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The Justice of Unequal Pay in the UFC: An In-Depth Analysis of the Fighters' Antitrust Class Action Lawsuit Against the UFC and the Misplaced Support of the Proposed Muhammad Ali Expansion Act

Hunter Sundberg
Nova Southeastern University

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The Justice of Unequal Pay in the UFC: An In-Depth Analysis of the Fighters' Antitrust Class Action Lawsuit Against the UFC and the Misplaced Support of the Proposed Muhammad Ali Expansion Act

Abstract

In 2016, the Ultimate Fighting Championships ("UFC") set the record for the largest sale in sports history. The UFC, the primary promotion company of the once fringe sport of mixed martial arts ("MMA") had matured into a mammoth 4 billion dollar promotion, but not without some growing pains. The league is replete with controversy, mostly dealing with disgruntled athletes over compensation. Athletes of the UFC feel that they are being financially exploited and they may be correct. The athletes are choosing different routes to remedy their pay disparities but they are misguided.

The first course of action chosen by the fighters is litigation, as a group of former UFC fighters have filed a class action antitrust suit against the UFC. Fighters are also lobbying for legislation in an attempt to expand the Muhammad Ali Act to regulate MMA as another method of resolution. While both will ultimately fail to appease the aggrieved athletes, the process may injure the UFC brand, something fighters may want to avoid. By reviewing similar antitrust disputes in sports and entertainment, the failure of the lawsuit against the UFC becomes apparent. As for the legislation, the Muhammad Ali Act fell short in protecting fighters in boxing as it was intended and will have the same ineffectualness in MMA. When the UFC was purchased in 2016 by WME-IMG, an immense international entertainment conglomerate, it is not likely the company was ignorant to these unsettled issues. This leads to the conclusion that the league's prospects are still bright. It is in the fighters' and the league's best interests to quell their innate divisive temperaments and negotiate a compromise internally.

Part II of this paper discusses the history of MMA, the sport of mixed martial arts. It also evaluates the evolution and current state of the UFC, the premier league that arranges and promotes the competition of elite MMA athletes. After a brief explanation of relevant antitrust laws, Part III analyzes the merits of the class action lawsuit against the UFC. Part IV explores the distinct nature of MMA and why antitrust enforcement will have varying results from what the athletes hope to achieve. Part V addresses possible effects of the proposed federal legislation amending the Muhammad Ali Act. Finally, Part VI summarizes that the antitrust litigation and proposed regulation will fail to redress the fighters' affliction of their income but may injure the UFC brand. Thus, imploring the league to be proactive in resolving this issue.

Keywords

UFC, Muhammad Ali Expansion Act, Ultimate Fighting Championships, mixed martial arts, MMA, sports, compensation

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ALI EXPANSION ACT

*Hunter Sundberg**

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I. INTRODUCTION

In 2016, the Ultimate Fighting Championships (“UFC”) set the record for the largest sale in sports history.¹ The UFC, the primary promotion company of the once fringe sport of mixed martial arts (“MMA”) had matured into a mammoth 4 billion dollar promotion², but not without some growing pains.³ The league is replete with controversy, mostly dealing with disgruntled athletes over compensation.⁴ Athletes of the UFC feel that they are being financially exploited and they may be correct.⁵ The athletes are choosing different routes to remedy their pay disparities but they are misguided.

The first course of action chosen by the fighters is litigation, as a group of former UFC fighters have filed a class action antitrust suit against the UFC.⁶ Fighters are also lobbying for legislation in an attempt to expand the Muhammad Ali Act to regulate MMA as another method of resolution.⁷ While both will ultimately fail to appease the aggrieved athletes, the process

¹ See Cindy Boran, *UFC Sale is Official at a Reported \$4 Billion in One of the Biggest Sales in Sports History*, THE WASHINGTON POST (July 11, 2016), https://www.washingtonpost.com/news/early-lead/wp/2016/07/11/ufcs-dana-white-confirms-4-billion-sale-the-largest-in-sports-history/?utm_term=.caf3c8e9c6eb (In 2016, the UFC sold for a record \$4 Billion, after grossing an estimated \$600 million just the year before. This marked one of the largest sales in sports history. The sale provided a \$3.9 Billion cultivation over a short period since the UFC was purchased in 2000 for only \$2 million).

² *Id.*

³ See generally Bill Reiter, *UFC's Evolution Almost Complete, but Growing Pains Evident in Jon Jones Fiasco*, CBS SPORTS (July 8, 2016), <http://www.cbssports.com/mma/news/ufcs-evolution-almost-complete-but-growing-pains-evident-in-jon-jones-fiasco/>; see also Anton Tabuena, *Several Fighters Outraged About CM Punk's \$500,000 Pay at UFC 203*, SB NATION: BLOODY ELBOW (Sept. 13, 2016, 8:00 AM), <http://www.bloodyelbow.com/2016/9/13/12900438/mma-fighters-outraged-about-cm-punk-500000-pay-ufc-203>.

⁴ Tabuena, *supra* note 3; see also UFC's Lorenzo Fertitta: *We Pay Fighters Way More Than Anybody Else (Video)*, MMA WEEKLY (Dec. 1, 2015), <http://www.mmaweekly.com/ufcs-lorenzo-fertitta-we-pay-fighters-way-more-than-anybody-else-video>; *infra* notes 5 & 8.

⁵ See Brett Okamoto, *Michael McDonald Saving Money from Second Job to Continue UFC Career*, ESPN (Jan. 25, 2017), http://www.espn.com/mma/story/_/id/18551901/ufc-bantamweight-michael-mcdonald-career-remains-hold-mma; See also Jonathan Snowden, *The Business of Fighting a Look Inside UFC's Top-Secret Fighter Contract*, THE BLEACHER REPORT (May. 14, 2013), <http://bleacherreport.com/articles/1516575-the-business-of-fighting-a-look-inside-the-ufcs-top-secret-fighter-contract> (No one said the life of a fighter would be easy, but as the UFC has established their legitimacy on the world stage, it is odd when athletes are not able to compete due to compensation inadequacies. This is an especially prevalent issue after the company sold for a record 4 billion dollars).

⁶ *Complaint, Le, v. Zuffa, LLC*, 216 F. Supp. 3d (D. Nev. 2016).

⁷ Muhammad Ali Expansion Act, H.R. 5365, 114th Cong. (2016).

may injure the UFC brand, something fighters may want to avoid. By reviewing similar antitrust disputes in sports and entertainment, the failure of the lawsuit against the UFC becomes apparent. As for the legislation, the Muhammad Ali Act fell short in protecting fighters in boxing as it was intended and will have the same ineffectualness in MMA.⁸ When the UFC was purchased in 2016 by WME-IMG, an immense international entertainment conglomerate, it is not likely the company was ignorant to these unsettled issues. This leads to the conclusion that the league's prospects are still bright.⁹ It is in the fighters' and the league's best interests to quell their innate divisive temperaments and negotiate a compromise internally.

Part II of this paper discusses the history of MMA, the sport of mixed martial arts. It also evaluates the evolution and current state of the UFC, the premier league that arranges and promotes the competition of elite MMA athletes. After a brief explanation of relevant antitrust laws, Part III analyzes the merits of the class action lawsuit against the UFC. Part IV explores the distinct nature of MMA and why antitrust enforcement will have varying results from what the athletes hope to achieve. Part V addresses possible effects of the proposed federal legislation amending the Muhammad Ali Act. Finally, Part VI summarizes that the antitrust litigation and proposed regulation will fail to redress the fighters' affliction of their income but may injure the UFC brand. Thus, imploring the league to be proactive in resolving this issue.

II. BACKGROUND -- THE UFC'S ASCENT TO THE THRONE OF MMA PROMOTION

There exists a common confusion between the difference of MMA and the UFC. Simply put, MMA is to the UFC, what football is to the National Football League ("NFL"). In other words, MMA is the sport and the UFC is a league for the sport.¹⁰

Although many people believe MMA is a relative newcomer, it actually can be traced back to the original Olympic games, and was popular until the

⁸See Jason Cruz, *Is the Muhammad Ali Act Helping Protect Fighters?*, THE WHITE BRONCO (May 2, 2016), <http://thewhitebronco.com/2016/05/is-the-muhammad-ali-act-helping-protect-fighters>. (The proposed regulation did not adequately protect fighters in boxing and will produce similar frustrations for the athletes in MMA).

⁹Noah Kirsch, *While Fighters Complain of Low Pay, UFC Sells Itself for \$4 Billion*, FORBES (July 15, 2016, 9:05 AM), <https://www.forbes.com/sites/noahkirsch/2016/07/15/while-fighters-complain-of-low-pay-ufc-sells-for-4-billion/#2fab96741bb2>; see also Boran, *supra* note 1.

¹⁰Although the analogy is not perfect because the UFC is not the only league, it is the prominent league in the sport, where most of the talent and revenue of MMA can be found.

fall of the Roman Empire in the fourth century.¹¹ It did not emerge in America until the early 1990's.¹² Even then, MMA only slightly resembled the sport as it exists today.¹³ The UFC at its outset, promoted itself as a rule-less, no holds-barred cage fight without any weight divisions.¹⁴ Due to public outcry, the UFC's successes of promoting MMA in that fashion were short lived.¹⁵ The sport quickly experienced widespread resistance from national and state legislatures, resulting in cumbersome regulation and in some states, a complete ban of the sport.¹⁶

In 2001, MMA made drastic progress driven by the successes of the UFC. The UFC was acquired by Zuffa, LLC, consisting of two Las Vegas casino moguls and their business partner Dana White.¹⁷ Also in 2001, the New Jersey Athletic Control Board adopted the Unified Rules of Mixed Martial Arts,¹⁸ which would be used to create uniform standards for competition nationwide.¹⁹ With new standards and strong management, the UFC made great strides, progressing the sport into the 21st century.

