domain transfers typically are cash transactions, the parties in this case would not reveal terms — or even give a ballpark figure, if cash was involved.”<sup>7</sup> Nevertheless, a few media outlets (none of which cited a source or gave a dollar figure) did report that Morgan Lewis was asked by MLB to “sell” mlb.com,<sup>8</sup> and commentators willing to assert in print (again without a source or dollar figure) that Morgan Lewis did in fact extract compensation from MLB were in even shorter supply.<sup>9</sup> Most news stories, however, implied it was a gift, or at least not a sale. They reported — without mentioning a sale or a price — that Morgan Lewis “surrendered mlb.com to Major League Baseball,”<sup>10</sup> or that “Morgan Lewis would transfer the mlb.com domain name to Major League Baseball,”<sup>11</sup> or that MLB “secured” it courtesy of Morgan Lewis, or that Morgan Lewis “relinquish[ed]” it to MLB,<sup>12</sup> or something of the sort.<sup>13</sup>

In any event, based on the available news stories — and they are just about all we have to go on — it appears that MLB probably got something quite valuable for nothing, or at least for a price it has gone to the trouble to keep secret for a decade. How valuable? By the late 1990s, a short and commercially identifiable Internet domain name could be, and often was, worth a small fortune.<sup>14</sup> Indeed, in a domain name lawsuit involving the National Football League and a couple of its teams, the presiding federal judge described the situation in the year 2000 as follows:

“[I]t cannot seriously be disputed that domain names have become a valuable commodity in today’s economy. In the battle to obtain as many website ‘hits’ as possible, companies have paid hundreds of thousands, and sometimes millions, of dollars for domain names that consumers will remember and use when browsing the internet.”<sup>15</sup>

Law firms, including Morgan Lewis, are for-profit enterprises. Why might such an enterprise give away such a valuable asset?

## THE CONNECTIONS

The answer springs pretty obviously from the second unusual feature of the mlb.com-to-MLB deal: the fortuitous connections between the original owner of the valuable domain name (Morgan Lewis) and the entity seeking to acquire that name (MLB). Those connections — which added up to a long and fruitful if sometimes rocky relationship, described in some detail below — probably made the sweetheart mlb.com deal possible. In other words, giving up mlb.com might well have been a small price for Morgan Lewis to pay if it meant preserving and perpetuating a valuable relationship between the firm and MLB.

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<sup>5</sup> Ashby Jones, *Tuck in the Bullpen*, AMERICAN LAWYER, Jan. 2002, at 18.

<sup>6</sup> Jeff Blumenthal, *Morgan Lewis Decides to Play Ball with Client*, [SAN FRANCISCO] RECORDER, Sept. 12, 2000 at 3.

<sup>7</sup> Michael Klein, *Major League Baseball Gains Right to ‘MLB’ Internet Address*, PHILADELPHIA INQUIRER, Sept. 9, 2000 at C1.

<sup>8</sup> See, e.g., Matt Fleischer, Karen Donovan, and Victoria Slind-Flor, *The Talk of the Profession*, NATIONAL LAW JOURNAL, May 1, 2000, at A8; Greg Auman, *Online Reports Not Necessarily On Line*, ST. PETERSBURG TIMES, Aug. 11, 2000, at 2C.

<sup>9</sup> See, e.g., Clinton Wilder, *A New Game Plan*, TECHWEBNEWS, Apr. 9, 2001; Mark Conrad, *MLB Gets Web Rights in MLB.com*, MARK’S SPORTSLAW NEWS, www.sportslawnews.com, Sept. 5, 2000 (vis. Sept. 7, 2010).

<sup>10</sup> Henry Gottlieb, Charles Toutant, Sandy Lovell, and Tim O’Brien, *Who’s On First?*, NEW JERSEY LAW JOURNAL, Sept. 25, 2000.

<sup>11</sup> Jeff Blumenthal, *Morgan Lewis Decides to Play Ball with Client*, [SAN FRANCISCO] RECORDER, Sept. 12, 2000 at 3.

<sup>12</sup> *Big Leagues’ Net Bet*, NEWSWEEK, Oct. 2, 2000.

<sup>13</sup> *On MLB’s Hit List: Web Plays, All-Star Ambushers*, BRANDWEEK, July 17, 2000, at 18; Tom Hoffarth, *It’s No Iceberg, It’s P’urgh*, [LOS ANGELES] DAILY NEWS, July 31, 2000; Tommy Cummings, *Underachievers Already Voted Off Packer Island*, SAN FRANCISCO CHRONICLE, Aug. 23, 2000, at E8.

<sup>14</sup> See, e.g., Winn L. Rosch, *Domains: Today’s Name Game*, CLEVELAND PLAIN DEALER, July 20, 2000, at 2C (“The value of easy-to-remember and -recognize names comes as no surprise. The big hits this year: Business.com sold for \$7.5 million, loans.com for \$3 million and autos.com for \$2.2 million.”).

