REORGANIZING MAJOR LEAGUE SOCCER'S SINGLE-ENTITY STRUCTURE

Elevating Player Quality To Achieve Profitability

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EXECUTIVE SUMMARY

Major League Soccer ("MLS") was formed when the sport of soccer had yet to be established in the US. Its founders sought a business model which avoided issues causing a prior league's failure: excessive salaries and a lack of competitive balance. A "single-entity" structure was created whereby owners invested in MLS directly and in exchange operated a team. Clubs built rosters but players were employed by the league, who set a salary budget. Early on MLS was sued by players, claiming the lack of competitive bidding for their services violated antitrust law.

MLS prevailed, but the Court expressed concerns about its structure's legality. The league has matured since then, but with limited exceptions like the "Beckham rule," salaries remain carefully controlled. Yet, that strategy has not resulted in profitability for most teams. Why?

The legally risky single-entity model impedes MLS's financial performance by underinvesting in its most valuable resource: players. By a restructuring which includes liberalized free agency, with salary cap and competitive balance measures, MLS will reach its full potential.

INTRODUCTION

Beginning in childhood my favorite sport was baseball. Sure I played soccer through high school, well after my little league baseball career ended. But following Major League Baseball ("MLB") was my passion – I read about it, regularly watched televised games and loved going to a major league ballpark. When my sons were young, I instilled that same passion in them.

At some point, that started to change. I began to notice my boys reserved their Saturday mornings for watching English Premier League ("EPL") soccer matches on television. Why was this? They enjoyed playing youth soccer, but there was more to this. It became clear my sons had a passion for English soccer and knew more about it than I did. In fact they teased me about this.

Subsequently, the city of Philadelphia was awarded a Major League Soccer ("MLS") franchise, the Union. What is interesting is I cannot recall my sons ever asking to attend a match. Yet, we continued to attend our usual allotment of MLB games and various other sporting events.

A few years ago our favorite MLB team, the Philadelphia Phillies, was mired in a "rebuild." Seeking to try something new, I became a Union season ticketholder. My sons continued to play soccer and this seemed to be a good way to bond with them. Surprisingly, we immediately loved attending MLS matches, soon more than even MLB games. In part it was the "experience:" viewing the pregame pageantry and the colorful "supporters," plus being close to the pitch. A low scoring 90-minute match had become more compelling for all of us than a 9-inning baseball game.

When inviting friends to Union games or giving them tickets, inevitably the feedback even from those who know little about soccer has been positive. And often it was their first match. When sharing my experiences with other people the typical reaction has been: they have not attended a match, and might be interested in going *except they know nothing about MLS players*.

This last part led me to wonder why exactly this league is not more popular. While the sport is captivating and the game experience in a growing number of new stadiums is appealing, MLS's following remains limited. I soon recognized the issue starts with the public's lack of connection with the players. With few exceptions ("designated players"), they are anonymous to the casual sports fan. This context is antithetical to a "player-centered" sports culture in the US.

This caused me to wonder why. From my initial research I learned it is not simply that MLS is a young league with limited resources, not able to pay more to bring in marquee players. Rather, this league holds onto its original model with tight controls over player compensation, notwithstanding an early lawsuit by its players. My economics background led me to believe that by continuing to restrain competitive bidding for players and thereby *lower quality*, MLS's risky model was limiting growth and financial viability. That fundamental premise is explored below.

BACKGROUND AND LITERATURE REVIEW

MLS Beginnings, Business Model. The idea of a new US soccer league originated in 1988 when Federation Internationale de Football Association ("FIFA"), the world governing body for the sport, awarded the US the right to host the 1994 Men's World Cup. This decision was conditioned on the United States Soccer Federation ("USSF") starting a new "tier one" league (Burns, Feb. 24, 2020). There was little effort initially to form a league while USSF struggled with World Cup planning. In 1990, attorney Alan Rothenberg was elected USSF's new President and under his leadership the tournament was a success (Froh, Feb. 9, 2018). He was then asked to lead organizing the new league (Burns, Feb. 24, 2020). Raising $50 million in capital and creating a business plan were among his challenges. Investors included Rothenberg, Lamar Hunt, the Kraft family and Phil Anschutz. A pivotal early decision was adopting a *single-entity* business model.

Understanding this structure and why it was adopted by Rothenberg and others requires context. A predecessor US league, the North American Soccer League ("NASL"), failed in 1985. The NASL was the first "tier one" US soccer league (MacMillan, 2018). Its demise was due mainly to uneven financial resources between clubs and lax cost controls (Taylor, 2011). MLS's founders wanted the new league organized so player costs and revenues were centrally controlled.

A single-entity model differed greatly from the structure of the four major US leagues. MLS was formed as a limited liability company (Macmillan, 2018). "Owners" held equity in the league, not a team; in return they became a team "operator." MLS owned all teams. A management committee of operators governed the league (Taylor, 2011). See Appendix at 1 ("App. 1").

Another unique feature at the outset was the centralization of several aspects of operations through the league office, particularly with respect to players. (Burns, Feb. 24, 2020). Over time strict adherence to this business form would evolve to allow teams more operational autonomy, except for players. They remained employed, and their pay controlled by, MLS and not their assigned team. Any player movement between teams was subject to approval by the league office (Taylor, 2011). A unitary salary budget and maximum contracts were set to manage costs. Within those constraints, clubs constructed their rosters (Taylor, 2011). The overriding objective was to *prevent competitive bidding for players*. The model was also designed to balance talent within the league (*Fraser v. Major League Soccer*, 2002). A team's ability to work outside the budget cap began to liberalize after the first decade. But MLS remained firmly against bidding for players.

The Fraser Suit. In February 1997, after just one season, 8 players sued MLS, USSF and nine owner-operators in federal court (*Fraser v. Major League Soccer*, 2002). They alleged antitrust violations including restraint of trade by the league's restriction on competing for player services and also monopolistic conduct. The Trial Court ruled in favor of MLS on the restraint of trade claims under the rationale *the league and its owner-operators were a single-entity*. Later the jury reached a verdict in MLS's favor on the remaining monopoly claims. The players appealed.

The Appeals Court's opinion first addressed the restraint of trade claims and MLS's single-entity defense (*Fraser v. Major League Soccer*, 2002). The Court questioned the Trial Court's finding that the defense applied. Yet, given the jury's verdict in MLS's favor on other issues (finding the *relevant market* had not been defined), the Court viewed the finding of the Trial Court regarding single-entity as harmless error. In short, the players lost the appeal.

Nevertheless, the Appeals Court's analysis of MLS's defense is key. The league's position was the US Supreme Court's decision in *Copperweld* applied (*Copperweld v. Independence Tube*, 1984). That Court held a parent and its subsidiary were shielded from restraint of trade claims as a single-entity. The *Fraser* Court first noted that while MLS owners were separate entities, under *Copperweld* they could engage in corporate governance through the management committee

(*Fraser v. Major League Soccer*, 2002). But the case did not apply if they acted as an "entrepreneur separately contracting with the company" (*Fraser v. Major League Soccer*, 2002, p. 57).

The Appeals Court proceeded to cite factual distinctions with *Copperweld*. MLS owner-operators had a "diversity of entrepreneurial interests" much broader than a parent-subsidiary affiliation (*Fraser v. Major League Soccer*, 2002, p. 57). The Appeals Court cited their separate contractual arrangements, like owners in other sports. It also found that owner-operators were not merely entrepreneurs with their own assets, revenues, expenses and investments, given they had a controlling position on MLS's board. That allowed these entrepreneurs to horizontally coordinate to restrain competition for player services. The Court concluded: "MLS and its operator/investors comprise a hybrid arrangement somewhere between a single company .... and a cooperative arrangement between existing competitors" (*Fraser v. Major League Soccer*, 2002, p. 58).

After years of litigation, MLS did escape liability. But the Appeals Court's opinion cast legal uncertainty over a new, struggling organization. Since that time the league has made some innovations summarized below involving player compensation and movement. Yet, these changes could make it even less likely a single-entity defense would be upheld in future litigation.

Initial Business Structure. MLS's operating model was truly unique. The *Fraser* Court's findings provide a good summary (*Fraser v. Major League Soccer*, 2002). League-owned assets included all intellectual property, national broadcast rights and supplied equipment. MLS negotiated all stadium leases and shared the rental cost. With respect to players, the league acquired them, negotiated their salaries, paid them from league monies and early on largely decided their assigned team. The Court explained this last part: "to balance talent among teams, it decides, with the non-binding input of team operators, where certain of the league's 'marquee' players will play" (*Fraser v. Major League Soccer*, 2002, p. 53) Within those contours, owner-operators constructed their rosters, managing player transactions by trading and drafting, but still with MLS approval.

From a management and business operations standpoint, teams hired general managers, coaches and other staff. (*Fraser v. Major League Soccer*, 2002). They were responsible for office and marketing costs and half of stadium rent. Clubs also handled ticketing and local media rights.

It is important to remember that owner-operators served a dual role on MLS's management committee, the body making decisions on various aspects of league operations (*Fraser v. Major League Soccer*, 2002) Each received a management fee which was chiefly a function of the financial performance of their team. League-driven revenues were shared equally between clubs.

MLS faced a crisis in 2002. Two clubs folded and two owners operated seven teams (Lex Sportiva, Oct. 9, 2019). Bankruptcy was considered (Burns, Feb. 24, 2020). But MLS stabilized, and began expanding (Lex Sportiva, Oct. 9, 2019). It is about to reach 30 total teams. App. 2.

Changes to MLS Player Rules, CBA. Soon after *Fraser* the MLS Players Association ("MLSPA") was certified as the players' representative (Taylor, 2011). App. 3. A collective bargaining agreement ("CBA") was negotiated, although due to MLSPA's weak bargaining position it focused on quality-of-life issues (E. Pope, personal communication, March 7, 2022).

In 2007 the landscape for player acquisition changed. Until then clubs were limited to seven international players on their roster (Taylor, 2011). That increased to eight, but more momentous was adoption of the Designated Player Rule ("DP Rule"), also known as "Beckham rule." Teams were allowed up to two players whose salaries were above MLS's player maximum. The excess would be outside of the salary budget, and the club rather than MLS was responsible for funding that. Later, a third designated player was permitted. While the rule was adopted to capitalize on a unique opportunity to sign a superstar, David Beckham, it was justified (despite MLS policy against bidding for players) as intended to attract fans and raise quality of play (Bradbury, 2021).

Another change was the Homegrown Player Rule ("HP Rule"), which incentivized team academies to develop young talent (Taylor, 2011). An academy player could later be signed by a club without entering the draft, with their salary exempt from the team budget cap. If a player left for a foreign league, the team retained most of the transfer fee. In 2018 Commissioner Don Garber stated a goal of MLS becoming a "selling league" of homegrown players (Stejskal, Feb. 5, 2020).

The MLSPA gained limited additional benefits in the 2010 CBA negotiations including guaranteed contracts, minimum salaries and a salary cap increase (Jacobsze, 2010). The union had demanded free agency, even threatening to strike. MLS again refused to budge on its policy of no competing for players. One change was a "re-entry draft" for players released by their club.

Finally under the 2015 CBA, MLS agreed to free agency on a *very* limited basis (MacMillan, 2018). Players meeting certain criteria were eligible if at least age twenty-eight with eight years of service. Salary increases were limited. Later changes lowered the age and service time required (mlssoccer.com, n.d.). The 2020 CBA was redone due to Covid-19 and extended to 2027 (Carlisle, Feb. 9, 2021). Overall, the new agreement provided minimal net gains to players.

MLS Revenue Sharing/Retention; Other Developments. Among what has evolved in the business of MLS has been the allocation of revenue between MLS and its teams. Operators now retain seventy percent of local revenue from ticketing, broadcasts, sponsorships, parking and in-stadium sales (Bradbury, 2021). The retained portion of player transfer fees and loans varies up to 100 percent. The percentage of revenue arising locally is much higher than in other US leagues (Krasny, June 7, 2017). At the league level the main expenses now are player salaries, excluding above-cap sums like under the DP Rule. Most other operational costs are borne by teams. App. 4.