After Zuffa purchased the UFC in 2001²⁰, the promotion company aggressively competed to rise to the top as the premiere MMA league. Ironically, many of the UFC's actions that contributed to its dominance, are cited in the chief complaint against them, as anticompetitive conduct.²¹ Thus, it is important to see how the UFC became to dominate the promotion of MMA through acquisition of its numerous early competitors.

In December 2006 the UFC began its incursion on competing leagues by purchasing World Extreme Fighting ("WEC")²² and World Fighting Alliance

¹¹ Jordan T. Smith, *Fighting for Regulation: Mixed Martial Arts Legislation in the United States*, 58 DRAKE L. REV. 617, 620 (2010).

¹² *Discover*, THE UFC, <http://www.ufc.com/discover/ufc> (last visited Nov. 17, 2017).

¹³ *Id.*

¹⁴ Adam Hill, *A Timeline of UFC Rules: From No-Holds-Barred to Highly Regulated*, BLEACHER REPORT (Apr. 24, 2013), <http://bleacherreport.com/articles/1614213-a-timeline-of-ufc-rules-from-no-holds-barred-to-highly-regulated>.

¹⁵ Dave Meltzer, *A Look Back at the 1990s Hysteria Which Got MMA Banned in New York*, MMA FIGHTING, (April 3, 2016, 11:00 AM), <http://www.mmafighting.com/2016/4/3/11312322/new-york-was-both-the-first-and-last-state-to-pass-a-law-legalizing>.

¹⁶ Jeffery B. Same, *Breaking the Chokehold: An Analysis of Potential Defenses Against Coercive Contracts in Mixed Martial Arts*, 2012 MICH. ST. L. REV. 1057, 1063 (2012).

¹⁷ See Smith, *supra* note 11.

¹⁸ N.J. ADMIN. CODE § 13:46-24 (2017).

¹⁹ Hill, *supra* note 14.

²⁰ See *THE UFC*, *supra* note 12.

²¹ Bill Viola Jr, *Who Really Invented MMA Mixed Martial Arts*, MMA HISTORY, (Nov. 7, 2017), <http://mmahistory.org/who-invented-mma/>.

²² Ken Pishna & Ivan Trembow, *UFC Buying World Extreme Cagefighting*, MMA

(“WFA”).²³ Some of the WFA’s fighters were immediately brought into the UFC’s roster,²⁴ whereas the WEC, an established league that focused on lighter weight classes, continued to operate for some time separately.²⁵ In 2010, The WEC’s roster of fighters were either signed with the UFC or released.²⁶ WEC fighters were mostly enamored at the idea of fighting for the UFC as their star champion, Uriah Faber was quoted, “I’ve always wanted this to happen because it felt like I was carrying the brunt of the weight for the WEC. So now there are new benefits and opportunities.”²⁷ Undoubtedly the UFC’s motivation for the acquisition was self-profit, but fans were excited to see an improved product with more fights and greater competition.²⁸ It would be important to note of the environment in which this acquisition occurred. It was not a situation where athletes and fans were unhappy to join the UFC, in fact it was quite the opposite.

The UFC announced they had acquired Pride in 2006.²⁹ In the early days of MMA, Pride, based in Japan, was the largest and most popular MMA promotion.³⁰ It had since dwindled and the UFC sought to revamp the Pride

WEEKLY (Dec. 6, 2006), <http://www.mmaweekly.com/ufc-buying-world-extreme-cagefighting-2>.

²³ *UFC Acquires World Fighting Alliance, Inc.*, MMAJUNKIE (Dec. 11, 2006, 10:05 PM), <http://mmajunkie.com/2006/12/ufc-acquires-world-fighting-alliance-inc>.

²⁴ Many fighters of WFA were brought into the UFC roster while others were released. See Ivan Trembow & Ken Pishna, *UFC Buys Select Assets as WFA Ceases Operations*, MMA WEEKLY, (Dec. 11, 2006), <http://www.mmaweekly.com/ufc-buys-select-assets-as-wfa-ceases-operations-2>.

²⁵ Ray Hui, *The History of the WEC: A Timeline*, MMA FIGHTING (Oct. 28, 2010, 1:35 PM), <https://www.mmafighting.com/2010/10/28/the-history-of-the-wec-a-timeline>.

²⁶ John Buhl, *Report: Jamie Varner and Chris Horodecki Released by UFC*, PROMMANOW (Dec. 28, 2010), <http://prommanow.com/2010/12/28/report-jamie-varner-and-chris-horodecki-released-by-ufc/>.

²⁷ Steve Barry, *UFC & WEC to Merge in January 2011 (Update II: Jose Aldo Defends Title at UFC 125)*, MMA CONVERT (Oct. 28, 2010), <http://www.mmaconvert.com/2010/10/28/the-wec-will-merge-with-the-ufc-in-january-2011/>.

²⁸ Tim Burke, *Analyzing the UFC/WEC Merger After Eight Months, Part One*, SB NATION: BLOODY ELBOW (Aug 11, 2011, 2:37 PM), <http://www.bloodyelbow.com/2011/8/11/2356338/analyzing-the-ufc-wec-merger-after-eight-months>.

²⁹ *Done deal: UFC Owners Purchase Pride FC*, SB NATION: MMA MANIA, (Mar. 27, 2007, 7:40 AM), <https://www.mmamania.com/2007/03/27/done-deal-ufc-owners-purchase-pride-fc>.

³⁰ Rainer Lee, *PRIDE Before the Fall: A Look Back at Japan's Greatest MMA Organization*, SB NATION: BLOODY ELBOW, (Oct. 30, 2014, 10:00 AM), <http://www.bloodyelbow.com/2014/10/30/7101575/pride-before-the-fall-a-look-back-at-japans-greatest-mma-organization>.

league and ultimately have it compete with the UFC.³¹ Those aspirations may have existed but the rejuvenation of Pride never materialized and the league's fighters, as occurred with the WEC's and WFA's fighters, were eventually merged into the UFC roster or released.³²

Strikeforce, another competitive league in the United States was purchased by the UFC in 2011.³³ The league was to be operated separately as WEC did for the first few years post acquisition.³⁴ Within three years, and after a few botched events, the league folded and its fighters were again absorbed into the UFC, most notably UFC superstar Ronda Rousey.³⁵ Rhonda Rousey would grow to become one of the most accomplished fighters in the UFC and for a moment was referred to as "the world's most dominant athlete."³⁶

The common theme is apparent, the UFC buys out its competition. Although this not an inherently bad practice nor is it illegal, the fighters complain of the UFC's actions were not innocent. The antitrust complaint alleges the league executed a strategy to control all available talent, sponsors, venues and broadcasting to weaken and then eliminate competing promotions, leaving it with a monopoly.³⁷ The alternative view, of course, is that the UFC consolidated all the talent so that consumers could enjoy the most entertaining fights. Not surprising, fans recognize that the UFC simply produces the proverbial "better mousetrap," resulting in the demise of its competitors and the league's legal dominance.

III. ANTITRUST: MERITS OF ANTITRUST SUITS AGAINST ZUFFA, DIFFERENT SPORTS ENTITIES, AND OTHER INDUSTRIES

Competition is viewed as the driving force in creating superior products

³¹ *The SuperBowl of MMA: UFC vs. Pride Mega-Events*, MMAJUNKIE, (March 28, 2007, 11:54 PM), <http://mmajunkie.com/2007/03/the-superbowl-of-mma-ufc-vs-pride-mega-events>.

³² Kaz Nagatsuka, *UFC Hopes to Shake Up Japan Fight Scene*, THE JAPAN TIMES (Feb. 28, 2012), <http://www.japantimes.co.jp/sports/2012/02/28/sports/ufc-hopes-to-shake-up-japan-fight-scene/#.WIOXTbHMyRs>.

³³ *UFC Purchases Strikeforce; UFC Boss Says Organizations to Operate Independently*, MMA JUNKIE (Mar. 12, 2011, 10:30 PM), <http://mmajunkie.com/2011/03/ufc-purchases-strikeforce>.

³⁴ Damon Martin, *Ronda Rousey Officially Moving to the UFC; Strikeforce Will Fold After January Event*, MMA WEEKLY (Nov. 9, 2012), <http://www.mmaweekly.com/ronda-rousey-officially-moving-to-the-ufc-strikeforce-will-fold-after-january-event>.

³⁵ *Id.*

³⁶ Jon Wertheim, *The Unbreakable Ronda Rousey is the World's Most Dominant Athlete*, SPORTS ILLUSTRATED (May 12, 2015), <https://www.si.com/mma/2015/05/12/ronda-rousey-ufc-mma-fighter-armbar>.

³⁷ Complaint, *Le v. Zuffa, LLC*, 216 F. Supp. 3d 1154 (D. Nev. 2016).

and lowering costs for consumers.³⁸ Antitrust regulations, such as the Sherman Act, exist to ensure competition continues in the US economy.³⁹ Monopolies are believed to suppress competition and restrain trade, thus are prohibited by Section 2 of The Sherman Act.⁴⁰ The UFC is being accused of having such a monopoly.⁴¹

The UFC is not the first sports entity to come under the scrutiny of antitrust litigation.⁴² Sports have a long history of antitrust disputes.⁴³ Baseball holds the unique position of being exempt from antitrust laws.⁴⁴ Other professional sports leagues have hashed out their disputes through collective bargaining and litigation.⁴⁵ Sports leagues are basically joint ventures of teams agreeing to work together for the sake of competition to entertain fans.⁴⁶ Anytime there are large numbers of individuals working collectively, there is substantial potential for antitrust allegations.⁴⁷ The essential collusion of athletes, teams and leagues, as well as production and distribution channels, are all to be balanced with healthy competition.⁴⁸

The antitrust lawsuit pending against the UFC alleges a Section 2 violation of the Sherman Act which prohibits monopolies or attempts to monopolize any parts of trade or commerce.⁴⁹ The violation contains two conjunctive elements.⁵⁰ First, the entity has to acquire a monopoly and second, there must be the requisite intent to achieve and maintain that monopoly power.⁵¹ Achievements in enterprise leading to possible monopolies should not be stifled as long as the successes were achieved legally and do not result in a restraint of trade and competition. In other words, monopolies that occur due to the company's natural innovations and expansion resulting from creating a superior product are permitted.⁵² The

³⁸ *Antitrust and Labor Law Issues in Sports*, US LEGAL, <https://sportslaw.uslegal.com/antitrust-and-labor-law-issues-in-sports/> (last visited Nov. 17, 2017).