<sup>15</sup> *Weber v. National Football League*, 112 F.Supp.2d 667, 672 (N.D. Ohio 2000).

But the story of the connections leads to one last question: In September 2000, was all the history between MLB and Morgan Lewis, combined with the prospect of more collaboration in the future, really enough to justify Morgan Lewis's decision to turn over mlb.com to MLB?

### *Connections 1978-1994*

In September 2000, when the mlb.com deal was consummated, Morgan Lewis could boast of connections to baseball dating back at least to 1978, when Michael Fremuth, a young lawyer working at the firm, moonlighted as a pitcher for the Alexandria Dukes of the Carolina League.<sup>16</sup> The firm's legal work involving baseball began no later than 1981, when it was defense counsel in *Dudley Sports Co. v. Berry*, a case in Florida state court in which a boy and his parents sued the manufacturer and distributor of a pitching machine after the boy was injured in an accident involving the machine.<sup>17</sup>

By the mid-1980s, Morgan Lewis's baseball involvement went directly and deeply to MLB itself. The firm, which had then and has today a reputation as one of the strongest management-side law firms specializing in labor-management relations, was receiving some publicity for its work representing teams at salary arbitration hearings.<sup>18</sup> But it was in October 1987 that the first of the two most important moments in the firm's relationship with MLB occurred. Murray Chass wrote about it at length in the *New York Times*:

"In what could be a significant change on the labor front, baseball management has made a change in its legal lineup.

"For more years than Tommy John has pitched in the major leagues, Willkie Farr and Gallagher [a very big and very prominent New York-based international law firm<sup>19</sup>] has been the law firm that handled the owners' labor matters, sometimes to the detriment of the owners. The most noted legal-labor blunder occurred in 1975 when the owners were advised not to negotiate a settlement of the Messersmith-McNally grievance, but to let the arbitrator rule and then have his decision overthrown in court if the ruling went against them. However, the decision of Peter Seitz was upheld in court, and the free agency that followed became far more costly to the owners than it might have been.

"Willkie Farr does not specialize in labor law, and some owners think that has hurt them in their dealings with the union. Now, after many years, the Player Relations Committee, of which [MLB spokesman Barry] Rona is executive director, has hired a Washington firm, Morgan, Lewis and Bockius, which represents management in labor relations.

"There are a number of labor lawyers there with great labor law expertise,' Rona said. 'Willkie Farr will continue to operate in corporate and general law and tax areas, where their strength and expertise lie.'"<sup>20</sup>

For most of the next decade, Morgan Lewis lawyers were important figures in a range of matters involving labor-management relations in the Major Leagues,<sup>21</sup> including especially the negotiation of collective bargaining agreements with the players' union (the Major League Baseball Players Association, or "MLBPA" for short) during the early and mid-1990s.<sup>22</sup>

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<sup>16</sup> *A Winner*, LEGAL TIMES, Sept. 11, 1978, at 3; *Michael Fremuth Minor League Statistics & History*, BASEBALL-REFERENCE.COM (vis. Oct. 15, 2010).

<sup>17</sup> *Dudley Sports Co. v. Berry*, 407 So.2d 335 (D. Ct. of Appeal of Fla., 3d Dist. 1981); see also *United States v. Athlone Industries, Inc.*, 746 F.2d 977 (3d Cir. 1984).

<sup>18</sup> See, e.g., Phil Hersh and Fred Mitchell, *Durham Is No Poor Loser: Cubs Win Arbitration, 'Bull' Gets \$800,000*, CHICAGO TRIBUNE, Feb. 21, 1985, at 1; see also, e.g., Christine Brandt, Karen Dillon, Robert Safian, and Sara Seigle, *Major League Baseball Arbitration*, AMERICAN LAWYER, Nov. 1987, at 30.

<sup>19</sup> See [www.willkie.com](http://www.willkie.com).

<sup>20</sup> Murray Chass, *Free Agency Still Key to Future Peace*, NEW YORK TIMES, Oct. 15, 1987, at B17.

<sup>21</sup> See, e.g., Robert Safian, *Tom Roberts Breaks Into the Majors*, AMERICAN LAWYER, May 1988 at 121; *Owners Gird for Costly Collusion Settlement*, CHICAGO TRIBUNE, Jan. 18, 1990, at 3; *Cusack v. Detroit Tigers Baseball Club, Inc.*, 956 F.2d 27 (United States Court of Appeals, Second Circuit 1992).