League-level revenue, including from media rights, merchandise sales and sponsorships, is equally divided among clubs (Bradbury, 2021). As explained later, MLS's current national broadcast deals, which extend through 2022, return a relatively modest sum. The league is optimistic values from new deals will rise significantly (Jones, Dec. 20, 2021). Also, Soccer United Marketing, owned by MLS operators, holds the marketing rights of MLS, USSF (this relationship ends this year), Mexico (US rights) and certain tournaments (Carlisle, May 23, 2021). Overall, profits or losses from MLS-level revenues and expenses are allocated among owners.

Other Sports League Structures. The NFL, NBA, NHL and MLB do not operate under a business model like MLS. But two of them claimed single-entity status in antitrust litigation. In the 1970s the NHL successfully argued the defense (Grow, 2006). In a later antitrust case before the US Supreme Court, the NFL did not (*American Needle v. National Football League*, 2010). At the time neither was organized like MLS. Often new leagues do own teams including the Premier Lacrosse League (its strategy is to *raise player pay in the sport*) (Ingemi, Mar. 2, 2021).

European soccer is governed by the Union of European Soccer Associations ("UEFA") (uefa.com, n.d.). The continent has a long history of professional soccer with several types of ownership structures (Radic, 2014). By the 1920s English teams were virtually all private stock companies. Except for a period in the 1990s when many teams converted temporarily to public ownership, that form remains. In Spain, the "membership model" still predominates. Supporters, or "socios," fund clubs through membership fees. Italian teams look similar to the country's corporations, where the owners and operators are wealthy individuals or families. In Germany, historically teams have been non-profit membership clubs. To address a for-profit trend, a 2000 "50+1" law required 51% of voting power to remain in a non-profit parent company. Europe's league structures also include promotion and relegation, a topic discussed in more detail hereafter.

Legal Exposure. Literature appears to be uniform that MLS's model is unlawful and continuing with it risks another antitrust challenge. Yet MLS has held firm in its legal position.

Farrell and Clopton (2015) assess MLS's single-entity model over a decade after *Fraser* was decided. They begin by referring to the long history of antitrust challenges in sports. MLB uniquely benefited from the so-called baseball exemption recognized by the US Supreme Court in 1922 (*Federal Baseball Club v. National League*, 1922). Other leagues like the NFL did not succeed in getting similar court protection. Yet, notice was taken when the US Supreme Court in *Copperweld* held a parent-subsidiary relationship constituted a single-entity, protected under antitrust law (*Copperweld v. Independence Tube*, 1984). Farrell and Clopton (2015) describe MLS's subsequent organization under this model, and the almost immediate player challenge in the *Fraser* litigation. They underscore the Court's finding that MLS was not a pure single-entity but a "hybrid." The authors then discuss the league's subsequent changes, including the designated and homegrown player rules. Their analysis leads to the conclusion they only *add to the legal risk*.

Despite the benefits, Farrell and Clopton (2015) argue these new rules created a diversity of interests among MLS clubs which is contrary to a single-entity model. Unlike when *Fraser* was decided, with designated players "teams now make out-of-pocket investments in the player services market" (Farrell & Clopton, 2015, p. 177). Similarly, a youth academy is a sound business and development strategy but again a club is making its own investments decisions, which is antithetical to a single-entity. As such, a future player challenge would put MLS at real risk.

Another author (Velarde, 2019) provides a slightly different perspective: MLS may have operated as a single-entity when *Fraser* was decided but developments and case law since then cast uncertainty on that defense holding up in court. The author also cites pending litigation against USSF and MLS by a lower tier league and concurs these defendants are violating antitrust law.

Velarde (2019) begins with an overview of US soccer under USSF. The author compares MLS's single-entity structure, including its central control over employment, with other leagues where teams are independently owned and governed by contracts between themselves and with the league. Velarde (2019) also contrasts US soccer with overseas leagues, specifically "open-league" systems with promotion and relegation. In this context, the Supreme Court's ruling against the NFL in *American Needle,* decided after *Fraser*, adds to the author's doubts MLS will be able to successfully defend itself in another suit (*American Needle v. National Football League*, 2010).

Competitive Balance. One objective of MLS's structure was avoiding the disparities in competitiveness among teams the prior league experienced. The primary strategy for achieving that goal was by prohibiting competition for players via centralized control. Academic research examines if these aspects of the single-entity model have been effective. The impacts on competitive balance from changes in MLS's structure, including the DP Rule, are also analyzed.

One study assesses the league's balance following revisions in player acquisition rules (Sung et. al, 2022). The authors begin by introducing the social welfare concept, explaining the tradeoff from balancing: a loss of welfare from less competition versus any expected benefits. Research of other leagues is cited. Then through use of modeling concepts the study focuses on two player rule changes: the 2007 DP Rule and the introduction of limited free agency in 2015.

The results of the model show "little improvement" in MLS's competitive balance from its inception through 2019, with some volatility but a positive overall trend in year-to-year stability (Sung et. al, 2022). After implementation of the DP Rule there was no change in overall MLS balance, but fewer weak teams. After restricted free agency was adopted competitive balance was not "strongly impacted" (Sung et. al, 2022). The performance of big market teams rose more rapidly, possibly reflecting prior MLS salary restrictions. Further, the authors cite other league studies with contrary results: rules to increase talent availability *improved* balance between teams.

A second study uses a different methodology (Gomez-Gonzales et. al, 2019). Instead of using “ex-poste” measures (outcomes, standings), this analysis applies a prospective, “ex-ante” approach by a combined use of sports betting data and graphical analysis. The authors posit that in analyzing the effect of league policy changes on balance, betting data is optimal by factoring in talent levels of competing clubs and fan expectations. A twelve-year period is examined in segments: 2004-07 (pre-DP Rule); 2008-11 (immediately after); 2012-2015. The findings show “solid” competitive balance in the first period, but immediately after the DP Rule balance decreased (Gomez-Gonzales et. al, 2019). Further, in the last period there was imbalance: teams in a top tier were more likely to compete for a title than those in a lower tier.

The latter study covers the period before limited MLS free agency was introduced in 2015, but not after. Research on the impact of free agency *in other US leagues* is extensive. One example is instructive (Maxcy & Mondello, 2006). This study finds that following its introduction there was improvement in certain criteria of competitive balance in the NFL and NHL; NBA balance decreased. This work concludes that *free agency alone is not determinative*. Leagues rules and policies influencing balance including revenue sharing and salary caps are what matter.

Economic Effects. The other key objective of MLS’s model and complex rules was restraining player salaries. Various literature explains the resultant negative economic effects.

On the subject of compensation, a study examining MLS “monopsonist” power is insightful (Twomey & Monks, 2011). As an overview, the authors begin with a description of player pay in other leagues in the US and Europe. They explain how a sole buyer in a labor market can exercise monopsony power, suppressing pay and movement. Other US leagues shifted away from such control with the advent of free agency. The study cites research finding the exercise of monopsony power *stifles growth by underinvesting in labor*. The authors ask if MLS is “shooting itself in the long term foot” by continuing with its model (Twomey & Monks, 2011).

Twomey and Monks (2011) proceed to explain monopsony power is measured by comparing the marginal revenue product ("MRP") of players with their salaries, a marginal cost. MRP is more difficult to quantify in soccer than other leagues like MLB so in their research they utilize a ratio of team salaries to revenues. Using 2007 data, the study finds MLS spent about only one-fourth of its revenue on salaries. The 4 major US leagues spent in excess of fifty percent. In Europe, the ratio was sixty to seventy percent. In other words, MLS was distinct in the degree to which it kept pay below MRP. The study concludes this underinvestment suppresses growth and disincentivizes US players from staying here, *negatively impacting quality of play*.

Other research is in harmony with these findings. Kesenne (2015) theorizes that a profit maximizing club will hire and pay for talent until the marginal cost equals marginal revenue. But a monopsonist is able to keep pay below marginal revenue. This study also analyzes the effects of MLS acting as a monopoly in the *product market* (soccer) on account of it being a closed league without promotion and relegation. Interestingly, it finds one result is higher ticket prices.

Besides examining the effects of certain changes like the DP Rule on competitive balance, some studies also explore their economic results (Coates et. al, 2016). The cohesion theory posits productivity among workers is greater with more equalizing of salaries. Coates et. al (2016) test its validity on MLS by viewing the impact of designated players. They observe that although all players contract with the league, clubs negotiate salaries and thereby control pay dispersion within their roster. Through modeling they conclude there is an inverse relationship between team salary inequality and success, supporting the cohesion theory. Therefore the DP Rule, by limiting the number of high-paid players (in contrast to under unrestricted free agency), decreases productivity.

MLS is an established league but still unprofitable in its 27th season. While on sounder financial footing than 20 years ago, by various metrics it trails others. Analysis in *Fortune* compares revenues with the other major US leagues (Mashayekhi, 2020). The author explains a relatively smaller revenue generator in US sports, the NHL, was projected to earn 5 times more than MLS. The league does admit most teams are unprofitable. The author believes the single-entity model limits revenue. He agrees this will improve *if* the next broadcast deal is better. The article adds that currently MLS's US viewership is behind that of the Mexican league, Liga MX.

Literature providing business intelligence offers further economic perspective (Kinch & Scrimgeour, September 21, 2020). MLS broadcast viewership declined 14 percent in 2019. Although 2020 was paused by the pandemic, MLS was the first US league to return to play with a tournament broadcast on ESPN. Yet, viewing of a hoped-for "own the morning" coverage (like EPL weekend broadcasts) was a "television flop" (Kinch & Scrimgeour, September 21, 2020).

Regarding attendance, from 2015 to 2019 the other major US leagues experienced declines in their per game averages (Kinch & Scrimgeour, September 21, 2020). MLS also dropped by a net 1.1 percent, less than the NFL and MLB but more than the other leagues. During 2018-19 EPL average attendance was 38,168, or 97.2 percent capacity. In contrast, Mashayekhi (2020) reports MLS averaged 21,322, or 76 percent capacity. For MLS clubs relying on a relatively higher share of revenue from game-day sources, these are additional unfavorable economic facts. App. 5.

Investment Impact. Scholarly studies exploring the effect of the single-entity model on investment are more limited. Publications do report recent escalating MLS team values prompted by outside investors, as described in the next section. One study examines whether or not the league's structure disincentivizes existing operators from investing internally (Bradbury, 2021).

In the study Bradbury theorizes that since MLS owners technically have equity in the league and not their clubs, as "operators" they may not be as inclined to invest resources in their team (Bradbury, 2021). This would have a negative impact on the quality of their product. With an inferior entertainment option compared to other sports, the end result would be fewer fans. But Bradbury (2021) explains not all revenues are generated at the league level, and the local income is largely retained. Considering this allocation, differences in investment incentives between a single-entity model and other leagues may be more "procedural than practical" (Bradbury, 2021).

The study uses a model to measure the relationship between revenue and other variables including performance. Bradbury (2021) cites other research showing a positive correlation between roster quality and revenue. His study treats player spending as an "investment" in performance. The results of the model show a positive relationship between revenue and performance. Bradbury (2021) concludes there is not a disincentive for MLS owner-operators to invest in their club, including players, given revenue allocations under the single-entity model.

THESIS STATEMENT

MLS's single-entity model should be reorganized to eliminate its legal risk and elevate the league's overall player talent level, thereby enhancing team and league financial performance.

ORIGINAL CONTENT AND ANALYSIS

Overview. MLS adopted its structure to maintain balance among teams and contain cost. This model has evolved but still adheres to a policy of no competitive bidding for players. It is legally risky and limits revenues by underinvesting in players, which lowers quality of play.

What follows is a critique of MLS's model, recommended changes to remove its legal risk and materially improve the league's financial results and an assessment of its competitive position. This section concludes with discussion of the economic impact of change and measuring success.

Competitive Balance Does Not Require A Single-Entity. The Sung (2022) study is particularly informative in its examination of balance. It looks at MLS's full lifespan as well as specific time periods after rule changes. The rules might have negatively affected balance by allowing teams, albeit in a limited way, to compete for players. The DP Rule allowed the signing of designated players, and the second change allowed limited free agency. Each enabled teams to increase compensation. This research first finds season-to-season stability during MLS's existence. In the period after the DP Rule there was no change in competitive balance; after free agency's introduction there was not a strong impact. Studies with comparable findings are cited.

