A MESSI FUTURE: REVISITING FRASER V. MAJOR LEAGUE SOCCER AND THE SINGLE ENTITY DEFENSE IN LIGHT OF O.M. V. NATIONAL WOMEN'S SOCCER LEAGUE AND THE SIGNING OF LIONEL MESSI

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I. INTRODUCTION

As Lionel Messi (Messi) lined up to take a free kick in the dying minutes of his Inter Miami CF (Inter Miami) debut, the future of soccer in the United States stood in the balance.[1] Would David Beckham, part owner of Inter Miami and designated player trailblazer, see his years of recruiting Messi to Miami pay off?[2] Would Messi deliver as he has time and time again on the world stage?[3] The answer was a resounding yes.[4] As the ball soared into the back of the net past the outstretched hands of the goalkeeper, one thing was certain: soccer in the United States would never be the same. Messi had arrived.[5] Messi's footprint on the field will not be known for years to come, but Messi's arrival saves the long-held legal identity of Major League Soccer (MLS).[6]

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[1] *See* ESPN FC, *Lionel Messi Scores Game-Winning Free Kick in Inter Miami Debut*, YOUTUBE (July 21, 2023), https://youtu.be/pORjd5ZkTrs?si=QQtbgVj30KbkbHrT [https://perma.cc/DT5W-4BVG].

[2] *See* Chris Burton, *Secret Meetings & a 10-Year Project – How David Beckham Signed Lionel Messi as Revealed by the Inter Miami Co-Owner*, GOAL (July 28, 2023, at 3:39 AM), https://www.goal.com/en-us/news/secret-meetings-10-year-project-how-david-beckham-signed-lionel-messi-inter-miami-co-owner/bltcc28a521e2bdff22 [https://perma.cc/4WVE-D9VQ].

[3] *See, e.g.*, Steve Douglas, *Messi Wins World Cup, Argentina Beats France on Penalties*, ASSOCIATED PRESS (Dec. 18, 2022, at 4:02 PM), https://apnews.com/article/lionel-messi-argentina-win-world-cup-final-against-france-e13fc1886725a0fe4f9e053e16a061bc [https://perma.cc/7S8J-N7FX].

[4] ESPN FC, *supra* note 1.

[5] *See Lionel Messi Scores Free-Kick Winner in Inter Miami Debut*, ESPN (July 21, 2023, at 9:31 PM), https://www.espn.com/soccer/story/_/id/38049022/lionel-messi-named-substitute-first-inter-miami-game [https://perma.cc/HFF5-GM37].

[6] *See How signing Lionel Messi will impact Inter Miami, MLS and American soccer*, N.Y. TIMES (June 7, 2023), https://www.nytimes.com/athletic/4590227/2023/06/07/messi-mls-inter-miami-american-soccer-impact/ [https://perma.cc/7ALR-UHBM].

For years, the MLS has defended itself from antitrust liability as a single entity business structure.[7] Initially deployed as a legal strategy to keep the league afloat, the single entity defense has proven to be highly controversial.[8] Most notably, players have criticized the control the league has over contracts and have accused it of violating federal antitrust laws.[9] In *Fraser v. Major League Soccer*,[10] the First Circuit Court of Appeals cast heavy doubt onto the MLS's single entity identity. Yet, the court decided to leave the question open, and it has gone untouched for decades.[11] However, the recent case of *O.M. v. National Women's Soccer League*[12] reignited the controversy surrounding the single entity defense.[13] This time, the court definitively shut it down, citing the way teams compete for and negotiate with players as a factor that goes against a single entity defense.[14] This is where the arrival of Messi comes in.[15]

This comment revisits *Fraser* in light of *O.M.*, discusses the ramifications of the ruling in *O.M.*, and analyzes how Messi's arrival and his innovative contract saves the MLS's single entity defense. First, a brief history of the MLS's use of the single entity defense and its relation to antitrust laws will be discussed. Then, *Fraser* will be revisited in light of the recent *O.M.* ruling. Finally, Messi's new contract will be analyzed along with the role it plays in saving the MLS's single entity defense.

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[7] *See, e.g.*, Fraser v. Major League Soccer, L.L.C., 284 F.3d 47, 55 (1st Cir. 2002).

[8] *See, e.g.*, Karen Jordan, Note, *Forming a Single Entity: A Recipe for Success for New Professional Sports Leagues*, 3 VAND. J. ENT. L. & PRAC. 235, 236 (2001); Carolina I. Velarde, Note, *Home-Field Disadvantage: How the Organization of Soccer in the United States Affects Athletic and Economic Competitiveness*, 117 MICH. L. REV. 963, 965, 978–80 (2019); Daniel S. MacMillan, Note, *Is MLS Inherently Anticompetitive? The Strange Single-Entity Structure of Major League Soccer in Order to Legitimize American Professional Soccer*, 28 MARQ. SPORTS L. REV. 503, 503–06, 512, 515–17 (2018).

[9] *Fraser*, 284 F.3d at 52.

[10] *Id.*

[11] *See id.* at 58.

[12] 544 F. Supp. 3d 1063 (D. Or. 2021).

[13] *See id.* at 1066.

[14] *Id.* at 1070–71.

[15] *See Lionel Messi Joins Inter Miami in Blockbuster Free Transfer*, ESPN (July 15, 2023, at 2:17 PM), https://www.espn.com/soccer/story/_/id/37820397/inter-miami-confirms-lionel-messi-signing-free-transfer [https://perma.cc/MM3D-8QCP].