<sup>22</sup> See, e.g., Ross Newhan, *A New Man on the Point for Owners: Charles O'Connor took over at the last minute as lead negotiator for baseball management. Will his outlook affect the outcome of the talks?*, LOS ANGELES TIMES, Dec. 9, 1989, at 1; Margaret Cronin Fisk, *Names Behind the News: Batter Up: Lawyers Score In Baseball Talks*, NATIONAL LAW JOURNAL, Apr. 2, 1990, at 10; Ronald Blum, *Finally, There's a Little Light at the End of the*

And then, in 1994, in an exercise of real and remarkable techno-marketing savvy (generally speaking, no one thinks of lawyers as savvy techno-marketers, not even lawyers themselves<sup>23</sup>), Morgan Lewis registered the domain name “mlb.com.” This display of web-based foresightedness happened a decade after the firm had begun working closely with the Major Leagues, and seven years after it had been hired as what amounted to MLB’s chief outside labor relations counsel. Which makes one thing clear: MLB did not hire Morgan Lewis just in order to acquire mlb.com from the firm. A conventional client-lawyer relationship long predated the Internet connection.

Moreover, neither side seemed to have a strong desire to move mlb.com from the law firm to its client at the time. Indeed, in an interview in 2000, an MLB spokesman recalled that, “I think we knew they had [the domain name] early on, but we didn’t think much about it because the Internet was not a big thing back then.” Conversely, a Morgan Lewis official recalled that, “[f]rom the beginning, Major League Baseball had an interest in using the mlb.com name. . . . And in the early years we weren’t interested in considering that because we had just started the Web site.”<sup>24</sup>

### Connections 1994-2000

In baseball, 1994 was something of a high water mark for Morgan Lewis. Firm partner Charles P. O’Connor, who had represented MLB during the 1990 spring training lockout, was again serving as counsel to MLB’s labor relations arm (the MLB Player Relations Committee) as it negotiated with the MLBPA for a new collective bargaining agreement to replace the one that had expired at the end of 1993.<sup>25</sup> It was those negotiations that eventually triggered the 1994-1995 baseball strike. O’Connor and several of his colleagues at the firm played prominent roles not only in the contract negotiations but also in the related litigation in 1995, including the famous *Silverman v. Major League Baseball Player Relations Committee* case before then-Judge (now Supreme Court Justice) Sonia Sotomayor in New York federal court.<sup>26</sup>

*Silverman* was the second (and far less beneficial) of the two most important moments in the firm’s relationship with MLB. Unfortunately for O’Connor and Morgan Lewis, management lost in *Silverman*.<sup>27</sup> The firm was portrayed in the media as one of the goats — or perhaps scapegoats (often in the company of MLB labor relations executive Richard Ravitch) — of the debacle.<sup>28</sup> The reportage in the *Philadelphia Inquirer* was impressively thorough and well-written, but the basic angle taken on the role of MLB’s lawyers was not atypical of newspaper coverage in general at the time:

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*Tunnel*, AKRON BEACON JOURNAL, Dec. 21, 1994, at C6.

<sup>23</sup> Cf. Henry Gottlieb, Charles Toutant, Sandy Lovell, and Tim O’Brien, *Who’s On First?*, NEW JERSEY LAW JOURNAL, Sept. 25, 2000.

<sup>24</sup> Jeff Blumenthal, *Morgan Lewis Decides to Play Ball with Client*, [SAN FRANCISCO] RECORDER, Sept. 12, 2000 at 3 (quoting MLB spokesperson Richard Levin and Morgan Lewis chairman Fran Milone)

<sup>25</sup> Julie Stoiber, *Lawyer Goes to Bat for Owners: He Represents the Major-League Clubs; As a Baseball Fan, He’s Eager to See the Strike Settled*, PHILADELPHIA INQUIRER, Jan. 16, 1995, at C1.

<sup>26</sup> See *Silverman v. Major League Baseball Player Relations Committee*, 880 F.Supp. 246 (S.D.N.Y. 1995); *Baseball Talks May Resume*, NEW YORK TIMES, July 9, 1995, at 7.

<sup>27</sup> See *Silverman v. Major League Baseball Player Relations Committee*, 67 F.3d 1054 (United States Court of Appeals, Second Circuit 1995); see also *New Lawyer for Owners in Appeal of Injunction*, PHILADELPHIA INQUIRER, Apr. 26, 1995, at D4; ROGER I. ABRAMS, LEGAL BASES: BASEBALL AND THE LAW ch. 9 (Temple University Press 1998) (reviewing the *Silverman* litigation and the entire course and consequences of the negotiations and related disputes from 1993 to 1996).

<sup>28</sup> See, e.g., *Baseball Owners to Replace Labor Lawyer*, PHILADELPHIA INQUIRER, Apr. 16, 1995, at C10; *Rangers, Tettleton agree on 1-year deal*, HOUSTON CHRONICLE, Apr. 13, 1995, at 6; see also, e.g., Jacques Steinberg, *Ravitch, Mayor’s Choice to Run Schools, Has Extensive Public Record*, NEW YORK TIMES, Sept. 17, 1995 (“Mr. [Richard] Ravitch served from 1991 until last December as the [MLB] owners’ chief labor executive and was credited with bringing the teams together on a revenue-sharing plan, in which richer teams like the Yankees would help poorer teams like the Pittsburgh Pirates. But by basing that plan on a salary cap, he earned the enmity of the players and was never able to forge a new collective bargaining agreement with them. While the [MLBPA] union blames Mr. Ravitch, in part, for bringing on the strike in summer 1994, David W. Sussman, the executive vice president and general counsel of the Yankees, believes he was cast unfairly as a scapegoat. Nevertheless, soon after the strike began, the owners eased Mr. Ravitch out of his lead role at the bargaining table. He resigned in December.”).