Among the recommended changes below is the adoption of less restricted free agency in MLS. Therefore, it is helpful to be guided by the experience of other US leagues after this type of consequential change in player compensation and movement is enacted. Maxcy and Mondello (2006) find *improvement* in competitive balance in the NFL and NHL. They cite MLS studies with similar results. While they did find balance decreased in the NBA after free agency, a more recent study differs (Krishnaraj, 2021). By applying economic modeling this research concludes free agency increased it. Most critically, Maxcy and Mondello (2006) conclude a league's free agency system and specific pro-balance policies ultimately were determinative of impact.

Looking at MLS Cup winners (league champions) shows a trend towards *more competitive balance* as player compensation rules and general team operational autonomy loosened over time. In 26 seasons, 15 different teams have won the Cup. In the first 10 years two clubs won a combined 6 Cups. In contrast, during the past 10 years, 8 different teams have won (Smith, n.d.). App. 6.

Another way of gauging balance is by market size. The 2019-2020 average population of the metropolitan areas for the home markets of the 28 MLS clubs was approximately 5.9 million (Statista.com, 2019-2020). That average is skewed higher by the largest markets, New York and Los Angeles, with 4 total teams; excluding those markets, the average was approximately 4.1 million. In the past decade as limited free agency was introduced, 5 of the Cup winners were in below average-sized markets. The other champions were new franchises: Atlanta won in its first season and NYCFC won in its sixth. In contrast, in MLS's first decade, only 3 champions were in smaller markets. After the DP Rule was adopted, 3 different smaller market teams won. All of this is evidence of *increased* competitive balance after MLS changes relating to compensation.

The above is not meant to minimize the importance of strategies to maintain overall balance. But the analysis questions the proposition that this requires a risky single-entity structure.

The Legal Risk Outweighs Any Benefits. The *Fraser* opinion left MLS's structural form on shaky legal footing (*Fraser v. Major League Soccer*, 2002). The Appeals Court concluded the league was not a single-entity but a *hybrid*. MLS escaped liability because the players had not proven the relevant market. This conclusion alone created uncertainty, and subsequent developments have only added to the risk. First, in the *American Needle* antitrust suit against the NFL that reached the US Supreme Court, that league's single-entity defense was denied (*American Needle v. National Football League*, 2010). Second, in the years since being labeled a "hybrid" MLS has adopted rules making it appear even less like a single-entity (Farrell & Clopton, 2015).

The DP and HR Rules, which encouraged the importing of star players and developing domestic talent, on their face seem to be favorable moves. But they are come with risk if MLS is made even less legally protected. Farrell and Clopton (2015) make that very point. Unlike at the time of *Fraser*, under the DP Rule clubs can now make "out-of-pocket investments in the player services market" (Farrell & Clopton, 2015). Similarly, the HP Rule may be a sound strategy but teams make their own decisions on player investment, contrary to being a part of a single-entity.

The league is *already a defendant in antitrust litigation* brought by a lower tier US league, NASL (Velarde, 2019). While the focal point of this suit may not be MLS's single-entity model, another antitrust suit should cause the league to seriously reconsider its allegiance to this structure.

This risk of another *Fraser*-like challenge is a critical point, along with the significant legal cost of defending against litigation. But to fully appreciate MLS's legal exposure it is important to explore the potential remedies that can be awarded including damages. An in-depth description of antitrust law is beyond the scope of this paper, but here is a brief summary of potential remedies: there are four federal statutes including the Sherman Act, under which the players in *Fraser* sued (*Fraser v. Major League Soccer*, 2002). Under that statute either private parties or governmental entities may seek money damages and injunctive relief (Ewing, 2006-07). Besides reimbursement of attorneys' fees and class certification, parties can seek *treble damages*. A single-entity structure adopted by a league at its birth is not worth preserving in light of all of this legal and financial risk.

With the Risk Comes Lost Economic Opportunities. In 2019, the season prior to the onset of the pandemic, collectively MLS teams lost over $100 million and only 7 clubs made a profit (Smith, 2010, Nov. 4). App. 7. According to Commissioner Don Garber the league lost nearly $1 billion in 2020 (Ruthven, April 5, 2021). Even as fans were set to return to venues in 2021, he warned of comparable losses. This prompts an obvious question: Why does a league in the US, in a sport which is the most popular in the world, continue to underperform financially?

MLS's business model is built to underinvest in its greatest resource through an overriding policy of no competitive bidding for them. The league can do that because of its position as a monopsonist (Twomey & Monks, 2011). It is the only USSF-sanctioned top tier US league. Without an "open system" there is a distinct difference in talent levels and compensation with the lower tier US leagues (Reuter, January 2020). The pool of top players offering their services in the US market essentially have one bidder: MLS. It is true the original single-entity structure has loosened to allow teams to compete for talent such as through designated and homegrown players, which alone would appear to improve talent levels. But there is evidence the DP Rule creates salary inequality on a roster, which correlates with lower team performance (Coates et. al, 2016).

So what would appear to improve the level of MLS's product may actually reduce it. The league incentivizes youth academies to develop homegrown talent, which does raise quality. But then MLS dilutes that effect by exporting talent to become a "selling league" (Stejskal, Feb. 5, 2020).

There is evidence the league's product is inferior, thereby negatively impacting its business. One barometer is a comparison of salary levels. It is axiomatic that better players are in higher demand and paid more. The salaries of the 2 highest paid designated players in MLS are at or just above $6 million; the average salary of senior, non-designated players is $398,725 (Stejskal & Tenorio, May 13, 2021). In contrast, in the EPL the 3 highest paid players earn $27-29 million; the average salary is $3.9 million (Soccerblade, n.d.). App. 8. Even France's La Ligue, at a lower pay scale than other major European leagues, averages $1.54 million. Liga MX is similar to MLS: a $353,730 average, with a high salary of $4.8 million (Loyola, January 8, 2021).

Another indicator of talent levels is media viewership and the value of broadcast rights. For US-based consumers, there are options for viewing various foreign leagues but two come to mind: the EPL and Liga MX. EPL's current broadcast agreement with NBC generates $450 million annually (Stejskal, March 18, 2022). In contrast, MLS's agreement currently pays $90 million per annum. App. 9. While the league had stated publicly its expectation of a new deal by the start of this season increasing the value to $300 million, no deal has been announced. Some question that projection, suggesting $200 million is more probable. Indeed, MLS's viewership in recent seasons oscillated and in 2021 was barely above 2017 levels. App. 10. A comparison with English soccer with a much longer history is not entirely fair. Still, the EPL's matches are televised on weekend mornings in the Eastern time zone, while MLS broadcasts are in the afternoon and evening. Additionally, the first 5 or so months of the EPL's season overlaps with the NFL season, as compared to less two months of MLS's regular season. The disparity in talent shows.

Similarly, the total US broadcast audience for the top Mexican league, Liga MX, is greater than that of MLS (Mashayekhi, 2020). This is another example of consumers of a sport choosing one product (league) in a market over another. One can assume a significant portion of these Liga MX viewers have personal or family connections to Mexico, so there is a familiarity or loyalty factor. Yet these viewers are fans of the sport, and with a better product on the field MLS should attract more of them. Latinos are a key demographic group the league needs to capture. In 2019 the Latino population in the US was 60.5 million, constituting almost 19 percent of the total and growing rapidly (The Perspective, 2021). This market segment expects a higher level of play.

Another gauge of product quality is attendance. Some might rationalize the above disparity in media metrics by arguing that unlike US fans of foreign leagues, MLS fans have a viewing choice and can attend in person. But the sign of a healthy league is growth in both areas. MLS's attendance prior to the pandemic did not reflect a steady upward trajectory. In fact the average declined after 2017 (Kinch & Scrimgeour, September 21, 2020). App. 11. While other US leagues have experienced modest declines too, a newer league should be growing. Moreover, as shown media rights values in those leagues are skyrocketing, with some receiving annual revenues in the billions (Stejskal, March 18, 2022). Soccer is the world's most popular sport with 3.5 billion fans (WorldAtlas, n.d.) and as described in detail later, US demographics are very favorable (Serano, 2018). The value of MLS's broadcast rights does not measure up because of an inferior product.

The league's structure must change. In economic terms, MLS underinvests in its product by lower pay and quality is impacted. As shown, revenue suffers, impeding profits. App. 12. The solution requires replacing a risky single-entity model to allow teams to compete for the best talent.

<u>Valuations Continue Rising.</u> Despite mediocre financial results, there has been a spike in MLS team valuations in recent years. As a technical matter, sales or partial equity acquisitions involve an interest in the league. Again, owners do not own teams, but rather hold a direct interest in MLS along with a corresponding right to operate a team. Only MLS owns its clubs directly. In any event, recent escalating prices cannot be overlooked in this discussion.

One transaction occurring in 2019 involved the Chicago Fire, with a history of average revenues, where the purchase was valued at $400 million (Poindexter, June 7, 2021). Separate investments involving Los Angeles FC and DC United were at valuations exceeding $700 million. Billionaire NFL owner David Tepper paid MLS a record-setting $325 million fee for a new franchise in Charlotte. *Sportico* released a report in mid-2021 estimating an average MLS team value of $550 million (Badenhausen, July 14, 2021). Considering the 2009 average value was an estimated $40 million, investors are finding MLS an attractive investment (Shea, Oct. 30, 2019).

Nevertheless, to put this information in perspective, team values in other major US leagues are in the billions. For example, *Sportico* projects the following averages: NFL-$3.1 billion; NBA-$2.4 billion; MLB-2.2 billion (Badenhausen, July 14, 2021). But in fairness these are older, established leagues, so the younger MLS's values are undeniably impressive. Perhaps this is partly because prices have become so lofty in other leagues. MLS is seen as more affordable. App. 13.

Moreover, research indicates the single-entity model is not necessarily a disincentive to investment. Bradbury (2021) finds a positive correlation between club performance and revenue, concluding owner-operators were incentivized to invest in their teams and players. During an interview, a silent partner in a group which acquired a league franchise stated MLS's model was not a factor in the decision to make the purchase (personal communication, March 21, 2022).

The obvious upshot of the above is that presently there is clear demand to invest in MLS, notwithstanding the unique structure, legal risk and lack of profitability. The buyer of the Chicago Fire characterized MLS as like a "growth company," and others liken teams to "tech stocks"

(Stejskal, March 24, 2021). Other commentators (Ruthven, April 5, 2021) make a similar analogy, but caution this "theory" of rising values because of expected future growth may not hold ultimately if performance is not realized. MLS's value-revenue ratio is currently about double that of NFL, MLB and NHL teams (Badenhausen, July 14, 2021). Future growth is one of the issues presented herein. As explained, MLS's prospects are uncertain if its present model remains in place. But making certain changes can lead to these high growth expectations being realized.

MLS Needs Immediate Change. Sports organizations, like other businesses, must evolve as they mature. MLS is now an established league, with investors showing confidence in its stability and prospects. The single-entity structure was adopted to avoid the mistakes of a prior US league which failed. This model may have been well intentioned originally but unfortunately it led to a lawsuit by players. The antitrust risk has only increased - *operating illegally is not a sound strategy*. Here, it substantially hinders growth and profitability by underinvesting in talent. By taking the following steps MLS can change to the league its investors anticipate it will be.

Restructure the Owner-Operator Relationship: Right now an MLS "owner" holds an equity interest directly in the league. In exchange, they enter into a contract to become the "operator" of a specific team. But it is not solely the league office dictating rules and policies with respect to player pay and other subjects. A representative of each "owner-operator" serves on MLS's management committee. This is a "hybrid" feature cited by the *Fraser* Court which facilitates an agreement to restrict competitive bidding for players, creating the legal risk.