³⁹ *Id.*

⁴⁰ *Id.*

⁴¹ Jon Barr, *Fighters Claim UFC Restricts Earnings*, ESPN (Dec. 16, 2014), http://www.espn.com/mma/story/_/id/12037883/antitrust-lawsuit-filed-ufc-parent-company-claims-monopoly.

⁴² *See generally Antitrust and Labor Law Issues in Sports*, *supra* note 39.

⁴³ *Id.*

⁴⁴ *Id.*

⁴⁵ *Id.*

⁴⁶ SPORTS AND ANTITRUST LAW 1 (AM. BAR ASS'N 2014).

⁴⁷ *Id.*

⁴⁸ *Id.*

⁴⁹ 15 U.S.C. §2.

⁵⁰ *United States v. Grinnell Corp.*, 384 U.S. 563, 570–71 (1996).

⁵¹ *Id.*

⁵² *Id.*; *see also Antitrust and Labor Law Issues in Sports*, *supra* note 38.

second element of intent is often the most challenging for plaintiffs to prove, but courts have determined if the motivation is something more than competition on its merits, it may be a violation.⁵³ Once a plaintiff can establish the first two elements, he must still prove the antitrust violation caused injury to competition and specifically to the plaintiff.⁵⁴ To fend off the allegations, defendants must prove their actions were actually procompetitive or for legitimate business purposes.⁵⁵ The court then determines whether the defendant's actions unfairly destroy competition itself or just are aggressive tactics for profit.⁵⁶ Often judges engage in a balancing test of the procompetitive versus the anticompetitive effects of the alleged monopoly.⁵⁷

Applying these elements directly to the antitrust lawsuit against the UFC; the fighters must show the UFC has monopoly power of the MMA market and that the company intentionally acquired that monopoly by engaging in a strategy to destroy competition. Once the fighters prove those two things, then they must show that the UFC's strategy and monopoly caused the fighters' financial injury. To defend against these allegations, the UFC could try to say they do not have a monopoly but the better strategy is to claim the market dominance is the result of a better product and the concentration of talent is best for the sport. The following sections will assess the merits of the alleged antitrust practices committed by the UFC beginning with Part (i) in broadcasting, then Part (ii) with venues, and finally in Part (iii) with the talent.

A. Anticompetitive Strategy in Broadcasting

The UFC is accused of engaging in unfair practices by forcing broadcasting companies into exclusive deals in a strategy to restrict competing promotions' ability to reach consumers.⁵⁸ Broadcasting is often a highly competitive market for sports leagues.⁵⁹ The more promotions can get their product on the air, the more consumers can enjoy the sport.⁶⁰ This in turn incentivizes sponsors to pay more, creating more revenue for the leagues, teams, players, etc. and, ultimately, an even better product⁶¹

⁵³ *Aspen Skiing v. Aspen Highlands Skiing Corp.*, 472 U.S. 585, 602–04 (1985).

⁵⁴ SPORTS AND ANTITRUST LAW at 46.

⁵⁵ *Major League Baseball Props, Inc. v. Salvino, Inc.*, 542 F.3d 290, 317 (2d Cir. 2008).

⁵⁶ *Spectrum Sports, Inc. v. McQuillan*, 506 U.S. 447, 459 (1993).

⁵⁷ *Id.*

⁵⁸ *Le v. Zuffa, LLC*, 216 F. Supp. 3d 1154, 1161 (D. Nev. 2016).

⁵⁹ *Id.*

⁶⁰ See Anthony Crupi, *Sports Now Accounts for 37% of Broadcast TV Ad Spending*, ADAGE (Sept. 10, 2015), <http://adage.com/article/media/sports-account-37-percent-all-tv-ad-dollars/300310/>.

⁶¹ *Id.*

A similar dispute of broadcasting rights and an alleged restraint of trade can be found in the case of *United States Football League v. National Football League*.⁶² There the United States Football League (“USFL”) alleged that the NFL had obtained a monopoly power over television rights in violation of the Sherman Act.⁶³ The USFL claimed that because the NFL had exclusive deals with the principal television networks, it had essentially blocked out the USFL, not giving the league the ability to compete.⁶⁴ The court found in favor of NFL, stating the existence of NFL contracts with three networks was not sufficient to claim an antitrust violation.⁶⁵ The court also noted the failure of the USFL was due to its own deficient business dealings.⁶⁶ Despite this favorable ruling, the legislature would later carve out an antitrust exception for the professional football with the Sports Broadcasting Act⁶⁷ to allow for greater collusion amongst franchises without fear of violation antitrust regulation.⁶⁸

In considering the UFC, the promotion only broadcasts on Fox Networks and on PPV as well as streaming on its own UFC’s Fight Pass online.⁶⁹ Furthermore UFC’s top competitor, Bellator, is owned by Viacom.⁷⁰ Viacom is recognized as the fourth largest media conglomerate in the world.⁷¹ In today’s abundance of available broadcasting avenues, from the internet to cable and the existence of legitimate competition with Bellator, the assertion of a UFC monopoly in broadcasting is weak.

⁶² *United States Football League v. National Football League*, 842 F.2d 1335 (2d Cir 1988).

⁶³ *Id.*

⁶⁴ *Id.*

⁶⁵ *Id.* at 1354–55.

⁶⁶ *Id.* at 1350.

⁶⁷ 15 U.S.C. §§ 1291–1295.

⁶⁸ Jack Moore, *Throwback Thursday: The TV Deal that Created Modern Sports*, VICE SPORTS, (June 11, 2015, 2:38 PM), https://sports.vice.com/en_ca/article/throwback-thursday-the-tv-deal-that-created-modern-sports.

⁶⁹ Jed Meshew, *Morning Report: UFC Looking to Quadruple its TV Broadcasting Deal Up to \$450 Million Dollars*, MMA FIGHTING (Nov. 29, 2016, 8:00 AM), <http://www.mmafighting.com/2016/11/29/13773374/morning-report-ufc-looking-to-quadruple-its-tv-broadcasting-deal-up>.

⁷⁰ Kale Havervold, *Three of the Biggest Competitors of the UFC*, THE HISTORY LOCKER, <http://historylocker.com/three-of-the-biggest-competitors-to-the-ufc/> (last visited Nov. 17, 2017).

⁷¹ Adam Guillen Jr., *UFC Quick Quote: Bellator and its \$5 Billion Owner, Viacom can Afford to Pay Eddie Alvarez*, SB NATION: MMA MANIA, (Jan. 25, 2013, 12:19 PM) <http://www.mmamania.com/2013/1/25/3914504/bellator-5-billion-viacom-ufc-pay-eddie-alvarez-mma>.

B. Anticompetitive Strategy in Venues

The complaint also alleges the UFC has obtained and maintained its monopoly power through exclusive contracts with venues.⁷² For the plaintiff to have a successful claim under this theory of a Sherman Act violation, he must show first, the defendant's control over an essential facility; second, that the plaintiff cannot reasonably duplicate the facility; third, the rejection of use of the facility and, finally, the ability by the plaintiff to use said facility.⁷³ Similar allegations were made in *Hetch v. Pro-Football, Inc.*,⁷⁴ where promoters sought to bring a team from the American Football League to the stadium where the Washington Redskins home games were played.⁷⁵ The contract between the NFL and RFK Stadium excluded any other professional football team from using the site.⁷⁶ The court held "where facilities cannot practicably be duplicated by would-be competitors, those in possession of them must allow them to be shared on fair terms. It was considered an illegal restraint on trade to foreclose on the scarce facility."⁷⁷

This case can hardly foreclose on the UFC's exclusive venue agreements due to the unparalleled nature of the venues. The capacity necessary for a MMA promotion is far less than for NFL games. NFL stadiums average a capacity upwards of 69,000⁷⁸ whereas the UFC's arenas are sub 20,000.⁷⁹ The average attendance at UFC Pay Per View events are between 10,000 and 20,000⁸⁰ people, whereas NFL games' average attendance is 68,400.⁸¹ Professional football teams would have a much more difficult time finding equivalent venues and MMA promotions do not have the same fortuitous obstacle.

⁷² Complaint, *Le*, 216 F. Supp. 3d 1154.

⁷³ *MCI Commc'ns Corp. v. AT&T Co.*, 708 F.2d 1081, 1132 (7th Cir. 1983).

⁷⁴ *Hetch v. Pro-Football, Inc.*, 570 F.2d 982, 985 (D.C. Cir. 1977).

⁷⁵ *Hetch*, 570 F.2d at 982.

⁷⁶ *Id.* at 985.

⁷⁷ *Id.* at 992.

⁷⁸ Chris Chase, *Ranking the Best and Worst NFL Stadiums, from No. 1 (Lambeau) to 31 (Soldier)*, USA TODAY SPORTS (Oct. 16, 2015, 3:55 PM),

<http://ftw.usatoday.com/2015/10/best-worst-nfl-stadiums-capacity-rankings-lambeau-field-solder-field-size-super-bowls>.

⁷⁹ *Total Attendance*, TAPOLOGY, <http://www.tapology.com/search/mma-event-figures/total-attendance> (last visited Nov. 17, 2017).