“Bill Buckner let a ground ball roll between his legs.

“Jim Fregosi let Mitch Williams pitch to Joe Carter.

“Oh, those agonizing, enduring errors of baseball lore.

“And now another has been added. Only this time, the guys in pinstripes who blundered were not ballplayers but lawyers — the ones representing the owners in their dealings with the union.

“Faulty strategy is what the judges in the Second U.S. Circuit Court of Appeals called it. The lawyer at last week’s hearing in New York, Frank Casey [of Morgan Lewis], got the umpire treatment from the judges, who interrupted his presentation with sarcastic retorts and accused him of ‘going around in circles’ and trying to confuse the court with double-talk.”<sup>29</sup>

In the aftermath of *Silverman*, it probably came as a surprise to no one that MLB hired a new lawyer — Randy Levine, who had been serving as Commissioner of Labor Relations for New York City — to take the lead when negotiations with the MLBPA resumed in earnest in late 1995 and early 1996.<sup>30</sup> (Levine is now President of the New York Yankees.<sup>31</sup>) And in another unsurprising move a few years later, both the American League and the National League retained Levine’s old employer, Proskauer Rose Goetz & Mendelsohn (another very big and very prominent New York-based international law firm<sup>32</sup>). Proskauer Rose partner Howard Ganz<sup>33</sup> served as lead outside counsel in labor disputes that were by 1999 beginning to boil over between the leagues and the umpires’ union, the Major League Umpires Association.<sup>34</sup>

These moves might have suggested that MLB’s confidence in Morgan Lewis had been shaken,<sup>35</sup> but other moves indicated that faith in the firm had not been utterly destroyed. For the balance of the 1990s, Morgan Lewis continued to do some labor-law work for the big leagues,<sup>36</sup> including work on the post-*Silverman* 1995-1996 collective bargaining with the MLBPA.<sup>37</sup> In addition, in 1998 MLB Commissioner Bud Selig hired two Morgan Lewis partners — Frank Coonelly and Robert Manfred — to serve as in-house labor relations counsel at MLB,<sup>38</sup> creating a long-term connection between the firm and the big leagues that remains in place today.<sup>39</sup>

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<sup>29</sup> Julie Stoiber, *Phila. Law Firm May Have Dropped the Ball for the Owners: Judges Blasted the Strategy of the Baseball Owners’ Lawyers; Will the Firm Be Benched?*, PHILADELPHIA INQUIRER, Apr. 9, 1995, at C1.

<sup>30</sup> See David Firestone, *Labor Chief for Giuliani to Leave for Baseball Job*, NEW YORK TIMES, Sept. 19, 1995.

<sup>31</sup> *Yankees Front Office*, mlb.mlb.com/team/front\_office.jsp?c\_id=nyy (vis. Oct. 16, 2010). Levine is also of counsel at Akin, Gump, Strauss, Hauer & Feld LLP, yet another very big and very prominent international law firm. See [www.akingump.com/rlevine/](http://www.akingump.com/rlevine/) (vis. Oct. 16, 2010).

<sup>32</sup> See [www.proskauer.com](http://www.proskauer.com) (vis. Oct. 16, 2010).

<sup>33</sup> See [www.proskauer.com/professionals/howard-ganz/](http://www.proskauer.com/professionals/howard-ganz/) (vis. Oct. 16, 2010).

<sup>34</sup> See, e.g., Susan Hansen, *Proskauer on Deck for Baseball Owners?*, AMERICAN LAWYER, Nov. 1995, at 17; Ashby Jones, *Tuck in the Bullpen*, AMERICAN LAWYER, Jan. 2002, at 18.

<sup>35</sup> See, e.g., *Season Opens with Replacement Umps*, ROCKY MOUNTAIN NEWS, April 26, 1995, at 8B (“The decision to replace Casey, made by the ruling executive council, signals what probably will be the phase-out of Morgan, Lewis. Several owners were angered over losing at the injunction hearing, and some want to drop Morgan, Lewis. Oral arguments on the appeal are scheduled for May 11.”).

<sup>36</sup> See, e.g., Susan Hansen, *Proskauer on Deck for Baseball Owners?*, AMERICAN LAWYER, Nov. 1995, at 17; *Bowen v. Workers’ Compensation Appeals Board*, 73 Cal.App.4th 15 (California Court of Appeal, Second District 1999).