The relationship between MLS and its owners must change to the model of other leagues: owners hold equity directly in a team, not the league. How other leagues, including N.W.H.L. more recently, reorganized can serve as a guide (Berkman, Oct. 13, 2020). App. 14. With advice from legal, financial and tax advisors, this would proceed with each owner a) exchanging its interest in the league for MLS's interest in a team; and b) replacing its operating agreement with a franchise agreement with the league. Owners should share in MLS's implementation costs. This would be the first, but not the only step towards reducing legal risk and increasing product quality.

Adjust the Player-Team Relationship: Currently teams are responsible for constructing their rosters pursuant to onerous Roster Rules and Regulations. Clubs initiate the acquisition of designated and academy players from the outside, while executing trades and free agent signings within MLS. Every move not only requires league approval, the underlying contract is *with the league*. This must change so players sign directly with their club, creating an employer-employee relationship. The rules must also be overhauled to give clubs more discretion in player acquisition.

Reopen CBA Negotiations on Free Agency: The foregoing adjustments are a necessary part of an overall restructuring, putting in place more common organizational relationships. But if limits on competitive bidding for players continue, the legal risk and economic flaws remain. Under the current centralized system, a core issue is highly restricted free agency. Without more transformative change to enable unbridled competition for player services, putting MLS in line with other US leagues, caliber of play will continue to suffer, as will profits.

The narrow window for allowing market-level salaries for top players has been through the DP Rule. In adopting it, MLS and its owners acknowledged the *correlation between league talent level and financial performance*. As Burns (Nov. 15, 2021) explains: "At the time, not only did MLS want to attract more high-quality players, but also ones who had global name recognition who could drive more bottom-line revenue and increase ticket sales and sponsorships." Seeing this economic connection is consistent with Twomey & Monk's (2011) conclusion that underinvesting in players lowers growth. Evaluating it now, fifteen years later, a rule permitting only three designated players has not elevated MLS's level of play even close to the levels of foreign soccer as measured by various metrics including broadcast viewership. Nor has it resulted in the profits MLS envisioned. This is consistent with the study by Coates et. al (2016) finding the rule's effect was salary inequality, negatively impacting performance and ultimately revenue.

In fact, if MLS reorganizes from its single-entity model but continues to restrict player movement and pay, it will be unable to rely on that structure as a legal shield in a probable future suit. The start of free agency in the NBA, NFL and NHL followed antitrust litigation; MLB was long protected by a court-created exemption but free agency resulted from an arbitrator's decision (Maxcy & Mondello, 2006). MLS should not wait and take the same forced, expensive legal path.

MLS needs broad, competitive bidding for its players now, like other leagues have, by allowing more liberalized free agency. With a CBA already in place, the league will need to agree to return to the negotiating table with the MLSPA, who clearly will be eager to discuss less restrictions. They can agree ahead of time that if there is an impasse, a mediator would be retained.

Evaluate Approaches by Other US Leagues to Address Cost, Balance: Expected arguments against more open free agency include claims of skyrocketing costs and less competitive balance. On the first point, the onset of bidding for player services will in fact result in rising salaries – the reward for higher talent. App. 15. It is also correct that MLS can follow the lead of other leagues with approaches controlling costs. The same is true in order to address balancing.

The four other major sports leagues in the US have a "salary cap" (Alwell, 2020). The underlying rationale is a cap prevents or disincentivizes teams in the larger markets or with the wealthy owners from outspending other teams and gaining an unfair economic advantage. The NFL and NHL have "hard caps" – no exceptions. Rules in MLB and the NBA are more complex.

In MLB there is a "Competitive Balance Tax" (or "luxury tax"), which is triggered if a team's annual payroll exceeds a dollar limit (Alwell, 2020). The tax on the excess escalates if a team continues to exceed the limit in successive seasons. In the NBA there is also a luxury tax, although it is confined to the time the cap is exceeded. Its CBA also provides for "maximum contracts" falling into 2 categories: designated rookie extensions and designated veteran exceptions (Sethi, August 4, 2021). The maximums are set at a percentage of the team salary cap.

These other US leagues have their own forms of revenue sharing. The NFL delineates between "national" versus locally-generated revenue (Gentrup, July 20, 2021). The former is split evenly among teams, also common in other leagues. All local revenue besides ticketing (of which 40% is shared) remains with a team. The NHL system appears to be that the top ten local revenue generating teams share with other teams (Campbell, Sept. 26, 2017). The NBA transfers a portion of local revenues from wealthier teams to less profitable ones (Windhorst & Lowe, Sept. 19, 2017). In contrast, in MLB 48 percent of local revenues from each team are shared with others (Baseball Reference, n.d.). Further, 50 percent of the collected Competitive Balance Tax is redistributed to smaller market teams who do not exceed the salary cap (Bloombergtax.com, March 24, 2022).

MLS's current centralized model tightly controls salaries. Under a reorganized league with a more open free agency system, owners should consider these different budgetary and competitive balance approaches. This subject would be part of CBA negotiations. Setting a total salary pool as a percentage of overall revenues would be a way to address owner concerns that salaries will rise at a greater rate than revenues. Other leagues besides MLB do this. Twomey & Monk (2011)

Consider a Future With Promotion and Relegation: Proponents of replacing MLS's model often support promotion and relegation (Velarde, 2019) (Prince-Wright, Nov. 21, 2016). Indeed, the suit against MLS and USSF by NASL alleges a conspiracy to prevent an "open" system with that feature (North American Soccer League, LLC vs. Major League Soccer et. al. (2017).

English soccer provides a comprehensive example of promotion and relegation. At the top of the hierarchy is the EPL, where the bottom 3 season finishers are relegated to the league at the next lower level (Velarde, 2019). In turn, the top 3 finishers in that 2nd level league, named EFL Championship, are promoted to the EPL (myfootballfacts.com, n.d.). There are 11 leagues, but no promotion-relegation below the 8th level. A few years ago *Deloitte* issued a report advocating that the US adopt this type of system (Prince-Wright, November 21, 2016). The study finds various benefits to all levels of US professional soccer including: greater attendance, revenue, investment; added ownership motivation to invest in and develop their club; player development. Notably, the report was commissioned by a NASL club owner, calling into question its objectivity.

The *Deloitte* report does acknowledge the US is not ready for this system (Prince-Wright, November 21, 2016). One reason cited is the need to protect the equity of MLS owners, at least initially, from the risk of relegation. Commentators opposed to this system cite the same concern (Hallorin, Feb. 26, 2014). This position is compelling. MLS investors have relied upon a system without a risk of dropping into a lower, less lucrative league. It would seem to be too much change at once, on top of adapting to a new model with increasing salaries. US soccer at all levels should be allowed to mature before another transformative move like this is implemented.

Defer on Financial Fair Play Rules: Over a decade ago, concerns over European club financial losses and accumulation of debt led UEFA to develop regulations to control spending (Plumley et al, 2018). One reason for this situation was the advent of free agency and resultant escalating salaries after a decision by the European Court of Justice (MacMillan, 2018). Another was the arrival of wealthy foreign owners. In 2011, UEFA introduced the "Financial Fair Play" regulations ("FFP") which require clubs to at least break-even financially (Plumley et al, 2018).

European soccer is distinct from MLS, and not just structurally (Radic, 2014). Rather than profit seeking, the business culture is described by many as "win maximizing" (Freestone &

Manoli, 2017). It was within that environment that FFP was enacted. When implemented there was concern the result would be less competitive balance. In their study Plumley et. al (2018) find a subsequent decline in balance in the Spain, Germany and France leagues, but not in England or Italy. It would be premature while changing its structure for MLS to lurch into regulations to address excessive expending, especially with the uncertain effects on competition within a league.

SWOT Analysis. MLS will continue facing a competitive environment domestically and globally even after reorganizing. Its future within that broader, future context will now be examined through a "SWOT" (strength, weakness, opportunities, threats) analysis.

Strengths: MLS's potential following is reflected in favorable demographics. Globally, the league competes in the most popular sport. (WorldAtlas, n.d.). App. 16. On the domestic front, there is a significant, and growing, Latino population with an affinity for soccer (Bonte-Friedheim, 2021). The sport has surpassed ice hockey in popularity (Serrano, Jan. 9, 2018). Other polling shows that in the 18-to-34-year age group, soccer is second in popularity to football, and third among 35 to 54-year-olds. In contrast, MLB, whose season mostly overlaps with MLS's, has a much older audience (Poindexter, March 31, 2021). A new strategy will enhance the affinities with these key market segments by a greater focus on players: "star power" resonates with them.

Investor interest grows. Business, sports and entertainment leaders offer new capital and fresh ideas (Poindexter, June 7, 2021). A more profitable model will also leverage these strengths.

Weaknesses: By the recommended changes it is expected MLS's weaknesses – inferior talent levels from low salaries, suppressed revenue and a lack of profitability – will be overcome. But improvement being player-driven, a turnaround will not be immediate. The talent gap with European clubs is stark. Rising compensation from liberalized free agency will transpire over time, and even with more competitive pay many foreign players may hesitate to move to MLS.

The pace of this process may mean MLS's following in terms of audience, viewership and media coverage will trail the other US leagues for a while. Revenues will steadily rise, and eventually profits will come, but only longer term will MLS reach its peers' economic stratospheres.

Opportunities: While full realization of the benefits of MLS's changes will take time, the possibilities are extensive. Under the current model there are promising developments to be leveraged. Sponsorship initiatives, including the "jersey patch," reflect brand awareness. New stadiums are expected to grow local revenue (Shea, Oct. 30, 2019). App. 17. Owners cite real estate development opportunities. MLS believes its media rights will grow in value (Mashayekhi, 2020). The 2026 World Cup in North America is expected to raise the profile of US soccer further.

But only through change will the league fully capitalize on these and other potential opportunities. Reorganizing team and player relationships *and* liberalizing free agency is the strategic path to enhancing quality of play, turbocharging all revenue sources. At their core, these changes enable a *brand upgrade which* elevates MLS's product, the players. Greater talent translates into greater consumer demand and in turn financial success. And an enhanced brand can be leveraged for more effective marketing. Fan cultivation and engagement will naturally be maximized by a *player-focused MLS*, and favorable demographics enhance that dynamic. Newer investors, including athletes, have witnessed the "star" approach succeed in sports and business.

Threats: MLS continues to face the systematic threat of another antitrust challenge. This vulnerability has increased over time. Until the league *fully* implements the recommended changes, that will remain. Additionally, as encouraging as the recent escalation in team values must be, including comparisons of MLS to a "growth stock," eventually investments must realize earnings expectations or values drop. By revamping its model to boost financial performance this risk will dissipate. But even in a reorganized form, MLS will face ongoing challenges in competing globally, particularly with "win maximizing" EPL clubs. In the US, it will still compete for fans with 4 established leagues, newer ones in other sports and other forms of entertainment.

Financial Considerations. The economic purpose of changing MLS is realizing the positive financial impact of higher talent levels on revenue and profits. Replacing the single-entity structure with a more traditional league model and introducing unrestricted free agency, with salary cap and competitive balance measures, will allow MLS to realize that talent-driven result.

Reorganizing the existing model to a different structure will require significant cost including for legal and financial advisors. There may also be tax effects for both MLS and owner-operators. League-level costs and taxes should be shared equally among owners.

The other major, and necessary, component of a restructuring involves replacing the complex rules on compensation with liberalized free agency. As described, this requires collective bargaining. There would be associated costs borne by MLS, owners and the MLSPA, including fees of legal and financial firms, plus those of a mediator if there is an impasse in negotiations.

Once the reorganization is implemented and a new compensation system is in place, MLS finances will change substantially. That starts with compensation. For the 2021 season the average *team* salary total was $12.29 million, ranging from $8.7 to $17.8 million (Stejskal & Tenorio, May 13, 2021). As already described, the average salary of a senior, non-designated player was $398,725, and the pay of the 2 highest paid players was at or just above $6 million. In contrast, in the top European leagues the highest average salary ranges from $1.54 million (Ligue One) to $3.9 million (EPL) (SoccerBlade, n.d.). Lionel Messi is the highest paid at $68.6 million; the top 10 salaries range from $25.1 to $68.6 million. Predicting the outcome of MLS collective bargaining is difficult. If salaries grew over time to the lowest European league average (Ligue 1), the average MLS payroll could more than double or triple. Whatever the increase, it would likely be gradual.