⁸⁰ *Id.*

⁸¹ *NFL Sees Small Regular-Season Attendance Decline; Titans, Rams Down Sharply at Home*, SPORTS BUSINESS DAILY GLOBAL JOURNAL, (January 5, 2016),

<http://www.sportsbusinessdaily.com/Daily/Issues/2016/01/05/Research-and-Ratings/NFL-gate.aspx>.

C. Anticompetitive Strategy in Talent

The primary source of the alleged grievances in the antitrust complaint against the UFC is the treatment of its athletes, specifically fighter pay. Though the complaint alleges antitrust violations injured competing promotion companies, the plaintiffs who brought the suit were not those failed promotion companies but ex UFC fighters.⁸² They complain the UFC signed its fighters to one-sided, long term contracts to keep the them from competing in other leagues.⁸³ According to the fighters, if the UFC has all of the talent and the UFC refuses to work with other leagues, those leagues will undoubtedly fail.⁸⁴ This result creates a monopoly for the UFC so it can stifle competition and fighter pay.⁸⁵ Refusing to work with competitors is not an antitrust violation, but it can be.⁸⁶ The Supreme Court noted that “we have been very cautious in recognizing such exceptions, because of the uncertain virtue of forced sharing and the difficulty of identifying and remedying anticompetitive conduct by a single firm.”⁸⁷ The Court here acknowledged competing enterprises can refuse to work together in order to starve out its competitors.

This general notion that monopolists do not have to engage in business with would be competitors has been upheld numerous times in the courts, notably in *Morris Communications Corp. v. PGA Tour, Inc.*⁸⁸ Here the Professional Golfers’ Association of America (“PGA”) required journalists to delay publishing tournament scores.⁸⁹ A media company wanted to use those scores to generate more viewers and therefore additional revenue. However, the Eleventh Circuit rejected the unfair practice claim against the PGA.⁹⁰ Instead, it held that, as long as the actions were for legitimate business purposes and not to restrain trade, the media company was not able to freeride off the PGA’s effort to compile, produce and release their product as they saw fit.⁹¹

When the UFC signs fighters to long term deals, it would be difficult to say that the UFC’s intent was to eliminate competing promotions and not for

⁸² Barr, *supra* note 41.

⁸³ Complaint, *Le*, 216 F. Supp. 3d 1154.

⁸⁴ *Id.*

⁸⁵ *Id.*

⁸⁶ ANTITRUST LAW DEVELOPMENT 261–62 (AM. BAR ASS’N 2012).

⁸⁷ *Verizon Commc’ns, Inc. v. Law Offices of Curtis V. Trinko, LLP.*, 540 U.S. 398, 408 (2004).

⁸⁸ *Morris Communications Corp. v. PGA Tour, Inc.*, 364 F.3d 1288, 1298 (11th Cir. 2004)

⁸⁹ *Id.* at 1291.

⁹⁰ *Id.*

⁹¹ *Id.* at 1295–96.

its own procompetitive reasons. The UFC has many legitimate motives to sign all the talent to long-term contracts. For one, having all the best fighters under a single promotion allows that promotion to set those fighters against each other, without the difficulty of having two promotion companies work together. This was the issue causing the delay for the Mayweather-Pacquiao fight. Floyd Mayweather and Manny Pacquiao reigned as co-champions for nearly a decade before finally stepping in the ring as foes.⁹² The bout was highly anticipated by fans wanting to see the two best boxers compete, but due to promotional disputes the fight came years too late.⁹³

Another procompetitive incentive for the UFC to have fighters in long-term deals, is the ability to feel more comfortable making large monetary investments in promotion and marketing to build stars, such as Connor McGregor and Rhonda Rousey.⁹⁴ Because of those stars, the UFC has been able to expand further into the mainstream markets, thus creating more revenue for the UFC and presumptively its fighters.⁹⁵ If the UFC can prove the procompetitive nature of locking their fighters into contracts, where they were not able to compete in other leagues, they should be free from liability for antitrust violations.⁹⁶

The UFC used several clauses to control their stable of fighters, most notably the “retirement clause,” the “champions clause” and the “ancillary rights clause.”

⁹² See Martin Rogers, *Mayweather-Pacquiao Happening, but Fighters Years Past Primes*, USA TODAY (Feb 21, 2015, 7:19 PM), <http://www.usatoday.com/story/sports/2015/02/21/mayweather-pacquiao-boxing-vegas-mgm-grand-past-primes/23814065/> (Discussions of the Floyd Mayweather versus Manny Pacquiao match began in 2009 but it would take six years before the two would face each other in 2015 due to promotional disputes between the two).

⁹³ *Id.*

⁹⁴ See Patrick Wyman, *How the Ufc Made Ronda Rousey and Conor Mcgregor Stars*, BLEACHER REPORT (Nov. 12, 2015), <http://bleacherreport.com/articles/2587824-how-the-ufc-made-ronda-rousey-and-conor-mcgregor-stars> (Conor McGregor and Rhonda Rousey eclipsed the sport of MMA. Both athletes’ popularity grew beyond the UFC; being featured in movies and fashion magazines); see also Alastair Campbell, *Conor McGregor: ‘I’m Going for Multi-Multi-Millions,’* GQ MAGAZINE (Dec. 14, 2015), <http://www.gq-magazine.co.uk/article/conor-mcgregor-interview>; *Ronda Rousey Joins the Lifetime Network with Three Movie Deal*, FOX SPORTS (Apr. 27, 2016, 1:20 PM), <http://www.foxsports.com/ufc/story/ufc-ronda-rousey-joins-the-lifetime-network-with-three-movie-deal-042716>.

⁹⁵ Wyman, *supra* note 94; see also Campbell, *supra* note 94; Matt Fitzgerald, *Ronda Rousey's Triumph in 1st Female Main Event Expands Ufc's Audience*, BLEACHER REPORT (Feb. 28, 2013), <http://bleacherreport.com/articles/1548074-ronda-rouseys-triumph-in-first-female-main-event-expands-ufcs-audience>; *Ronda Rousey Joins the Lifetime Network with Three Movie Deal*, *supra* note 94.

⁹⁶ See *Antitrust Labor Law Issues in Sports*, *supra* note 38.

The retirement clause states:

“If at any time during the Term, Fighter decides to retire from mixed martial arts or other professional fighting competition,” the clause begins, “then ZUFFA may, at its election, (i) suspend the Term for the period of such retirement; (ii) declare that ZUFFA has satisfied its obligation to promote all future Bouts to be promoted by ZUFFA hereunder, without any compensation due to Fighter therefore; or (iii) elect to provide Fighter with notice of an Acceleration.”⁹⁷

This clause gives the UFC three options in its contractual obligations to athletes when the athlete retires.⁹⁸ Clause (i) allows the UFC to suspend the contract, owning the rights to the fighter in perpetuity.⁹⁹ Therefore, should the fighter come out of retirement, he cannot just go join another league. Clause (ii) allows the UFC to consider fights offered while in retirement as satisfying their contractual obligations.¹⁰⁰ And clause (iii) gives the UFC the ability to accelerate and end the contract, therefore releasing the UFC and the fighter from any obligation.¹⁰¹

The champions clause states:

“If, at the expiration of the Term, Fighter is then a UFC champion, the Term shall automatically be extended for the period commencing on the Termination Date and ending on the later of (i) one (1) year from the Termination Date; or (ii) the date on which Fighter has participated in three (3) bouts promoted by ZUFFA, regardless of weight class or title, following the Termination Date (“Extension Term”).”¹⁰²

This clause gives the UFC the power to extend an athlete’s contract for one year after winning a championship or for three more fights, whichever comes first. It is not apparent what happens if the champion keeps winning.¹⁰³ At least one commentator has even suggested a possible 13th Amendment violation, comparing it to involuntary servitude.¹⁰⁴ Allowing the UFC to control a fighter after he becomes champion; advantages the promotion and fans for the following reasons.

First, the fighter will not be able to bring his championship status and

⁹⁷ Adam Swift, *Inside the Standard Zuffa Contract*, SHERDOG (Oct 31, 2007), <http://www.sherdog.com/news/articles/Inside-the-Standard-Zuffa-Contract-9734>.

⁹⁸ *Id.*

⁹⁹ *Id.*

¹⁰⁰ *Id.*

¹⁰¹ *Id.*

¹⁰² Snowden, *supra* note 5.

¹⁰³ *Id.*

¹⁰⁴ *Id.*

fame to another league.¹⁰⁵ This incentivizes the UFC to build more promotional value behind that specific fighter, without fear of losing out on its investment. Secondly, if the UFC cannot control the champion, not only would this monetarily dissuade the UFC from building stars, it would complicate divisions with vacant titles and substitute champions. Each division must have a champion and if one leaves, then the contending athletes cannot compete to become the “true champion.” Situations like this occur when a fighter moves up in weight or cannot defend his title due to injury and retains champion status, while other compete to become interim champions.¹⁰⁶ Too many champions leads to confusion for fans and dilutes the glory of being a champion. Similar effects have already occurred in boxing, caused by multiple governing bodies awarding numerous championship belts and causing decline in viewership.¹⁰⁷

Finally, the Ancillary Rights Clause grants the UFC the exclusive rights to the athlete’s identity as a UFC fighter. The UFC would argue that the promotion makes the fighters into an entity, a character so to speak, which the UFC in turn would like to profit from and it alone. It makes sense to not want to put massive amounts of money behind a fighter, building up his brand, only to have him then go to a competing league and use all the fame to drive the successes of other leagues. The UFC’s general counsel Lawrence Epstein stated the following in the defense of this clause, “We’re trying to capture the rights that can emanate from the fighter’s participation in our event. The video that we capture of the pre-event, the post-event, the event itself—we want to be able to exploit that in any way we possibly can. At the end of the day, that’s the only real asset that the UFC has.”¹⁰⁸

¹⁰⁵ Snowden, *supra* note 5.