<sup>37</sup> See, e.g., *Smiley an All-Star as a Replacement*, MIAMI HERALD, July 9, 1995, at 7D.

<sup>38</sup> See Appellants’ Brief and Appendix, *Phillips v. Selig*, 2007 WL 5289093 (Superior Court of Pennsylvania Nov. 5, 2007).

<sup>39</sup> See *MLB Official Info: MLB Executives*, mlb.mlb.com/mlb/official\_info/about\_mlb/executives.jsp?bio=manfred\_rob (vis. Sept. 7, 2010) (identifying Robert D. Manfred, Jr. as “Executive Vice President, Labor Relations & Human Resources,” and as a former “partner in the Labor and Employment Law Section of Morgan, Lewis & Bockius, LLP”). Coonelly left his position under Selig in 2007 to become President of the Pittsburgh Pirates. See Rob Biertempfel, *Bucs hire Coonelly, president with a plan*, PITTSBURGH TRIBUNE REVIEW, Sept. 14, 2007; *Front Office biographies, Frank Coonelly, President*, pittsburgh.pirates.mlb.com/pit/team/exec\_bios/coonelly\_frank.jsp (vis. Oct. 16, 2010) (“Frank Coonelly was named President of the Pittsburgh Pirates on September 13, 2007 . . . . Prior to joining the Pirates, Frank served as Senior Vice President and General Counsel of Labor in the Office of the Commissioner of Baseball . . . . Coonelly practiced labor and employment law as a Partner in the Washington, D.C. office of Morgan, Lewis & Bockius before joining the Commissioner’s Office. A large part of Frank’s practice consisted of the representation of Major League Baseball as outside labor counsel. In that role, Frank assisted the Commissioner of Baseball in collective bargaining and litigation matters. He also represented several individual Clubs, including the Minnesota Twins, Chicago Cubs, Montreal Expos and Atlanta Braves, in salary arbitration matters.”).

And so, by 2000, MLB and Morgan Lewis had been through the wars together. The client had done its part: MLB had been a steady and valuable Morgan Lewis client for more than a decade, and had continued to send business to Morgan Lewis even after the uncomfortable period in 1994 and 1995 when the firm spectacularly failed to carry the day for the team owners at the bargaining table or in court. And the lawyers had done their part: Morgan Lewis lawyers had stood up in court, and then in the media spotlight, to take the heat for the team owners' (and the firm's) commitment to what turned out to be an unpopular and unsuccessful bargaining position in the 1994-1995 round of contract negotiations with the MLBPA.<sup>40</sup> And the firm had seemingly performed satisfactorily in other capacities as labor counsel to MLB both before and since that difficult time.

It was against this mixed background of deep disappointment and continuing collaboration that MLB began pressing Morgan Lewis to relinquish the mlb.com domain name. In the past, Morgan Lewis's control of mlb.com had not been much of an issue. As recently as early 1999, an official at MLB had "indicated that the organization was satisfied with the current arrangement" under which Morgan Lewis used mlb.com and included on the firm's website a link to MLB's website at [www.majorleaguebaseball.com](http://www.majorleaguebaseball.com).<sup>41</sup> By December 1999, however, MLB wanted very much to control mlb.com, and it was negotiating with Morgan Lewis for a transfer.

What was Morgan Lewis to do? Ironically, this was the very firm whose "great labor law expertise," including its experience in negotiations with organized labor,<sup>42</sup> had made it such a good choice for MLB back in 1987 when the firm was hired to replace Willkie Farr and Gallagher as counsel to the MLB Player Relations Committee.<sup>43</sup> But negotiating with its client in 2000 over the transfer of mlb.com as it had negotiated with the MLBPA on behalf of that client over a new collective bargaining agreement in 1994-1995 might not be a good idea.

Holding out for a good price from MLB might well alienate the client. And it was a client that was building a substantial in-house legal operation (including two former Morgan Lewis lawyers) and showing a willingness, perhaps even a preference, for competitively high-powered outside counsel from another firm (Proskauer Rose and its star sports labor law partner, Howard Ganz). In other words, MLB might be willing to pay Morgan Lewis well for "mlb.com" if pressed to do so. But if the firm actually did demand payment, MLB not only probably would, but also easily could, promptly walk away from its long relationship with the firm.

Of course, if MLB was already well on its way to walking away from Morgan Lewis and likely to continue on its way, what did Morgan Lewis have to lose? First, the firm would almost certainly lose any chance of holding on to any MLB work, let alone winning back any of what it had lost to other firms or the in-house operation. Second, trying to extract top dollar from a client for an asset that had been acquired by the firm for little money but had fortuitously turned to be of great value to that client was not likely to inspire warm feelings of confidence toward Morgan Lewis among its other clients and prospective clients.