But higher salaries cannot be viewed merely as an expense. They represent an investment in elevated player talent – a better product on the field. More spending on this key resource of MLS teams will mean more revenue (Bradbury, 2021). In the near term, a modest expectation could be teams reaching a break-even point. Teams collectively lost over $100 million in 2019 (Smith, Nov. 4, 2019). A positive swing of that magnitude would be a good start. Profit-seeking teams spend on players until marginal cost meets marginal revenue (Kesenne, 2015). Under that theory, salary increases would be moderated until income begin to grow more significantly.

Similarly, projecting with any precision the magnitude of revenue increases over time is a challenge. To get some sense of the financial effects from replacing the single-entity model, it is instructive to look at two revenue sources. One is game-day revenue, where a large majority of MLS club income originates. As a baseline, 2019 average attendance was 21,322, or 76 percent capacity. This contrasts with the EPL average of 38,168, or 97.2 percent capacity (Kinch & Scrimgeour, Sept. 21, 2020). Even a conservative boost in attendance due to higher talent would mean substantially more revenue. If a 10% rise, 2,132 additional fans for 30 teams at 17 home games would mean attendance increasing by 1.1 million – causing a big spike game-day receipts.

A second revenue source, generated at the league level, is from media rights. MLS's current annual payout from national agreements of $90 million annually is substantially below other US leagues (Stejskal, March 18, 2022). The EPL's US rights alone earn it $450 million. MLS negotiations are ongoing for new contracts starting in 2023. The league aspires to increase its annual return to $300 million. Even with that jump, MLS's value is substantially below the annual payouts in other US leagues: NFL-$10 billion; NBA-$2.5 billion; MLB-$1.75 billion; NHL-$625 million (Stejskal, March 18, 2022). If MLS's reorganization is implemented and unrestricted free agency is in place, the next time the league's media rights contracts are renewed one can envision new deals at least within the range of the current values for the EPL and NHL (which will have risen again). That would be a substantial increase over the current annual payout.

In sum, the rewards from MLS's restructuring, while difficult to gauge, are substantial.

Measurement of Success. Return on investment ("ROI") will continue to be the focus of one group of stakeholders, MLS owners. Over the past twenty years, the average annual return in the other 4 US leagues ranged from 9 to 13 percent. (Perez, Jan. 29, 2022). Considering many owners view MLS as a growth stock, their ROI expectation may be even higher. If the league adopts the recommended restructuring steps, it can meet these expectations of success.

From the view of other stakeholders, return on objective is a relevant, complementary metric of success (Van der Bergh, Aug. 20, 2021). The objective is *elevating quality of play by higher pay*, by a model allowing competition for player services. The economic benefits to players are obvious. Sponsors, media companies and other business partners also gain from greater talent levels. Finally, there is a boost in the all-important fan engagement by realizing this objective.

CONCLUSION

In summary, MLS needs to change. There is a question whether the single-entity structure contributes to competitive balance, but regardless the ongoing antitrust exposure overwhelms any such benefit if it is exists. The model still curbs player pay, as intended at MLS's origins. So with the legal risk, level of play is sacrificed. That underinvestment in the league's most precious resource – players – results in lower growth, less revenue and unprofitability to this day. In parallel with a change in structure, less restricted free agency must be negotiated with the players. Concerns over rising salary costs and competitive imbalance can be addressed through tools adopted by other US leagues. Promotion and relegation may be needed in the future as the US soccer landscape matures. For now, the recommended reorganization will lead to a more vibrant, prosperous MLS.

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INTERVIEWS (biographies attached in App. 18):

Professor Charles Link, personal communication, February 24, 2022

Eddie Pope, personal communication, March 7, 2022

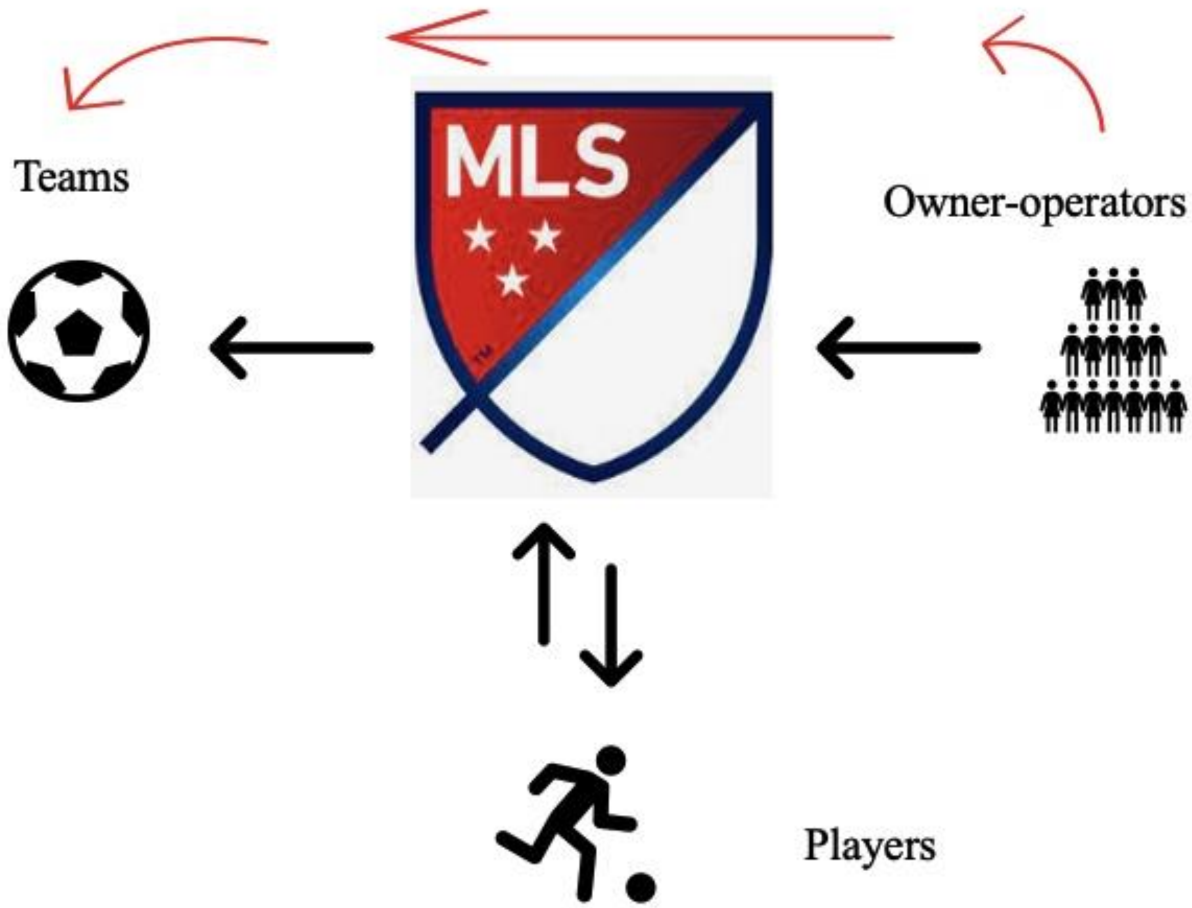
Amy Inlander Minniti, Esquire, personal communication, March 15, 2022

("Silent partner" in MLS ownership group), personal communication, March 21, 2022)

APPENDICES

APP. 1

SINGLE-ENTITY STRUCTURE



APP. 2

MAJOR LEAGUE SOCCER LOGO

Source: mlssoccer.com

MAP OF MLS MARKETS – US, CANADA

Source: Atlanta United FC/Reddit

APP. 3

MLSPA History

We've come a long way, but we still have room to grow our legacy.

April 17, 2003
Recognition: The MLS Players Union is recognized as the exclusive collective bargaining representative of all MLS players, becoming the first labor organization formed by MLS players.

December 1, 2004
First CBA: The Union and MLS sign the first Collective Bargaining Agreement in MLS. The agreement raises the minimum salary, increases incentive bonuses, guarantees fully-paid health insurance for all players, creates the first grievance and arbitration system in MLS, and creates a 401(k) plan for players.

March 20, 2010
Second CBA: The Union and MLS agree to terms on a second Collective Bargaining Agreement. This agreement significantly increases the number of players with guaranteed contracts, limits the number of options in players' contracts, increases all economic terms, creates new benefits for players, and increases player rights to move within the league by creating the re-entry draft.

March 4, 2015

Third CBA Signed: The Union and MLS agree to terms on a third Collective Bargainin Agreement. Under this Agreement, restricted free agency is introduced for the first time in league history. Players who are 28 years old with at least 8 years of MLS for th first time can choose which team within MLS to play for when signing a new contract In addition, the number of players with guaranteed contracts increases, and all economic terms increase.

December 14, 2015

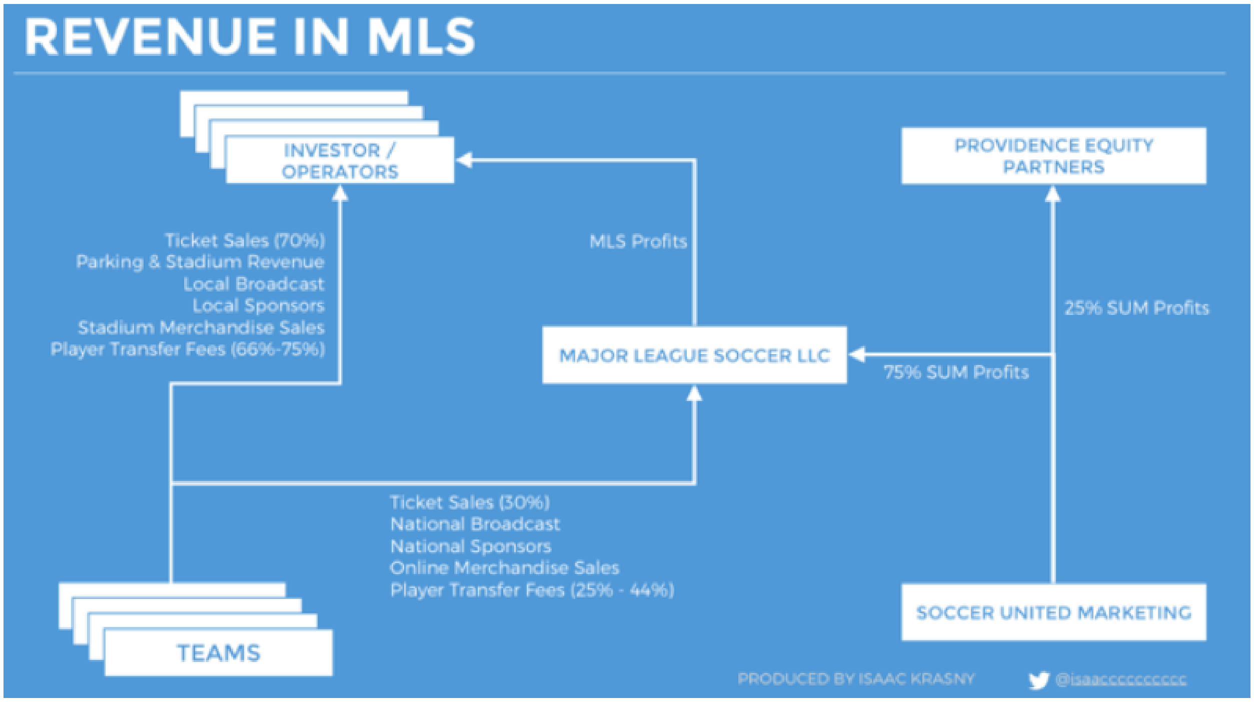
First free agent in MLS history: Justin Mapp signs the first free agent contract in ML history with Sporting Kansas City.