¹⁰⁶ Matt Erickson, Abbey Subhan & Justin Park, *To Interim, or not to Interim? That is the Question, and UFC Fighters are Torn*, MMA JUNKIE (Apr. 22, 2016 1:45 PM), <http://mmajunkie.com/2016/04/to-interim-or-not-to-interim-that-is-the-question-and-ufc-fighters-are-torn>.

¹⁰⁷See *What if Boxing had one Champion for Every Weight Division?*, THE GUARDIAN (Oct. 15, 2013 6:46 AM), <https://www.theguardian.com/sport/queensberry-rules-boxing-blog/2013/oct/15/boxing-one-champion-every-weight> (The heavyweight champion was one of the most revered titles in all of sports but due to splintering of the organizations and additions of titles it is difficult for the title to carry the same accolade. In mid-2017, when this paper was written, there were three different Heavy Weight Champions in the four major organizations, WBA, WBO, WBC, and IBF. The WBA championship is vacant. Pound for pound champion Floyd Mayweather said “Boxing is tainted. There are too many belts, too many champions.” There are 17 weight classes in boxing and 35 champions); see generally Bill Cromwell, *Five Sports on the Decline with Viewers*, MEDIALIFE MAGAZINE (Mar. 28, 2016), <http://www.medialifemagazine.com/five-sports-that-are-on-the-decline-with-viewers>.

¹⁰⁸ *Id.*

i. Hollywood's Control Over Talent During the Golden Era

Hollywood studios made a similar argument during Hollywood's Golden Era in which the studios practiced the same control over their talent to generate more revenue.¹⁰⁹ In the 1930's and 40's the entire film industry was run by the five major studios.¹¹⁰ The actors themselves were controlled under the contract system, where they were compelled into long term contracts, (usually seven years) at the very beginning of their careers, prior to knowing their worth.¹¹¹ The contracts could and would be extended for numerous reasons, such as when the actors turned down a role if they felt it inappropriate for their skill level.¹¹² Even if the actors were unable to work for a period of time due to illness, the contract could be extended.¹¹³ The actors were not allowed to work with other studios while under contract, if they thought they could possibly make more money or they preferred a particular role.¹¹⁴ The actors could be loaned out to competing studios, but the actors would receive no additional compensation and were not at liberty to refuse.¹¹⁵ If the actor protested, the actor's contract would be suspended without pay, until agreeing to work again.¹¹⁶

Hollywood's chokehold on its talent inevitably came to end with *De Haviland v. Warner Bros. Pictures*.¹¹⁷ In this case, the studio exercised a number of the previously mentioned unsavory practices, such as loaning the actress to other studios, under using her talent, and suspending and extending her contract.¹¹⁸ On the advice of her agent and lawyer, she filed suit and, surprising many, she won.¹¹⁹ As a result of this decision, actors and actresses were able to work freely at any studio that suited them, whether that be for monetary reasons or for preferred roles.¹²⁰ This case would seem to be favorable to the athletes bringing suit against the UFC. The fighters believe that if they could move freely amongst leagues their value would increase. Sadly, their theory is flawed.

¹⁰⁹ Alex Ben Block et al., *George Lucas's Blockbusting: A Decade-by-Decade Survey of Timeless Movies Including Untold Secrets of Their Financial and Cultural Success* 248 (1st ed. 2010).

¹¹⁰ *Id.* at 144.

¹¹¹ Carol Robertson, *The Little Book of Movie Law* 95–96 (1st ed. 2012).

¹¹² *Id.* at 97

¹¹³ *De Haviland v. Warner Bros. Pictures*, 153 P.2d 983, 984 (Cal. Ct. App. 1944).

¹¹⁴ Robertson, *supra* note 111, at 96.

¹¹⁵ *Id.*

¹¹⁶ *Id.*

¹¹⁷ *De Haviland*, 153 P.2d at 983.

¹¹⁸ Robertson, *supra* note 111, at 100-01.

¹¹⁹ *De Haviland*, 153 P.2d at 983.

¹²⁰ Robertson, *supra* note 111, at 108.

IV. ANTITRUST IN THE UFC IS DISTINCT FROM OTHER SPORTS AND INDUSTRIES AND FOR GOOD REASON

The analogy previously presented of the UFC being to MMA, what the NFL is to football is not perfect because the NFL consists of teams of players, and the UFC consists of individual athletes. This distinction is an important one because one of the most litigated areas of antitrust issues in sports is the non-statutory labor exemption.¹²¹ It is Congress's intention that judicial intervention not be the immediate resolution for all labor disputes.¹²² It is the preferred federal labor policy that such disputes be resolved through collective bargaining and economic pressures.¹²³ Leagues such as the National Football League, Major League Baseball, National Basketball Association, and the National Hockey League all have player unions that lobby for the interests of the athletes. The judiciary will do its best to avoid interfering with deals created between players' unions and their leagues, but it does happen.¹²⁴ Attempts to unionize fighters have been under way for years but have failed to materialize.¹²⁵ The UFC's president, Dana White, mocked the unions for battling amongst each themselves¹²⁶ and called into question the unions' leadership and motivations in creating such unions.¹²⁷ He is quoted saying, "as a fighter there's a lot of people that are trying to put their hand in your pocket. Be careful whose hand you let go in your pocket."¹²⁸ Nevertheless, because fighters currently have no legitimate union, it is not necessary to examine the non-statutory labor exemption when it comes to the UFC and MMA.¹²⁹

Since the collective bargaining examination does not apply, because the UFC consists of nonunion individual athletes and the league does not consist of teams, a more appropriate comparison again comes from Hollywood. During the same period of the aforementioned contract system, those same

¹²¹ SPORTS AND ANTITRUST LAW at 6.

¹²² *Brown v. Pro Football, Inc.*, 518 U.S. 231, 236 (1996).

¹²³ *Id.*

¹²⁴ See *Antitrust Labor Law Issues in Sports*, *supra* note 38.

¹²⁵ *Id.*

¹²⁶ Steven Marrocco, *Anti-trust Attorneys Issue Cease-and-Desist to MMA, Which Counters it 'Will Do No Such Thing'*, MMA JUNKIE (Dec. 7, 2016, 5:45 PM), <http://mmajunkie.com/2016/12/anti-trust-attorneys-issue-cease-and-desist-to-mmaa-which-counters-it-will-do-no-such-thing>.

¹²⁷ Mike Bohn, *Dana White: In-fighting Between MMA Association and Union Groups is 'Hilarious'*, MMA JUNKIE (Dec. 9, 2016, 4:45 PM), <http://mmajunkie.com/2016/12/dana-white-in-fighting-between-mma-association-and-union-groups-is-hilarious>.

¹²⁸ *Id.*

¹²⁹ *Id.*

studios were exercising monopoly power over the entire industry.¹³⁰ The “block-booking” tactic was the greatest source of controversy practiced by the monopolist studios.¹³¹ “Block-booking,” was the studio refusing to sell a movie individually to a theater, but rather would require the theater to purchase a block of movies.¹³² This was advantageous to the studios because it allowed for one good movie to carry the profits for the rest of films in the block.¹³³

These major studios felt the pressures of the new Franklin D. Roosevelt administration and knew their monopoly power and predatory practices would be short lived.¹³⁴ The film industry made the same monetary pleas as the UFC’s Lawrence Epstein did above, stating their practices were essential and the business would not be economically viable without them.¹³⁵ But in 1945 the Department of Justice (“DOJ”) brought suit against the studios for violations of Section 2 of the Sherman Act.¹³⁶ The suit reached the Supreme Court in *United States v. Paramount Pictures*¹³⁷ and ruled in favor of the DOJ, citing the many ways in which the studios violated antitrust laws.¹³⁸ The block-booking maneuver was key to the government’s argument. The Court determined a film should be judged on its own merits, and the practice would suppress the quality of films and entertainment as a whole.¹³⁹

In *De Haviland*, the actors and actresses wanted to be free to work with competing studios.¹⁴⁰ In *Paramount*, the DOJ was dissatisfied with studios working collectively; suppressing the quality of films.¹⁴¹ Because of the decisions in *Paramount* and *De Haviland*, the major studios were stripped of much of their power and many independent producers emerged.¹⁴² These cases are useful in considering the alleged antitrust violations of the UFC and the results that may come if the lawsuit is successful.

Should the UFC lose the antitrust lawsuit, the consequences for fighters

¹³⁰ Robertson, *supra* note 111, at 111.

¹³¹ *Id.* at 111.

¹³² *Id.* at 112–13.

¹³³ *Id.* at 113.

¹³⁴ Lucas, *supra* note 109, at 248.

¹³⁵ *Id.*

¹³⁶ Robertson, *supra* note 111, at 114.

¹³⁷ *United States v. Paramount Pictures*, 334 U.S. 131, 178 (1948).

¹³⁸ Robertson, *supra* note 111, at 114.

¹³⁹ *Id.*

¹⁴⁰ *De Haviland v. Warner Bros. Pictures*, 153 P.2d 983, 988 (Cal. Ct. App. 1944); *see generally Paramount Pictures*, 334 U.S. at 131.

¹⁴¹ *Paramount Pictures*, 334 U.S. at 158.

¹⁴² Robertson, *supra* note 111, at 121; *see also Paramount Pictures*, 334 U.S. at 131; *De Haviland*, 153 P.2d at 983.

would differ from Hollywood's talent. MMA athletes want to compete in the UFC and if they are a good MMA fighter, "it's the UFC or nothing."¹⁴³ All the premier athletes fight in the UFC, so there is no issue of quality and it is the only league an athlete can hope to make substantial income.¹⁴⁴ Divesting the UFC of their concentrated control would damage the product. In boxing, the power is vastly splintered with numerous regulatory bodies creating dozens of championship belts in each weight class, frustrating even the most loyal fan.¹⁴⁵ Boxing's numerous promoters also add to the vexation. The stale Mayweather-Pacquiao fight situation¹⁴⁶ would never occur in the UFC because the UFC is responsive to what fans want.¹⁴⁷ These promotional battles plague boxing.¹⁴⁸ The UFC holds a great advantage in having absolute control over all the athletes and promotional aspects. The UFC can make the fights fans want. Should the antitrust lawsuit succeed, the UFC's absolute authority would no longer exist. Competing athletes of the UFC desire more money, they want a bigger percentage of the league's income, but they must realize that the athletes' income is tied to the successes of the only legitimate MMA league, the UFC.