Finally, as the abbreviations used in this article for "Major League Baseball" (MLB) and "Morgan, Lewis & Bockius LLP" (Morgan Lewis) suggest, the transfer of "mlb.com" to MLB and the switch to using "morganlewis.com" by Morgan Lewis fit well with the brand-marketing strategies of both organizations.<sup>44</sup> Thus, because Morgan Lewis was not going to be using mlb.com itself, the firm had little or nothing to gain from the domain name

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<sup>40</sup> See LEONARD KOPPETT, *KOPPETT'S CONCISE HISTORY OF MAJOR LEAGUE BASEBALL* 456-470 (Carroll & Graf Publishers 2004 ed.).

<sup>41</sup> Ruth Singleton, *Morgan to Lewis to Bockius: Firm's Web Site Plays Major League Ball*, NATIONAL LAW JOURNAL, Apr. 19, 1999, at A23.

<sup>42</sup> See Jennifer Fried, *Walking the Line: Morgan, Lewis knows how to bargain at the table and battle in the courthouse*, AMERICAN LAWYER, Jan. 2004, at 99.

<sup>43</sup> Murray Chass, *Free Agency Still Key to Future Peace*, NEW YORK TIMES, Oct. 15, 1987, at B17.

<sup>44</sup> Jim Oliphant, *Morgan, Lewis Takes One for the Team*, NEW YORK LAW JOURNAL, Oct. 10, 2000, at 6. "The marketing strategies of many large law firms have been gravitating for some time to use of the first name or names on the letterhead. Bingham, Orrick, and Paul Hastings are now promoted with shorthands rather than full names or acronyms. With their 2001 merger the Winthrop, Stimson, Putnam & Roberts and Pillsbury Madison & Sutro firms adopted pillsburywinthrop.com and discontinued use of their 'WSPR' and 'PMS' shorthands — the latter acronym having a most unfortunate connotation in the late twentieth century. The Pillsbury firm today uses the single-word Pillsbury brand, but retains the 'pillsburylaw.com' domain name to distinguish itself from the Pillsbury food brands." Correspondence to the author from Robert A. James, partner and board member of Pillsbury Winthrop Shaw Pittman LLP, Oct. 19, 2010. If Morgan Lewis had similar plans in 2000 for moving from mlb.com to morganlewis.com, the firm may have been quitclaiming the sleeves off of its vest.

other than whatever money it could extract from MLB for it.

In the end, as *The American Lawyer* put it, “Morgan, Lewis & Bockius made the best of a tricky situation with one of its sexiest clients, Major League Baseball.”<sup>45</sup> The deal was done on September 6, 2000.

### *Connections Since 2000*

Without knowing what price MLB would have paid for mlb.com, and without access to the confidential MLB-Morgan Lewis agreement, it is impossible to say with any confidence whether Morgan Lewis did the right thing by (apparently) giving away that valuable domain name. But a look at what has happened to the MLB-Morgan Lewis relationship since then (or at least at the parts in the public record) might provide some basis for ruminating about what kind of value Morgan Lewis ended up getting for mlb.com.

To Morgan Lewis, the mlb.com deal must have seemed at first to be an excellent investment, and then perhaps a fruitless one, and then, for the time being at least, a pretty good one.

The months following the September 2000 transfer of mlb.com were a good time for Morgan Lewis’s baseball practice. The firm began to play a prominent part on behalf of MLB in the important and well-publicized labor relations conflicts between the big leagues and the umpires.<sup>46</sup> And there was other work as well,<sup>47</sup> including an amicus brief for the Office of the Commissioner of Baseball filed in the Supreme Court of the United States in the case of *Major League Baseball Players Association v. Garvey*.<sup>48</sup>

In 2002, however, when the time came for MLB and the MLBPA to negotiate a collective bargaining agreement to succeed the one agreed to after the 1994-1995 strike, Morgan Lewis was not invited. Howard Ganz of Proskauer Rose was.<sup>49</sup> *The American Lawyer* interpreted this development as an indicator of just how much value the mlb.com deal could have for Morgan Lewis:

“The gift [of mlb.com] won Morgan, Lewis some goodwill. But it didn’t permanently win over Major League Baseball (or, should we say, MLB). That became clear recently, when the commissioner’s office bypassed Morgan, Lewis and tapped New York’s Proskauer Rose to handle the most important piece of work to come

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<sup>45</sup> Ashby Jones, *Tuck in the Bullpen*, AMERICAN LAWYER, Jan. 2002, at 18; see also Michael Klein, *Major League Baseball Gains Right to ‘MLB’ Internet Address*, PHILADELPHIA INQUIRER, Sept. 9, 2000 at C1 (“The deal . . . was complicated by the fact that the two sides had long been business partners and enjoyed attorney-client privilege: Morgan Lewis has handled much of Major League Baseball’s labor-negotiations work for a decade.”); Monica Bay, *Yankee Stadium, Ringstrasse, Disney World, Dallas*, LAW TECHNOLOGY NEWS, Nov. 2000, at 16.