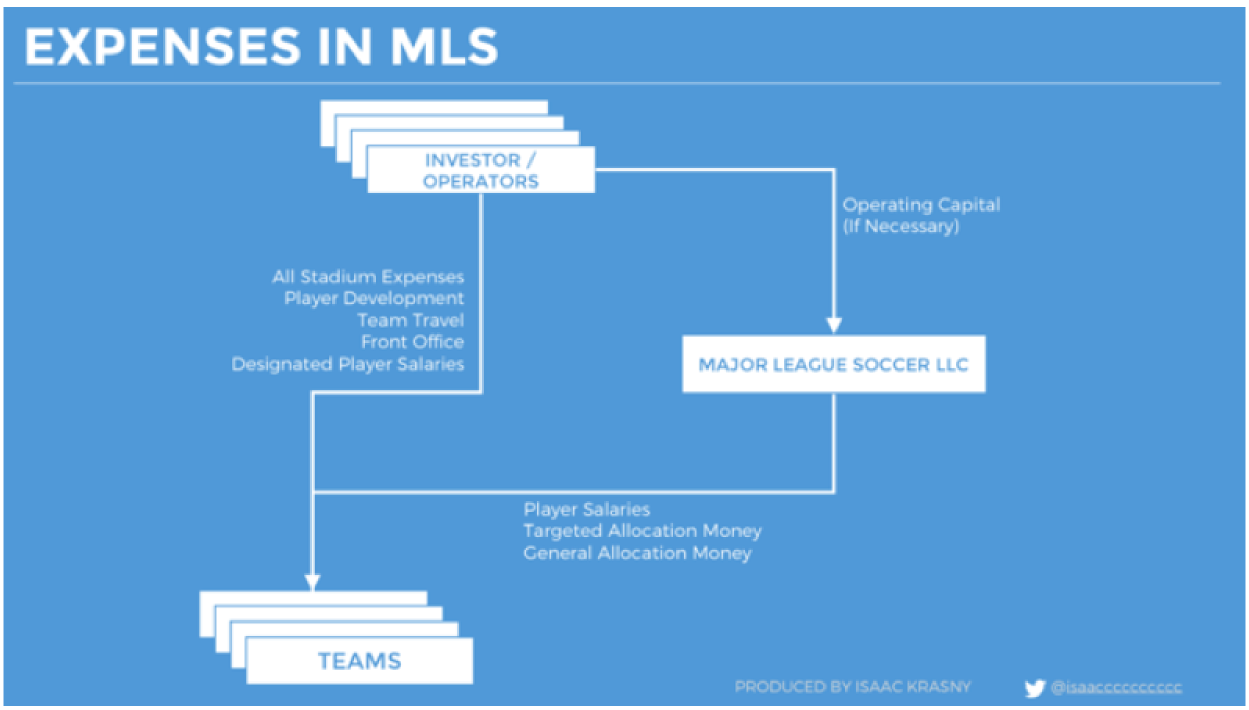
December 14, 2017

Name Change & Re-Brand: The MLS Players Union changes its name to the MLS Players Association and launches a full re-branding.

Source: mlsplayers.org

APP. 4





Source: Isaac Krasny

APP. 5

REVENUE COMPARISON WITH OTHER US LEAGUES

Table 1. *Forbes* 2018 Revenue Estimates for U.S. Sports Leagues.

League	Revenue per team	Minimum	Maximum
NFL	$452.4	$357	$950
MLB	$329.8	$218	$668
NBA	$266.9	$204	$443
NHL	$156.7	$96	$253
MLS	$35.5	$18	$78

Note. In millions of dollars. NFL = National Football League; MLB = Major League Baseball; NBA = National Basketball Association; NHL = National Hockey League; MLS = Major League Soccer.

Source: Forbes.com

APP. 6

MLS CHAMPIONS

Club	Titles	Runners-Up
Los Angeles Galaxy	5	4
D.C United	4	1
Seattle Sounders FC	2	2
Houston Dynamo	2	2
Columbus Crew SC	2	1
Sporting Kansas City	2	0
San Jose Earthquakes	2	0
Chicago Fire	1	2
Toronto FC	1	2
Portland Timbers FC	1	2
Colorado Rapids	1	1
Kansas City Wizards	1	1
Real Salt Lake City	1	0
Atlanta United	1	0
New York City FC	1	0
New England Revolution	0	5
New York Red Bulls	0	1
Real Salt Lake	0	1
FC Dallas	0	1

Source: soccerprime.com

APP. 7

Major League Soccer's Most Valuable Teams 2019

The average MLS team is now worth $313 million, up 30% year-over-year. The 23 teams that played in 2018 generated more than $800 million in revenue.

Rank	Team	Value ($M)	Revenue ($M)	Operating Income ($M)
1	Atlanta United	500	78	7
2	LA Galaxy	480	64	5
3	LAFC	475	50	-5
4	Seattle Sounders	405	47	1
5	Toronto FC	395	43	-19
6	Portland Timbers	390	47	4
7	New York City FC	385	45	-16
8	Chicago Fire	335	23	-16
9	DC United	330	41	1
10	Sporting Kansas City	325	43	1
11	Minnesota United	300	24	-8
12	Orlando City SC	295	39	-1
13	New York Red Bulls	290	36	-6
14	FC Cincinnati	285	n/a	n/a
15	Houston Dynamo	280	23	-6
16	San Jose Earthquakes	275	35	-5
17	New England Revolution	245	29	-2
18	Philadelphia Union	240	21	-5
19	Real Salt Lake	235	21	2
20	FC Dallas	220	33	-7
21	Vancouver Whitecaps	215	20	-5
22	Montreal Impact	210	18	-12
23	Columbus Crew	200	18	-8
24	Colorado Rapids	190	18	-5

Source: Forbes

APP. 8

SALARY COMPARISON – MLS v. EUROPE

LEAGUE	AVG SALARY ($ mill)	HIGH SALARY ($ mill)
English Premier (UK)	3.9	29
La Liga (Spain)	2.75	41.2
Serie A (Italy)	2.23	10.2
Bundesliga (Germany)	2.05	25.1
Ligue 1 (France)	1.54	68.6
MLS	$ 398,725*	6.3

* non-designated players

Sources: Statista; Sportskeeda

HIGHEST PAID MLS PLAYERS – 2021

PLAYER	CLUB	GUARANTEED COMP. (MILLIONS)
Carlos Vela	LAFC	$6.3
Javier Hernandez	LA Galaxy	$6
Gonzalo Higuain	Inter Miami	$5.79
Alejandro Pozuelo	Toronto FC	$4.69
Josef Martinez	Atlanta United	$3.89
Jozy Altidore	Toronto FC	$3.60
Rodolfo Pizarro	Inter Miami	$3.35
Maxi Moralez	New York City FC	$3.29
Victor Wanyama	Montreal	$3.09
Franco Jara	FC Dallas	$2.98
Jurgen Locadia	FC Cincinnati	$2.81
Carles Gil	New England Revolution	$2.77
Nicolas Lodeiro	Seattle Sounders FC	$2.74
Robert Beric	Chicago Fire	$2.70
Nani	Orlando City SC	$2.49

Source: The Athletic

HIGHEST PAID EUROPEAN PLAYERS – 2021

Player	Team	Avg. Salary Per Year
Lionel Messi	PSG	$68.6 million
Neymar	PSG	$43.47 million
Luis Suarez	Athletico Madrid	$41.2 million
Antoine Griezmann	Athletico Madrid (Barca)	$41.2 million
Gareth Bale	Real Madrid	$35.8 million
Kylian Mbappe	PSG	$29.4 million
Cristiano Ronaldo	Manchester United	$29 million
Kevin De Bruyne	Manchester City	$27.6 million
David De Gea	Manchester United	$26.8 million
Robert Lewandowski	Bayern Munich	$25.1 million

Source: Soccerblade.com

APP. 9

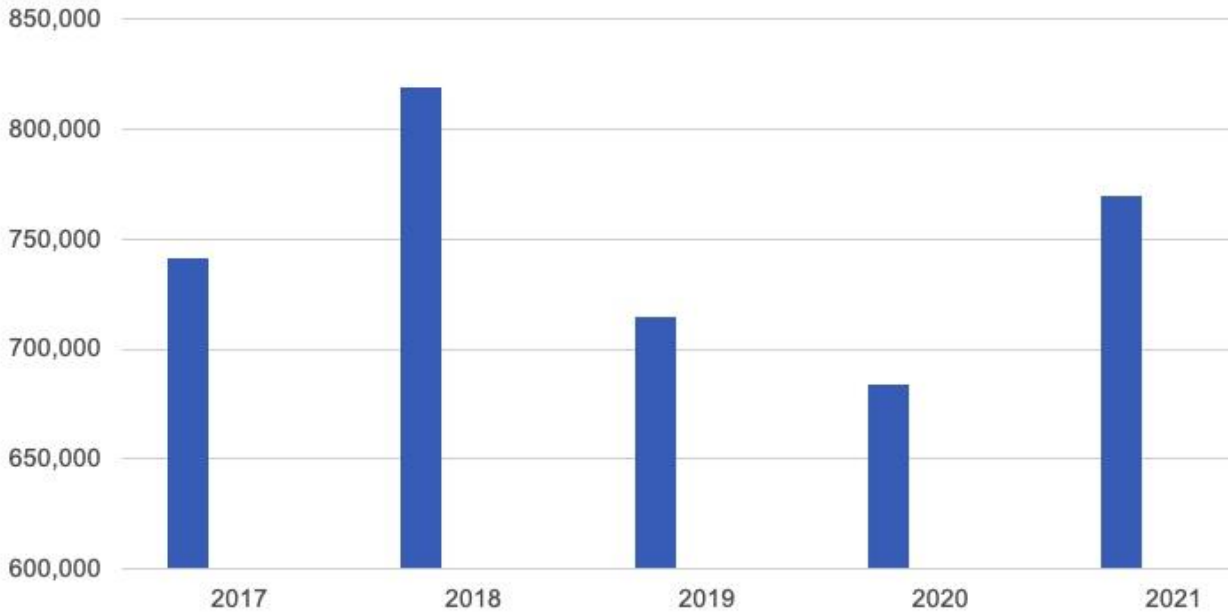
MEDIA RIGHTS VALUES – MLS v. EPL, OTHER LEAGUES

LEAGUE	ANNUAL REVENUE-MEDIA RTS ($)	REVENUE/TEAM ($ mill)
NFL	10 billion	312.5
NBA	2.5 billion	86.7
MLB	1.75 billion	58.3
NHL	625 million	20.2
MLS	90 million	3.2
ENGLISH PREMIER LEAGUE (US ONLY)	450 million	22.5