V. PROPOSED LEGISLATION IN THE MUHAMMAD ALI EXPANSION ACT

The Muhammad Ali Expansion Act¹⁴⁹ is another proposed solution to many of the athletes' grievances.¹⁵⁰ H.R. 5365 was introduced into the house

¹⁴³ Complaint, *Le v. Zuffa, LLC*, 216 F. Supp. 3d (D. Nev. 2016).

¹⁴⁴ *Lineup MMA: US Congressman Markwayne Mullin, Former Bellator and MI matchmaker Sam Caplan, and the Muhammad Ali Boxing Reform Act*, PODBAY.FM (at minutes 34–36:30), <http://podbay.fm/show/972433653/e/1461600204?autostart=1>.

¹⁴⁵ *What if Boxing Had One Champion for Every Weight Division?*, *supra* note 107.

¹⁴⁶ Martin Rogers, *Mayweather-Pacquiao Happening, but Fighters Years Past Primes*, USA TODAY (Feb 21, 2015, 7:19 PM), <http://www.usatoday.com/story/sports/2015/02/21/mayweather-pacquiao-boxing-vegas-mgm-grand-past-primes/23814065/>; *see also* Levi Nile, *MMA: The Role of Promoters, Managers and Trainers in the Sport*, BLEACHER REPORT (May 20, 2013), <http://bleacherreport.com/articles/1644149-mma-the-role-of-promoters-managers-trainers-in-the-sport>.

¹⁴⁷ Brent Brookhouse, *Dana White Talks Mayweather vs. Pacquiao, Jon Jones and 'Giving Fans the Fights They Want' on ESPN First Take*, SB NATION: BLOODY ELBOW (April 23, 2014, 4:00 PM), <http://www.bloodyelbow.com/2014/4/23/5643670/dana-white-talks-mayweather-vs-pacquiao-jon-jones-and-giving-fans-the>; <http://bleacherreport.com/articles/1644149-mma-the-role-of-promoters-managers-trainers-in-the-sport>.

¹⁴⁸ Steven Muelhlhausen, *Will Canelo vs. GGG Ever Happen? Only the Fighters and Promoters Know*, SPORTING NEWS (Sept. 18, 2016), <http://www.sportingnews.com/mma/news/boxing-canelo-alvarez-ggg-gennady-golovkin-liam-smith-title-fight/zcd8vnt9bnwv1d5yxs17xfnc6>.

¹⁴⁹ Muhammad Ali Expansion Act, H.R. 5365, 114th Cong. (2016).

¹⁵⁰ Brett Okamoto, *Ali Act Amendment Could Expand Federal Law's Coverage to MMA*,

in March of 2016.¹⁵¹ The legislation would take protections afforded to boxers and expand them to many other combat sports, including MMA.¹⁵² For athletes the greatest contention to expand the bill are the financial protections the regulation is meant to provide.¹⁵³ It is helpful to evaluate the effects of the legislation on boxers and how it failed to accomplish its goals. By doing this, it gives insight of how it will fail to protect MMA athletes as they hope. The following sections will discuss the pertinent provisions of the proposed bill.

A. Coercive Contract Provision

Section 6307(b) of the Muhammad Ali Act protects fighters against coercive contracts by making them unenforceable.¹⁵⁴ Coercive contracts are of course already unenforceable under common law. The legislation goes on to define the coercive contracts provisions often used to take advantage of boxers in order to make them readily identifiable. A coercive contract is described in this section as a contract that grants a boxer's rights to a promoter when that boxer is either already under contract to another promoter or grants those rights to the promoter for longer than 12 months. If the granting of those rights is a condition precedent to the participation in a professional boxing match, it will be considered coercive.¹⁵⁵

This section of the legislation emerged in response to a situation that arose in the mid-nineties involving Mike Tyson, Evander Holyfield, and Don King.¹⁵⁶ Then heavyweight champion Mike Tyson was promoted by Don King and Holyfield wished to challenge Mike Tyson for the belt.¹⁵⁷ In order for Holyfield to be granted the fight, he was forced to sign with Don King as his promoter even though he already had one.¹⁵⁸ This arrangement would be

ESPN (May 19, 2016), http://www.espn.com/mma/story/_/id/15589773/bill-aims-expand-muhammad-ali-boxing-reform-act-mma.

¹⁵¹ The act was originally the Professional Boxing Safety Act of 1996 and was amended in 2000 to further protect boxers financially. Muhammad Ali Expansion Act, H.R. 5365, 114th Cong. (2016); see also Geoff Varney, *Fighting for Respect: MMA's Struggle for Acceptance and How the Muhammad Ali Act Would Give it a Sporting Chance*, 112 W. VA. L. REV. 269, 287 (2009).

¹⁵² Muhammad Ali Expansion Act, H.R. 5365, 114th Cong. (2016); Varney, *supra* note 155, at 287.

¹⁵³ Erik Magraken, *Let's Draft MMA's "Muhammad Ali" Act*, COMBAT SPORTS LAW (Apr. 27, 2016), <https://combatsportslaw.com/2016/04/27/lets-draft-mmas-muhammad-ali-act/>.

¹⁵⁴ 15 U.S.C. § 6307(b) (2015).

¹⁵⁵ 15 U.S.C. § 6307(b)(a)(1)(ii).

¹⁵⁶ Varney, *supra* note 155, at 290.

¹⁵⁷ *Id.*

¹⁵⁸ *Id.*

unenforceable under the Muhammad Ali Act.¹⁵⁹

The following examples prove how the coercive contract clause has been substantially legally ineffectual in boxing. The first example presents how courts ignore clear violations of the law. The second exposes the lack of redressability a court can provide, when there is a clear violation due the monetary and time limitations of fighters.

In *Lewis v Rahman*¹⁶⁰, Hussein Rahman, a then-contender who had suffered recent losses,¹⁶¹ signed to fight the heavyweight champion, Lennox Lewis.¹⁶² Rahman was forced to sign a provision requiring him to fight in a rematch under Lewis's promoter should the champion, Lewis, lose their first bout.¹⁶³ The deal also required that if Rahman chose to fight prior to their rematch and lost, the opponent would be under Lewis's promoter as well.¹⁶⁴ Not surprisingly, however, when Rahman pulled off the upset win, he was not eager for the rematch and instead wanted to fight an interim bout against another opponent.¹⁶⁵ Lewis demanded an immediate rematch and sued for injunctive relief and breach of contract.¹⁶⁶ Rahman challenged the enforceability of the contract, citing the provisions above as violations under the Muhammad Ali Act¹⁶⁷ prohibiting coercive contracts.¹⁶⁸ The court, persuaded by the aging fallen champ and his endearing pleas to recover his title before retirement, ruled in favor of Lewis, ignoring the violations.¹⁶⁹

The other example revealing the ineffectiveness of the prohibited coercive contract provision occurred when Bermane Stiverne sued Don King.¹⁷⁰ Stiverne had recently beaten Ray Austin in the World Boxing Council's ("WBC") title eliminator to become the number one contender.¹⁷¹ Ray Austin was under Don King's promotion.¹⁷² Prior to fighting Austin,

¹⁵⁹ *Id.*

¹⁶⁰ *Lewis v. Rahman*, 147 F. Supp. 2d 225, 227 (S.D.N.Y. 2001).

¹⁶¹ *Hasim Rahman*, BOXREC, <http://boxrec.com/boxer/6070> (last visited Nov. 17, 2017).

¹⁶² *See Lewis*, 147 F. Supp. at 225.

¹⁶³ *Id.* at 229–30.

¹⁶⁴ *Id.*

¹⁶⁵ *Id.* at 233.

¹⁶⁶ *Id.* at 225.

¹⁶⁷ 15 U.S.C. § 6307.

¹⁶⁸ *Lewis*, 147 F. Supp. 2d at 225, 234.

¹⁶⁹ *See Id.* at 225 (The court was persuaded by Lewis's argument that he was an aging fighter and should have a chance to win back his belt before he was too old. This is an example of the regulation not being effective even when litigated through the courts).

¹⁷⁰ *Stiverne v. Don King*, No. 13-CV-7767, 2013 WL 6980844, at *1 (S.D.N.Y. Nov. 18, 2013); Cruz, *supra* note 10.

¹⁷¹ *Stiverne*, 2013 WL 6980844, at *1.

¹⁷² *Id.*

Stiverne was forced to sign an exclusive promotion agreement with King.¹⁷³ After beating Austin, Stiverne wanted to fight Vitali Klitschko for the heavyweight title and foresaw King's interference with the deal.¹⁷⁴ Stiverne sued, claiming he had been coerced into an exclusionary contract with Don King Promotions.¹⁷⁵ He sought a preliminary injunction.¹⁷⁶ Don King fired back with numerous claims against Stiverne and his manager, including breach of contract and tortious inference.¹⁷⁷ Stiverne's request for a preliminary injunction was denied and subsequently he dismissed his case.¹⁷⁸

This is an all-too common story; fighters have neither the time nor the money to battle drawn out litigation when their careers are so short lived. In contrast, the pockets of promoters are often much deeper, their time frame much longer, and they are generally more powerful.¹⁷⁹ If the regulations were to be expanded to MMA, the promoters would still be able to draft contracts with these provisions and continue to require fighters sign them. Promoters might not be able to enforce them in the unlikely event the fighter can afford both the time and money to sue. This is likely a gamble many promoters would take. In other words, unless and until courts invalidate these provisions, unscrupulous promoters can continue to try to take advantage of fighters. Absent a proper interpretation and enforcement, such provisions are no protection.