<sup>46</sup> See, e.g., *Bonin v. World Umpires Association*, 204 F.R.D. 67 (E.D. Pa. 2001); Defendant Office of the Commissioner of Major League Baseball’s Memorandum of Law in Support of its Motion to Dismiss, *Bonin v. World Umpires Association*, 2001 WL 34898519 (E.D. Pa. 2001); *Gregg v. National League of Professional Baseball Clubs*, 57 Fed. Appx. 123 (3d Cir. 2003); Brief of Defendants/Appellees National League of Professional Baseball Clubs, *Gregg v. National League of Professional Baseball Clubs*, 57 Fed. Appx. 123, 2002 WL 32818411 (3d Cir. 2002); *Major League Umpires Association v. American League of Professional Baseball Clubs*, 2001 WL 34894718 (E.D. Pa. 2001); *Major League Umpires Association v. American League of Professional Baseball Clubs*, 357 F.3d 272 (3d Cir. 2004); Reply Brief of Appellees/Cross-Appellants, *Major League Umpires Association v. American League of Professional Baseball Clubs*, 357 F.3d 272, 2002 WL 32819168 (3d Cir. 2002); Memorandum of Law in Support of Motion of Defendants to Dismiss the Complaint, *Major League Umpires Association v. American League of Professional Baseball Clubs*, 2003 WL 23906078 (E.D. Pa. 2003); Memorandum of Law in Opposition to the Major League Umpires Association’s Motion for Contempt of Court, *Major League Umpires Association v. American League of Professional Baseball Clubs*, 2005 WL 3724109 (E.D. Pa. 2005); *Phillips v. Selig*, 157 F.Supp.2d 419 (E.D. Pa. 2001); Brief & Appendix for Appellees, *Phillips v. Selig*, 959 A.2d 420, 2008 WL 2623632 (Super. Ct. Pa. 2008); Memorandum of Law in Support of the Motion of Defendants to Disqualify Patrick Campbell, Esquire and Phillips & Campbell, P.C., *Major League Umpires Association v. American League of Professional Baseball Clubs*, 2003 WL 23906093 (E.D. Pa. 2003); Memorandum of Law in Support of Motion for Summary Judgment of Defendants, *Phillips v. Selig*, 2006 WL 6048310 (Ct. Common Pleas of Pa., Phila. Cty. 2006); Complaint, *Office of the Commissioner of Baseball v. Major League Umpires Association*, 2002 WL 34447591 (E.D. Pa. 2002); see also Shannon P. Duffy, *Arbitrator’s Call on Most Umpires Stands: Three See Their Cases Returned for Reassessment*, LEGAL INTELLIGENCER, Dec. 14, 2001, at 1.

<sup>47</sup> Ashby Jones, *Tuck in the Bullpen*, AMERICAN LAWYER, Jan. 2002, at 18 (“For the time being, the firm is handling the league’s garden-variety ERISA and employment work. ‘We’re just happy that Rob and Frank are keeping us busy with other matters,’ says Steven Wall, the deputy manager of the firm’s labor and employment practice group.”).

<sup>48</sup> Motion for Leave to File Brief Amicus Curiae and Brief Amicus Curiae of the Office of the Commissioner of Baseball in Support of the Petition, *Major League Baseball Players Association v. Garvey*, 532 U.S. 504 (2001) (Harry A. Risetto, Counsel of Record, Morgan, Lewis & Bockius LLP).

<sup>49</sup> Liane Jackson, *Play Ball: MLB Lawyers Strike a Deal*, CORPORATE LEGAL TIMES, Nov. 1, 2002, at 70.

along in a half-decade, this winter's labor negotiations with the Major League Baseball Players Association. The stakes are big. A failure to hammer out a new collective bargaining agreement could lead to a strike or lockout at the beginning of the 2002 season."<sup>50</sup>

While the loss of its prestigious seat at the MLB-MLBPA bargaining table was surely hard to take, that did not mark the end or even the beginning of the end of Morgan Lewis's work for MLB. For much of the past decade, the firm has represented MLB in litigation relating to its conflicts with the umpires.<sup>51</sup> In recent years MLB has also enlisted Morgan Lewis to lobby the administration of the second President George Bush to permit Cuba to participate in the World Baseball Classic,<sup>52</sup> and to represent the Major League Baseball Players Benefit Plan in federal court in Ohio.<sup>53</sup> Given the confidential nature of much legal work, there is no telling (from the outside) what other sorts of work Morgan Lewis may have done or might be doing for MLB.<sup>54</sup>

So, in the 15-plus years since Morgan Lewis originally registered the mlb.com Internet domain name (and since the 1994-1995 MLB-MLBPA meltdown that cost baseball and its fans one World Series and parts of two seasons), the law firm and its big-league client have continued to work together. For the last 10-plus of those years, MLB has had (1) the probably-free benefit of Morgan Lewis's mlb.com as well as (2) the certainly-not-free benefit of the good work of the firm's labor lawyers. In return, Morgan Lewis has enjoyed the income and prestige of having MLB as a client. Would this particular lawyer-client relationship have persisted for so long, and in the face of such intense ups and downs and competitive pressures, if MLB had not received both kinds of benefits? You make the call.