Source: The Athletic

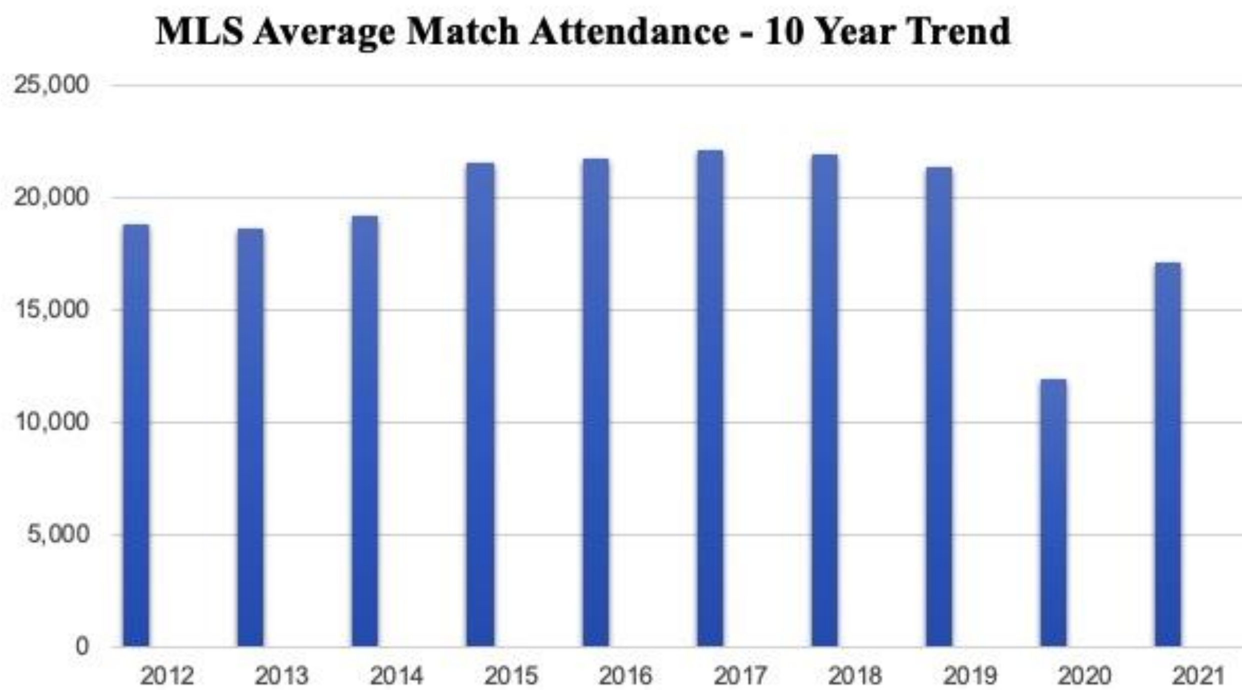
APP. 10

MLS Regular Season Viewership – 5 Year Trend



Source: The Athletic

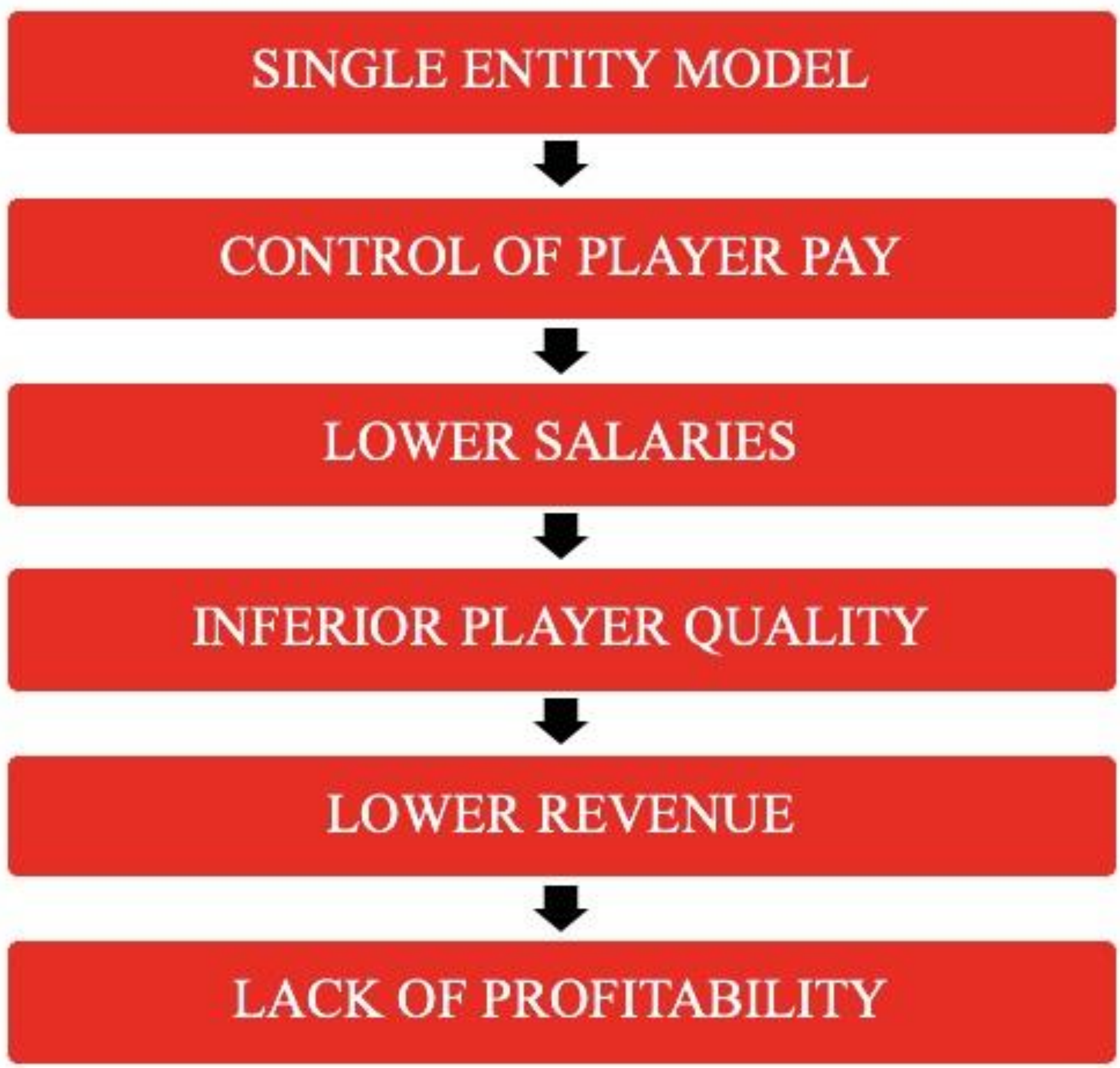
APP. 11



Source: transfermarkt.us

APP. 12

ECONOMIC IMPACT OF MLS BUSINESS MODEL



APP. 13

COMPARISON OF LEAGUE VALUATIONS – 2021

LEAGUE	HIGH VALUATION ($)	AVERAGE VALUATION ($)	VALUE TO REVENUE RATIO
NFL	6.9 billion (Dallas Cowboys)	3.1 billion	6.3
MLB	6.75 billion (New York Yankees)	2.2 billion	6.4
NBA	6.12 billion (New York Knicks)	2.4 billion	7.8
NHL	2 billion (Toronto Maple Leafs)	934 million	5.2
MLS	860 million (Los Angeles FC)	550 million	12.2

Source: Sportico

APP. 14

Women's League Changes Its Commissioner and Operating Model

Berkman, Seth . New York Times , Late Edition (East Coast); New York, N.Y. [New York, N.Y]. 13 Oct 2020: B.8.

ProQuest document link

FULL TEXT

The league is replacing its commissioner, the league founder Dani Rylan Kearney, as it seeks to secure independent ownership for four of its six teams heading into its sixth season.

Tyler Tumminia has been named the interim commissioner of the National Women's Hockey League, replacing the league's founder, Dani Rylan Kearney.

The N.W.H.L. confirmed the change on Monday and announced that it was switching its operational model to an unincorporated association with a six-person board of governors to ensure "alignment of interests between the league and its teams."

Under the previous system, the six-team league was owned by a group of investors that also controlled four of the league's clubs, in the New York metropolitan area, Connecticut, Minnesota and Buffalo. Although the league sought independent owners for all six franchises, only two teams are independently owned – the Boston Pride and the Toronto Six, an expansion club for the 2020-21 season.

Since its inception in 2015, the N.W.H.L. operated more like a single entity – like Major League Soccer – with salary limits and investors or shareholders controlling major decisions for the teams. This differs from the models used by the N.H.L. and the N.F.L., which the N.W.H.L. will now attempt to mimic.

Martin Edel, a lecturer at Columbia Law School who specializes in sports law, said that the single-entity model of the last 20 years or so was built primarily on trying to avoid the antitrust laws, like Section 1 of the Sherman Act, rather than on growth.

"I haven't seen new leagues that have arisen since the early 1990s come up in the traditional model; that's why this is frankly surprising," Edel said of the N.W.H.L.'s switch. "Is that a better model for growth? It could be."

The older model became challenging to uphold after Miles Arnone, a venture capitalist, purchased the Pride in 2019, and Boston seemed to gain a clear advantage over the rest of the teams.

Pride players praised the provided equipment, training and travel amenities, which trumped those of the league-owned teams. Boston recorded the best record in the league at 23-1-0 and made the Isobel Cup final (which was canceled because of the coronavirus pandemic). The Buffalo franchise was briefly owned – from late 2017 to the spring of 2019 – by Pegula Sports and Entertainment, the parent company of the N.H.L.'s Buffalo Sabres and the N.F.L.'s Buffalo Bills, and that team had similar success.

Rylan Kearney will remain with the league and lead the pursuit of securing independent ownership for the Metropolitan Riveters, the Connecticut Whale, the Minnesota Whitecaps and the Buffalo Beauts. She declined an interview request on Monday.

Andy Scurto, an insurance and tech entrepreneur who is on the new board of governors, thanked Rylan Kearney in a statement for bringing the league "where it is today."

"Tyler brings a wealth of relevant experience and we are confident that she will help take the league to the next level," he added, referring to Tumminia, the interim commissioner.

For five years, Rylan Kearney had been the lone visible face of N.W.H.L. leadership and took the brunt of criticism for missteps.

When many around the hockey world called for merging competing women's hockey leagues, she remained confident that the N.W.H.L. was pushing toward creating the best environment available for female hockey players.

After playing ice hockey at Northeastern, Rylan Kearney moved to New York and opened a coffee shop in East Harlem. At the time, women's professional hockey was almost nonexistent in the United States, with one team in Boston playing in the Canadian Women's Hockey League.

Rylan Kearney saw an opening to bring women's pro hockey to the U.S., starting with four teams in the N.W.H.L. The league signed Olympians and stars from the C.W.H.L., like Hilary Knight and Meghan Duggan.

But during the N.W.H.L.'s second season, the league incurred financial troubles, including lawsuits, and slashed player salaries, creating distrust from several top players. In a 2017 interview with The New York Times, Rylan Kearney acknowledged that it was more difficult than she envisioned to get major companies on board supporting women's sports.

After many players left the N.W.H.L., Rylan Kearney secured partnerships with companies like Twitch that somewhat stabilized the league's standing. The N.W.H.L. added franchises in Minnesota in 2018, and Toronto in April.

The N.W.H.L., which will begin its sixth season in January, will now turn to Tumminia to pursue the broadcast rights deals and partnerships with major brands that have largely eluded women's hockey. The C.W.H.L. folded in 2019 because of economic troubles. The Canadian league operated as a centrally funded, nonprofit enterprise. Last season, the N.W.H.L.'s highest announced salary was $15,000.

Tumminia first got involved with the N.W.H.L. this year as the chairwoman of the Toronto team, a position she will leave because of her new post. Previously, Tumminia helped run several minor league baseball teams with a focus on sponsorship and marketing.

"This is a time of opportunity and transformation for the N.W.H.L., and the changes we are making across the league will fortify a foundation for continued success well into the future," Tumminia said in a statement.

Tumminia's ascent arrives at a time when women's hockey is at a standstill because of the coronavirus pandemic. A majority of N.C.A.A. Division I women's college hockey conferences have indefinitely delayed their 2020-21 seasons, while some Division III conferences have canceled theirs. Several international tournaments have been canceled, and the Professional Women's Hockey Players Association, a barnstorming group that includes players like Knight and other top Olympians, is operating with a limited schedule.

Members of the P.W.H.P.A. have been resolute in creating their own path toward a pro league that can provide players livable salaries, which the N.W.H.L. does not yet provide.

Replacing Rylan Kearney with Tumminia will probably not change the stance of the P.W.H.P.A., but her marketing experience could open up avenues to untapped sponsors or potential team owners.