In the event the legislation is expanded and properly enforced this provision would greatly affect MMA, specifically the UFC. Anytime fighters were nearing the end of their contracts and wanted to sign for another fight, the UFC would not be able to enforce a new contract for greater than 12 months, should it be signed as a condition precedent to that fight happening. The aforementioned championship and retirement clauses would be limited by this provision as well. This provision of the proposed regulation would be beneficial to the high-profile athletes because it allows them to renegotiate more regularly and, in theory, increase their market share.¹⁸⁰ On the other hand, it may hurt the fighters just starting out who would prefer long-term

¹⁷³ *Id.*

¹⁷⁴ *Id.*

¹⁷⁵ *Id.*

¹⁷⁶ *Stiverne*, 2013 WL 6980844, at *1.

¹⁷⁷ David P. Greisman, *Report: Stiverne and Don King Settle Ali Act Lawsuit*, BOXING SCENE (Dec. 19, 2013, 3:47 AM), <http://www.boxingscene.com/report-stiverne-don-king-settle-ali-act-lawsuit--72912>.

¹⁷⁸ Cruz, *supra* note 10.

¹⁷⁹ *Id.*

¹⁸⁰ Jordan Breen, *Opinion: The Good, the Bad and the Ugly of the Ali Expansion Act*, SHERDOG (Jun. 2, 2016), <http://www.sherdog.com/news/articles/Opinion-The-Good-the-Bad-and-the-Ugly-of-the-Ali-Expansion-Act-105809#fYpXirvoik9RYRB3.99>.

deals.¹⁸¹ This is especially true in an industry rife with injuries causing extended periods of inactivity.¹⁸²

B. Manager Promoter Firewall Provision

Section eight of the Muhammad Ali Act provides for a firewall between managers and promoters for specific types of fighters.¹⁸³ It makes it illegal for a promoter to have any financial interest in the management of a boxer or for a manager to have any financial interests in the promotion of a boxer. The provision's application is limited to boxers fighting ten rounds or more.¹⁸⁴ The purpose of this provision was to make sure a fighter's manager and promoter are working independently for the benefit of the fighter and avoid any self-dealing.

This provision has also, for the most part, been toothless in boxing. Alan Haymon, one of boxing most prominent managers,¹⁸⁵ emerged on the boxing scene in 2015 with a new promotion company, Premier Boxing Championship ('PBC').¹⁸⁶ PBC is technically not Haymon's promotion, as he is not a promoter but a manager, and that would no doubt be a violation of the Muhammad Ali Act.¹⁸⁷ Nonetheless, PBC is owned by Haymon Sports, LLC.¹⁸⁸ Haymon manages over 200 fighters, most if not all who also fight on PBC promotions, but Haymon claims he is nothing more than an advisor for PBC.¹⁸⁹ Most anyone can see through this thinly veiled attempt to skirt the Muhammad Ali Act, but when sued for using "sham promoters" he has so far been untouchable.¹⁹⁰

¹⁸¹ *Id.*

¹⁸² *Id.*

¹⁸³ 15 U.S.C. § 6308.

¹⁸⁴ 15 U.S.C. § 6308(b).

¹⁸⁵ Greg Bishop, *Behind the Scenes, Haymon is Shaking Up the Fight Game*, N.Y. TIMES (Dec. 17, 2011), http://www.nytimes.com/2011/12/18/sports/behind-the-scenes-haymon-is-shaking-up-the-fight-game.html?_r=1&pagewanted=all.

¹⁸⁶ Lem Satterfield, *About*, PREMIER BOXING CHAMPIONS, <http://www.premierboxingchampions.com/about> (last visited Nov. 17, 2017).

¹⁸⁷ Zach Arnold, *For the First Time, Al Hayman Admits He's a Boxing Manager (In court) & Here are His Past Contract Details*, FIGHT OPINION (Nov. 10, 2016), <http://www.fightopinion.com/2016/11/10/al-haymon-admits-boxing-manager-federal-court-contract/>.

¹⁸⁸ *About*, *supra* note 197.

¹⁸⁹ Bishop, *supra* note 196.

¹⁹⁰ *Golden Boy Promotions LLC v. Haymon*, CV15-3378-JFW(MRWx), 2017 WL 460736, at *1 (C.D. Cal. Jan. 26, 2017); *see also Top Rank, Inc. v. Haymon*, CV15-4961-JFW(MRWx), 2015 WL 9948936 (C.D. Cal. Oct. 16, 2015); Mike Coppinger, *Golden Boy Promotions' Antitrust Lawsuit Against PBC Creator Al Haymon Dismissed by Judge*, BOXING JUNKIE: USA TODAY SPORTS (Jan. 26, 2017, 10:27 PM), <http://boxingjunkie.usatoday.com/2017/01/26/golden-boy-promotions-antitrust-lawsuit->

Another defect of this provision is that it only applies to fighters fighting ten rounds or more.¹⁹¹ Boxing matches can range from four to twelve rounds.¹⁹² Four rounders will be for the novice fighters just entering professional boxing while the twelve rounders are reserved for championship bouts.¹⁹³ The limited application means it does not protect the most vulnerable fighters. Those who are involved in bouts of 10 rounds or more, are probably well established and, thus, in a better position to protect themselves.¹⁹⁴

The legislation is altered in its application to MMA as to include all fighters. MMA bouts are usually three five-minute rounds, unless it is a championship, which are five five-minute rounds.¹⁹⁵ The proposed legislation would apply to “mixed martial arts competition or other combat sport competition scheduled for 11 minutes or more.”¹⁹⁶ This will apply the firewall provision to all MMA fighters, promoters, and managers. Ignore the implications for the UFC if any, because UFC does not manage fighters, they promote MMA events.¹⁹⁷ Though it could be argued the UFC controls fighters similar to managers.¹⁹⁸

The greatest impact may be felt by local MMA promotions.¹⁹⁹ Most MMA fighters do not start in the UFC; they start by fighting at local and regional events. Very often the promoter of those local shows also owns a gym, whose fighters will typically fill the card of the promoter’s show.²⁰⁰ The promoter’s job is to sell tickets. Promoters do this by getting local fighters on the fight card. Local fighters are better able to sell tickets, by bringing family and friends. Often that promoter is also a gym owner and will act as a manager for those same unaccomplished fighters.²⁰¹ This provision would prohibit this structure, causing local and small promotions to dwindle into

against-pbc-creator-al-haymon-dismissed-by-judge/.

¹⁹¹ 15 U.S.C. § 6308(b)(2)(B).

¹⁹² *What are the rules of a boxing match?*, THE TELEGRAPH, (Aug. 26, 2017, 4:31 PM), <http://www.telegraph.co.uk/boxing/0/rules-boxing-match1/>.

¹⁹³ *Id.*

¹⁹⁴ Cristina E. Groschel, *Down for the Count: The Muhammad Ali Boxing Reform Act and its Shortcomings*, 26 NOVA L. REV. 927, 942 (2002).

¹⁹⁵ *Rules and Regulations*, UFC, <http://www.ufc.com/discover/sport/rules-and-regulations> (last visited Nov. 17, 2017).

¹⁹⁶ Muhammad Ali Expansion Act, H.R. 5365, 114th Cong. (2016).

¹⁹⁷ Nile, *supra* note 153.

¹⁹⁸ *Id.*

¹⁹⁹ *Lineup MMA: US Congressman Markwayne Mullin, Former Bellator and M1 Matchmaker Sam Caplan, and the Muhammad Ali Boxing Reform Act*, PODBAY.FM (at minute 48:33), <http://podbay.fm/show/972433653/e/1461600204?autostart=1>.

²⁰⁰ *Id.*

²⁰¹ *Id.*

extinction.²⁰² This will significantly weaken the talent base of MMA athletes for the UFC to scout from, adversely affecting the sport.²⁰³

C. Financial Disclosure Provision

The Muhammad Ali Act also contains a financial disclosure provision which states that the promoter shall not receive any compensation until he provides the fighter with

“(1) the amounts of any compensation or consideration that a promoter has contracted to receive from such match; (2) all fees, charges, and expenses that will be assessed by or through the promoter on the boxer pertaining to the event, including any portion of the boxer’s purse that the promoter will receive, and training expenses; and (3) any reduction in a boxer’s purse contrary to a previous agreement between the promoter and the boxer or a purse bid held for the event.”²⁰⁴

This provision has been the subject of much litigation in boxing. For instance, gold medalist Olympian and current light heavyweight champion, Andre Ward, brought suit against his promoter in 2014 for such a violation.²⁰⁵ The lawsuit was preceded by two arbitration disputes between fighter and promoter, both decided in favor of the promoter.²⁰⁶ Presumably because Ward was unhappy with the arbitration results, he sued and was eventually released to fight with another promoter.²⁰⁷ Whether this violation was the source of Ward’s grievance or just something he could use against the promoter to get out of his promotion deal, he ended up all but falling out of the ranks, fighting only three times in thirty-six months due to the dispute.²⁰⁸ The time and expense of litigation make these solutions impractical to most fighters.²⁰⁹

Not only are the legal avenues of resolution impractical for fighters, the actual logistics of disclosing the financials to fighters can be an unworkable

²⁰² *Id.*

²⁰³ *Id.*

²⁰⁴ 15 U.S.C. § 6307e.

²⁰⁵ *Complaint, Ward v. Estate of Goossen*, No. 14 CV03510, 2014 WL 7691380 (N.D. Cal. Dec. 22, 2014).

²⁰⁶ Cruz, *supra* note 10.