## A POSTSCRIPT IN DEFENSE OF MLB

It is difficult to read about the process by which Major League Baseball established its Internet home at mlb.com without getting the impression that if a journalist or commentator had been in charge of the big leagues back in the early 1990s, mlb.com would have been registered by MLB long before Morgan Lewis got to it. If MLB's failure to register its natural domain name early really was a result of its "comparatively late [entry] in the game," or the "minor-league . . . quality" of its "tradition"-bound approach to the web,<sup>55</sup> then it had some pretty diverse and fancy company, including such marketing/self-promotion slugs as Nissan Motor Co.,<sup>56</sup> Planned Parenthood,<sup>57</sup> Madonna (as in the music and media celebrity),<sup>58</sup> and the White House (meaning both the operation of which the President of the United States is the boss and the National Fruit Product Company, makers of White House Apple Sauce and other delectables),<sup>59</sup> to name just a few of the more famous Internet latecomers.

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<sup>50</sup> Ashby Jones, *Tuck in the Bullpen*, AMERICAN LAWYER, Jan. 2002, at 18.

<sup>51</sup> See note \_\_\_ above.

<sup>52</sup> See *Looper back with Cards for \$13.5 million, 3 years*, CHICAGO TRIBUNE, Dec. 16, 2005, at 6.

<sup>53</sup> See Answer, *United States v. Rogers*, 558 F.Supp.2d 774, 2004 WL 3124417 (N.D. Ohio 2004); see also *United States v. Rogers*, 558 F.Supp.2d 774 (N.D. Ohio 2008).

<sup>54</sup> Cf., e.g., *Rebecca A. Falk Attorney Biography*, www.morganlewis.com (vis. Oct. 17, 2010) ("Recent matters include . . . Represented individuals employed by a Major League Baseball franchise in connection with the San Francisco U.S. Attorney's Office's investigation into steroid use and the related internal investigation conducted by the Commissioner of Baseball.").

<sup>55</sup> Michael Klein, *Major League Baseball Gains Right to 'MLB' Internet Address*, PHILADELPHIA INQUIRER, Sept. 9, 2000, at C1; Clinton Wilder, *A New Game Plan*, TECHWEBNEWS, Apr. 9, 2001.

<sup>56</sup> See *Nissan Motor Co. v. Nissan Computer Corp.*, 378 F.3d 1002, 1006 (9th Cir. 2004) ("This appeal raises a number of trademark issues arising out of the use by Uzi Nissan of his last name for several business enterprises since 1980, his use beginning in 1991 of 'Nissan' as part of the name of a North Carolina computer store he owned-Nissan Computer Corp.-and his registration in 1994 of 'nissan.com' as a domain name . . .").

<sup>57</sup> See *Planned Parenthood Federation of America, Inc. v. Bucci*, 42 U.S.P.Q.2d 1430, 1997 WL 133313 (S.D.N.Y. 1997) ("On August 28, 1996, Bucci registered the domain name 'plannedparenthood.com'").

<sup>58</sup> See *Madonna Ciccone v. Dan Parisi*, WIPO Case No. D2000-0060, www.wipo.int/amc/en/domains/decisions/html/2000/d2000-0847.html (Oct. 12, 2000) (vis. Oct. 17, 2010) ("On or about May 29, 1998, Respondent . . . purchased the registration for the disputed domain name").

<sup>59</sup> See Letter from Charles F.C. Ruff, Counsel to President Clinton, to Dan Parisi, President, Infolook, Inc., news.com.com/2009-1023-207800.html?legacy=cnet (Dec. 8, 1997) (vis. Oct. 17, 2010) ("It will come as no surprise to you that the White House Counsel's Office is aware of your Internet Web site, 'www.whitehouse.com,' and that we object to your use of the names and images of the White House, the President, and the First Lady on that Web site to sell memberships in an adult video club."), discussed in Chad D. Emerson, *Wasting Time*

And according to *Sports Illustrated*, when MLB and Morgan Lewis closed the mlb.com deal in September 2000, quite a few other pillars of the sports world were still locked out of their natural homes on the Internet. The list at the time included the International Olympic Committee, the NHL's Colorado Avalanche, and the Bears, Bills, Cowboys, and Saints of the National Football League, as well as the Arizona Diamondbacks and Montreal Expos.<sup>60</sup>

As always, wisdom after the event is easy to come by.

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*in Cyberspace*, 34 U. BALT. L. REV. 161, 186-87 & n.223 (2004).

<sup>60</sup> See *Misdirection Plays*, SPORTS ILLUSTRATED, Sept. 18, 2000.