APP. 15

SALARY INCREASES AFTER FREE AGENCY**

Table 1 Average Player Salary by League

Year	MLB ($)	NFL ($)	NBA ($)[a]	NHL ($)[a]
1970	29,303	41,000		
1971	31,543		40,000	25,000
1972	34,092	45,000		
1973	36,566			44,109
1974	40,839	56,000		
1975	44,676			
1976	51,501	78,000		74,000
1977	76,066		130,000	
1978	99,876	100,000	139,000	96,000
1979	113,558		148,000	
1980	143,756	117,000	170,000	101,000
1981	185,651		171,000	110,000
1982	241,497	157,000	212,000	97,350
1983	289,194		249,000	110,303
1984	329,408	279,000	275,000	118,788
1985	371,571		325,000	127,273
1986	412,520	288,000	375,000	144,242
1987	412,454		440,000	169,697
1988	438,729	307,000	510,000	178,182
1989	497,254	389,000	653,000	188,000
1990	597,537	430,000	823,000	220,606
1991	851,492	488,000	1,003,000	271,000
1992	1,028,667	551,000	1,100,000	368,000
1993	1,076,089	729,000	1,300,000	467,000
1994	1,168,263	674,000	1,700,000	572,161
1995	1,110,766	752,000	1,900,000	733,000
1996	1,119,981	807,000	2,000,000	892,000
1997	1,336,609	725,000	2,200,000	984,500
1998	1,398,831	783,066	2,239,000	1,167,713
1999	1,720,050	794,401	2,463,058	1,288,974
2000	1,895,630	928,266	2,919,772	1,356,380
2001	2,277,318	1,175,506	2,901,595	1,434,884
2002	2,384,779	1,086,453	3,473,525	1,642,590
2003	2,553,057		3,893,801	1,790,209

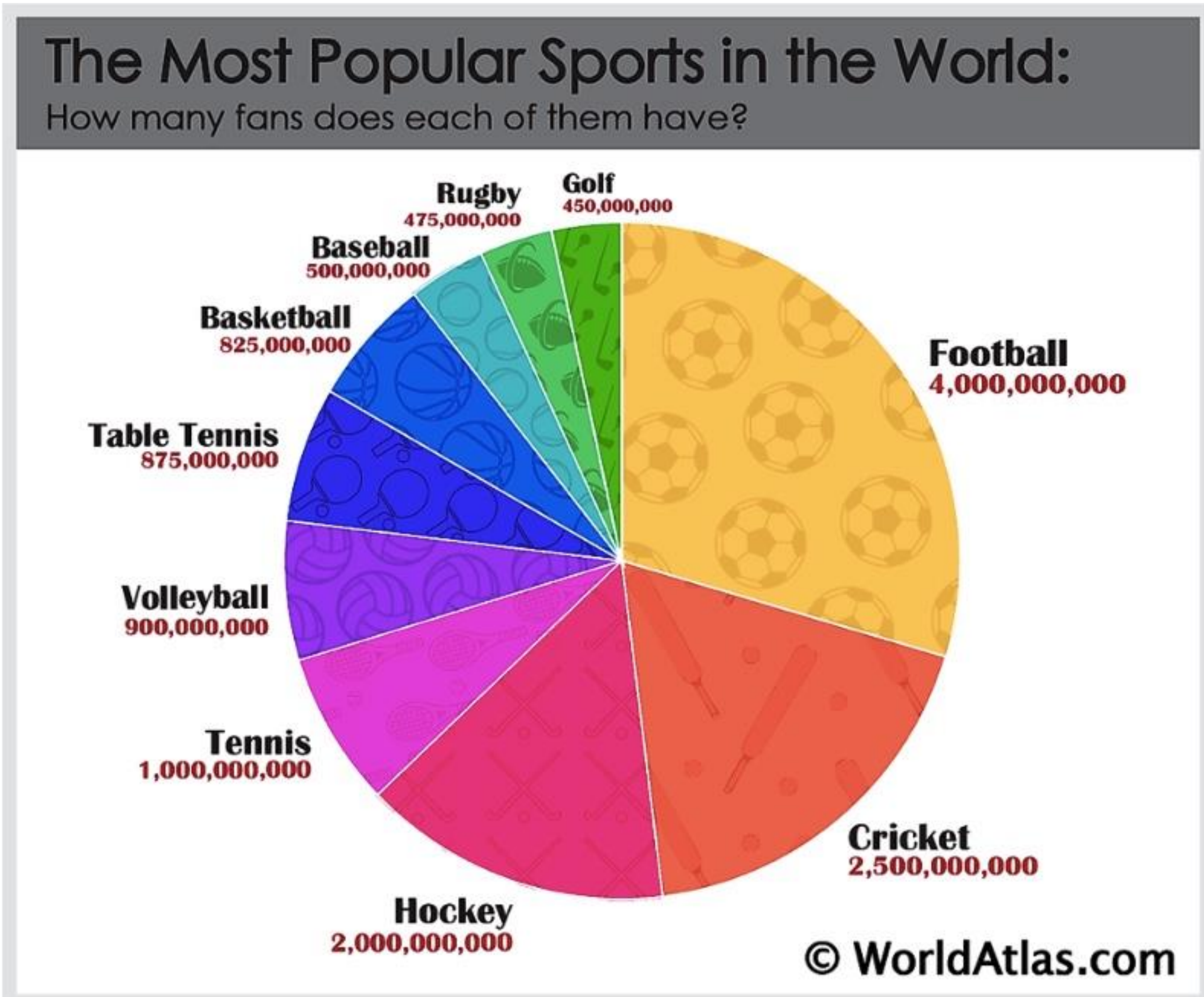
Note. Table adapted from Rodney Fort's Sports Business Data, http://www.rodneyfort.com/PHSportsEcon/Common/OtherData/DataDirectory.html.

[a]Each season's NBA and NHL schedule includes two consecutive calendar years. Year represents the completion of the schedule; e.g., 2003 indicates the 2002–2003 season.

Source: Journal of Sports Management

** **The salary in the year free agency was implemented is circled for each league.**

APP. 16



The most popular sports in the world according to the number of fans.

APP. 17

MLS CLUB JERSEY SPONSORS

Team	Previous sponsor(s)
Atlanta United	American Family Insurance (2017)
Austin FC#	Yeti (2020)
Charlotte FC#	Ally (2020)
Chicago Fire	Motorola (2019) *Valspar 2016-18; Quaker Oats 2012-2015; Best Buy 2008-2010*
Colorado Rapids	Transamerica (2015) *Ciao Telecom (2014)*
Columbus Crew	N/A *Acura (2017-19); Barbasol (2012-2016)*
D.C. United	Leidos (2014) *Volkswagen (2008-2013)*
FC Cincinnati	Mercy Health (2018)
FC Dallas	AdvoCare (2012)
Houston Dynamo	MD Anderson Cancer Center (2019) *BHP Billiton (2014-2017); Amigo Energy (2007-10); Greenstar Recycling (2011-12)*
Inter Miami CF#	TBD
LA Galaxy	Herbalife (2006)
LAFC	YouTube TV (2018)
Minnesota United FC	Target (2017)
Montreal Impact	BMO (2012)
Nashville SC	Renasant Bank (2020)
New England Revolution	United Healthcare (2011)
New York Red Bulls	Red Bull (2006)
NYCFC	Etihad Airways (2011)
Orlando City SC	Orlando Health (2011)
Philadelphia Union	Home: Bimbo (2011); Away: Artesano (2020)
Portland Timbers	Alaska Airlines (2010)
Real Salt Lake	LifeVantage (2014) *XanGo (2007-2013)*
Sacramento Republic FC#	UC Davis Health (2020)
San Jose Earthquakes	Intermedia (2020) *Sutter Health (2016-18)*
Seattle Sounders	Zulily (2019) *Xbox (2009-18)*
Sporting KC	Ivy Funds (2013)
St. Louis FC#	N/A
Toronto FC	BMO (2007)

Source: Sports Business Journal

RECENT STADIUM CONSTRUCTION

Building boom

MLS's expansion means a slew of new soccer-specific stadiums are on the way. Here's what is coming soon.

Name (Year Opening)	Team	Cost	Capacity
Inter Miami CF Stadium (2020)*	Inter Miami CF	$60m	18,000
New Columbus Crew Stadium (2021)	Columbus Crew	$300m	20,000
Austin FC Stadium (2021)	Austin FC	$242m	20,500
West End Stadium (2021)	FC Cincinnati	$200m	25,500-26,500
Miami Freedom Park (2022)	Inter Miami	$966m	25,000
Nashville Fairgrounds Stadium (2022)	Nashville SC	$275m	27,500-30,000
Railyards Stadium (2022)	Sacramento Republic FC	$300m	20,100
St. Louis MLS Stadium (2022)	St. Louis expansion team	$250m	22,500

** The club will play there until its proposed stadium opens in 2022.*

Source: Sports Business Journal research • Get the data • Created with Datawrapper

Source: Sports Business Journal

APP. 18

VITA
CHARLES R. LINK
Professor of Economics
Bank of America Professor of Business

Biographical Information

Home Address: 275 Orchard Road
Newark, Delaware 19711
(302) 454-1952

Office Address: Department of Economics
University of Delaware
Newark, DE 19716
Phone (302) 831-1921
Fax # (302) 831-6968
email: clink@udel.edu

Place of Birth: Kirksville, MO

Education:

University of Missouri (Columbia), B.A., 1966, Economics
University of Wisconsin (Madison), M.A., 1968, Economics
University of Wisconsin (Madison), Ph.D., 1971, Economics

Fields of Specialization:

Labor and health economics (emphasis is on financing health care)
Economics of Education (emphasis is on financing education)
Economics of Professional Baseball (emphasis on baseball finances)
Health Economics and Health Labor Markets

Honors:

-See grants listed below in section II
-Woodrow Wilson Designate (1966-1970) - Research
-Omicron Delta Epsilon
-Fellow in the Center for Advanced Study (University of Delaware) - Research 1985-86 (one of 4 UD Full Professors selected from a panel of distinguished full professors at the UD)
-Salzburg Seminar (January/February 1990)
-Selected to participate in the American Economic Association Seminar on Excellence in Teaching Economics, 1994
-Fellow in the Center for Advanced Study (University of Delaware) - Teaching 1996-97 (only UD Full Professor to receive a teaching fellowship as selected by a panel of distinguished Full Professors at the UD. Only UD Full Professor to have received both a research and teaching award.)
-Department of Economics Excellence in Teaching Award, 1995
-University of Delaware Excellence in Teaching Award, 2000
-Named professor at the UD 2002-present: Bank of America Professor of Business
- 2014 Outstanding Teacher Award for the Alfred Lerner College of Business and Economics.

Association Memberships:

American Economic Association
International Health Economics Association
American Society of Health Economists
Western Economic Association

Employment History:

July 2002 - MBNA America Professor of Business (named changed to Bank of America Professor of Business)

September 1981 - Professor of Economics, University of Delaware

September 1975 to September 1981 - Associate Professor of Economics, University of Delaware

January 1971 to September 1975 - Assistant Professor of Economics, University of Delaware

September 1970 to January 1971 - Instructor of Economics, University of Delaware

EDDIE POPE

Experience

Director N.A. Soccer Division at Octagon
Octagon
Oct 2015 - Present · 6 yrs 8 mos
McLean, Virginia

Director of Player Relations
MLS Players Association
Jan 2008 - Nov 2015 · 7 yrs 11 mos
Bethesda, Maryland

Professional Soccer Player
Major League Soccer
Jan 1996 - Dec 2007 · 12 yrs

Professional Soccer Player
U.S. Soccer Federation
Jan 1996 - Jan 2006 · 10 yrs 1 mo

Education

University of North Carolina at Chapel Hill
Bachelor of Arts (B.A.), Political Science
1992 - 1996

Source: LinkedIn

AMY INLANDER MINNITI, ESQUIRE

Experience

Senior Vice President & General Counsel
Philadelphia Union
2021 - Present · 1 yr 5 mos
Greater Philadelphia

Adjunct Faculty, Sports Industry Management Program
Georgetown University
2011 - Present · 11 yrs 5 mos
Washington, DC

Vice President & Deputy General Counsel
Spectra
2018 - 2021 · 3 yrs
Greater Philadelphia Area

Vice President & Deputy General Counsel
Washington Nationals Baseball Club
Jan 2008 - 2018 · 10 yrs 1 mo
Washington, D.C.

Adjunct Faculty, George Washington University School of Law
George Washington University
2014 - 2017 · 3 yrs
Washington, DC

Associate
Reed Smith LLP
2007 - 2008 · 1 yr
Philadelphia, PA

Law Clerk
Pittsburgh Pirates
2005 - 2007 · 2 yrs

Education

University of Pittsburgh School of Law
JD
2003 - 2007

University of Pittsburgh
MPIA, Masters of Public & International Affairs
2003 - 2007

Colgate University
BA, Political Science & History
1999 - 2003

Source: LinkedIn