²⁰⁷ *Id.*

²⁰⁸ Josh Katzowitz, *Andre Ward Doesn't Regret Past Promotional Problems Despite Loss of Million Dollar Purses*, FORBES (Nov. 18, 2016, 8:54 AM), <http://www.forbes.com/sites/joshkatzowitz/2016/11/18/andre-ward-doesnt-regret-past-promotional-problems-despite-loss-of-million-dollar-purses/#1ab414063b6c>.

²⁰⁹ Cruz, *supra* note 10.

task for a promoter. Promoters make a great deal of their income from pay per view and ticket sales at the gate, and it can take months to determine these numbers.²¹⁰ The promoter may also have long term deals with foreign broadcasters and exclusive venue deals that pay out over set periods of time.²¹¹ Calculating the amount attributable to a specific fighter is a perplexing task. Furthermore, the regulation requires the promoter disclose the gross amount of revenue and not the net, giving a misleading value to fighters.²¹²

One purpose of the financial disclosure provision is to assist boxers assess their market value. Unfortunately for the fighters, the disclosure provision lacks a time for which the disclosure must be made.²¹³ Due to this inept drafting, the purpose to assist fighters is frustrated. This was the source of a dispute with professional boxer Chris Algieri.²¹⁴ Algieri had unexpected successes in two major upset victories in a row after a less than stellar start to his career.²¹⁵ Using the momentum of those wins, Algieri signed to fight Manny Pacquiao for his highest pay day at \$1.67 million.²¹⁶ He lost that fight against Pacquiao and then went on to lose again, and then sneak in a win before setting a fight with Olympian Errol Spence, Jr.²¹⁷ Algieri demanded the disclosures prior to the fight with Spence but the promoter refused, which he could do as the Act is silent on when the disclosure must be made, putting the fighter at a great disadvantage.²¹⁸ In fact, it is common for a promoter to make disclosures at the last minute, giving the fighter little opportunity to renegotiate prior to his or her bout.²¹⁹ This is a strategy used by promoters to eliminate the chance the fighter will demand more money, and there is nothing illegal about this underhanded method of disclosure.²²⁰

The required disclosure provision serves several purposes; the one which athletes are most interested in concerns their market value.²²¹ The provision

²¹⁰ Groschel, *supra* note 203, at 944.

²¹¹ *Id.*

²¹² *Id.* at 946

²¹³ Kevin Lole, *Chris Algieri Latest Example of Battle Between Boxers, Promoters*, YAHOO SPORTS (Feb. 26, 2016, 3:41 PM), <http://sports.yahoo.com/news/chris-algieri-latest-example-of-battle-between-boxers--promoters-204131253-boxing.html>.

²¹⁴ *Id.*

²¹⁵ *Id.*

²¹⁶ *Id.*

²¹⁷ *Chris Algieri*, BOXREC, <http://boxrec.com/boxer/449201> (last visited Nov. 17, 2017).

²¹⁸ Jason Cruz, *Algieri Situation Presents Problem with Ali Act*, MMA PAYOUT (Apr. 14, 2016),

<http://mmapayout.com/2016/04/algieri-situation-presents-problem-with-ali-act/>.

²¹⁹ *Id.*

²²⁰ *Id.*

²²¹ *Main Events Prod. v. Lacy*, 358 F. Supp. 2d 391, 398 (2004).

provides more transparency, usually considered a good thing. Fighters see how much money their names bring to the promotion so, in theory, they should have a better idea of their worth and in return they can demand an appropriate amount money.²²² As much as the disclosure provision provides essential information, the method of delivery required and recourse for fighters if its deviated, prove it is both inadequate and impractical.

D. Independent Ranking Requirement Provision

The Muhammad Ali Act requires that there be an independent ranking system.²²³ In boxing, the governing sanctioning bodies are required to report justifications for the rank of fighters.²²⁴ The rankings often determine who fights who, due to mandatory challenger provisions in boxing. Because fighter rankings are subject to discretion and often do not adhere to objective determinations, they are easily manipulated by persuasion, especially the financial kind.²²⁵ The Muhammad Ali Act has not been successful in eradicating boxing of this sort of corruption²²⁶

In the UFC, the UFC itself controls the ranking system and has shown it is willing to arbitrarily lower fighters' rank as a form of punishment.²²⁷ Jon Fitch is said to be an example of this mistreatment.²²⁸ After winning fifteen straight fights, Fitch fought for the title and lost.²²⁹ Soon thereafter, Fitch battled with the UFC over a video game deal that lead to his contract being terminated.²³⁰ Although they finally agreed to a deal and he was reinstated in the UFC,²³¹ he only won the battle, but lost the war as he was subsequently forced to fight on undercards, a practice generally reserved for the less achieved fighters.²³²

²²² Amy Dash, *Breaking: Congress to Hold Hearing on MMA Ahead of Ali Act Vote*, SB NATION: BLOODY ELBOW (Dec. 2, 2016, 6:20 PM), <http://www.bloodyelbow.com/2016/12/2/13824930/breaking-congress-to-hold-hearing-on-mma-ahead-of-ali-act-vote>.

²²³ 15 U.S.C. § 6307c.

²²⁴ 15 U.S.C. § 6307c(c).

²²⁵ Tim Graham, *How to Get Ranked in Boxing*, ESPN, <http://assets.espn.go.com/boxing/columns/graham/207931.html> (last visited Nov. 17, 2017).

²²⁶ *Id.*

²²⁷ Okamoto, *supra* note 157.

²²⁸ *Jon Fitch Released by UFC Over Likeness Rights*, SB NATION: MMA FIGHTING (Nov. 20, 2008, 12:36 AM), <http://www.mmfighting.com/2008/11/20/jon-fitch-released-by-ufc-over-likeness-rights>.

²²⁹ *Id.*

²³⁰ *Id.*

²³¹ *Id.*

²³² Varney, *supra* note 155, at 302.

The UFC does attempt at an independent ranking system, though its merely for show. The organization uses media members to vote on the fighters' ranks.²³³ Determining who is the better fighter is a daunting task in considering all the variables of a fighter's skills. The rankings are highly subjective and often produce perplexing results where fighters will be outranked by a fighter they had previously defeated.²³⁴ Furthermore the rankings mean nothing more than bragging rights for fighters or to assist fans in following along. In the UFC, there is no such thing as a mandatory challenger. The rankings in the UFC have little effect on who fights who, as that is in the discretion of the UFC, who will put on the fight that fans most want to see.

VI. CONCLUSION

The fighters are unhappy because they think they are not getting paid enough. The UFC enjoys the status quo and so prefers things stay the same. The fans, and they must be considered, are happy if they continue getting big fights. The fans are the ultimate consumer and those responsible for driving revenue for the UFC. They should be the main concern of not only the UFC, but of the fighters. This is what makes the lawsuit and the athlete's support for the proposed regulation so perplexing. Both will undoubtedly hurt the UFC and in turn hurt the fans and inevitably the athletes.

This is not to say the UFC is perfect and should be left alone. There is debate over what percentage of the UFC's revenue is going to the fighter.²³⁵ Some claim it is as low as seven percent, others say it is as high as thirty five percent.²³⁶ Boxing promoter Bob Arum claims in boxing, the percentage going to the fighter can be as high as eighty percent.²³⁷ Maybe none of those percentages are reasonable for either the UFC or the fighters,²³⁸ but they must

²³³ *UFC Fighter Rankings*, UFC (Nov. 13, 2017),

http://www.ufc.com/rankings?fb_comment_id=6086517324953#f1b838fe1352dfa.

²³⁴ Tim Burke, *The Official UFC Rankings aren't Perfect, and Here's Why*, SB NATION: BLOODY ELBOW (Oct. 29, 2013 2:00 PM),

<http://www.bloodyelbow.com/2013/10/29/5042538/ufc-rankings-issues-nelson-machida>.

²³⁵ Anton Tabuena, *Do UFC Fighters Get Just 7% of the Pie? Anik and Schaub Debate Salary, Revenue Share*, SB NATION: BLOODY ELBOW (Aug 18, 2015, 7:31 AM),

<http://www.bloodyelbow.com/2015/8/18/9170185/anik-schaub-debate-ufc-fighter-salary-revenue-share>; see Jesse Holland, *Bob Arum Fires Back at Dana White: 'UFC Fighters Get Paid Nothing*, SB NATION: MMA MANIA (Sept. 23, 2011, 9:51 AM),

<http://www.mmamania.com/2011/9/23/2444228/bob-arum-fires-back-at-dana-white-ufc-fighters-get-paid-nothing>.

²³⁶ Tabuena, *supra* note 252.

²³⁷ Holland, *supra* note 252.

²³⁸ Brett Okamoto, *UFC Fighters for Mix Martial Arts Athletes Association*, ESPN (Nov. 30, 2016), http://www.espn.com/mma/story/_/id/18175184/ufc-fighters-come-together-

find a happy medium.

Fighter's pay is not an antitrust issue and the Muhammad Ali Act does not address it. As it stands, the Muhammad Ali Act has proven ineffective. The legislation was not able to help the fighters in boxing as it was supposed to. It is ludicrous to expect the legislation to help the MMA athletes in its expanded version. Even when it was first enacted, its own drafters felt the legislation was deficient.²³⁹ The MMA community, if it feels that regulation is necessary, should create its own rules, appropriate for the dynamics of the sport and not just lazily expand an already failing Muhammad Ali Act. As for the antitrust suit, the fighters should assess the end game and what it is they want. Do they want to fight for other leagues? Probably not. But they want more money, so what is the best way to accomplish that goal? It is not to hurt the UFC brand, which they are a part of. In order to avoid further frustration for fighter, fan, and company, the UFC must be proactive in resolving these issues with their athletes, as they are the lifeblood of the sport.

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form-mixed-martial-arts-athletes-association (one of the MMA fighter's associations has stated they want half of UFC revenue).

²³⁹ Groschel, *supra* note 205, at 950.

²⁴⁰ See *supra* note 222.