A. History of the MLS

The MLS was born from the United States hosting the 1994 World Cup and played its first game in 1996.[16] From its humble beginnings in 1996 to 2025, the MLS has grown from a modest ten teams to an unprecedented 30 teams.[17] While impressive, much of the growth can be credited to lessons learned from history.[18]

The MLS was not the United States' first top tier professional soccer league.[19] Its predecessor, the North American Soccer League (NASL), saw early success, which was evidenced by the signing of the best player in the world, Pelé.[20] The league folded, in part, because of "[w]ide disparities in the financial resources of the league's independently owned teams and a lack of centralized control."[21]

As the new kid on the block in the world of professional soccer, and in an attempt to not make the same mistakes the NASL made, the MLS relied on two ideas to give it a fighting chance: soccer-specific stadiums and the single entity business structure.[22] The history of the single entity defense and how the MLS has used it will be discussed later.[23] As far as soccer-specific stadiums go, Historic Crew Stadium was the first in the

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[16] Dhruv Sharma, *A Beginner's Guide to Major League Soccer (MLS)*, KHEL NOW (June 10, 2023, at 1:55 PM), https://khelnow.com/football/2023-06-world-football-beginners-guide-major-league-soccer [https://perma.cc/EF3H-6P9D].

[17] Aimée Lister, *The History of Major League Soccer*, RED BULL (Nov. 9, 2022, at 1:21 PM), https://www.redbull.com/us-en/history-of-major-league-soccer [https://perma.cc/42PV-TPMG]; *Major League Soccer Awards Expansion Team to San Diego*, MAJOR LEAGUE SOCCER (May 18, 2023, at 1:53 PM), https://www.mlssoccer.com/news/major-league-soccer-awards-expansion-team-to-san-diego-x9222 [https://perma.cc/2SWN-MD3C].

[18] *See, e.g.*, Michael Lewis, *How the Birth and Death of the NASL Changed Soccer in America Forever*, THE GUARDIAN (Oct. 20, 2018, at 4:00 EDT), https://www.theguardian.com/football/2018/oct/20/nasl-history-soccer-america [https://perma.cc/8VCG-E36S] ("The lessons learned from the [North American Soccer League] helped build the game in the long run.").

[19] Fraser v. Major League Soccer, L.L.C., 284 F.3d 47, 52 (1st Cir. 2002).

[20] *See NASL 1968–1984: A Review of the Golden Era*, N. AM. SOCCER LEAGUE, http://www.nasl.com/a-review-of-the-golden-era [https://perma.cc/522Q-N9BX].

[21] *Fraser*, 284 F.3d at 52.

[22] Grant Wahl & Brian Straus, *The Birth of a League*, SPORTS ILLUSTRATED, https://vault.si.com/vault/2015/07/06/mls-pioneers [https://perma.cc/A777-L2F8].

[23] *See* discussion *infra* Sections I.D–E.

country in 1999.[24] Twenty-five years later, soccer-specific stadiums are the norm.[25]

As the number of teams and soccer-specific stadiums in the MLS has increased over the last twenty-five years, so has the league's popularity.[26] The average attendance during the 1996 season ranged from 28,979 to 10,282.[27] In contrast, the average attendance during the 2022 season ranged from 47,116 to 15,769.[28]

While in-person attendance numbers have increased moderately, television viewership has exploded.[29] This corresponds to the overall increase in soccer's popularity in the United States, which has seen soccer become the most popular sport among young Americans.[30] The recent dominance of the United States Women's National Team, increased television coverage of major European leagues, and an influx of immigrants have all caused the increase in soccer's popularity.[31] The 2026 World Cup,

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[24] *Timeline of Every New Soccer Stadium in MLS*, MAJOR LEAGUE SOCCER (July 1, 2021, at 1:02 PM), https://www.mlssoccer.com/news/timeline-of-every-new-soccer-stadium-in-mls [https://perma.cc/B9T4-R67Z].

[25] *See* Dylan Butler, *Soccer-Specific Stadiums Are Booming Around the MLS*, OSDB, https://www.osdbsports.com/editorials/soccer-specific-stadiums-are-booming-around-mls [https://perma.cc/Z8CU-X425].

[26] *See* Aden Ikram, *Soccer Is Taking Over America–and Proving Apple Scored the Biggest Win in the Sports Streaming Wars with Its $2.5 billion MLS Deal*, FORTUNE (Sept. 29, 2023, at 2:19 PM), https://fortune.com/2023/09/29/soccer-taking-over-america-apple-win-sports-streaming-wars-mls-deal-aden-ikram/ [https://perma.cc/AYJ7-T4QW].

[27] Major League Soccer Attendances in 1996, TRANSFERMARKT, https://www.transfermarkt.us/major-league-soccer/besucherzahlen/wettbewerb/MLS1/plus/?saison_id=1995 [https://perma.cc/6EBH-A8PT].

[28] Major League Soccer Attendances in 2022, TRANSFERMARKT, https://www.transfermarkt.us/major-league-soccer/besucherzahlen/wettbewerb/MLS1/plus/?saison_id=2021 [https://perma.cc/CSZ5-2Y4Z].

[29] Rory Jones, *MLS Cup Attracts 2.16m Viewers in Largest US TV Audience for 25 Years*, SPORTSPRO MEDIA (Nov. 9, 2022), https://www.sportspromedia.com/news/mls-cup-viewership-audience-fox-univision-lafc-philadelphia-union/ [https://perma.cc/BEC2-6UBY].

[30] *See Soccer's Growth in the U.S. Driven by Young, Diverse Audiences*, SPORTS BUS. J. (Mar. 23, 2023) https://www.sportsbusinessjournal.com/Native/Isos/2023/March.aspx [https://perma.cc/7WC9-87GM].

[31] *Why Is Soccer Becoming So Popular in the United States?*, BREAKING THE LINES (Aug. 1, 2023), https://breakingthelines.com/opinion/why-is-soccer-becoming-so-popular-in-the-united-states/ [https://perma.cc/J8AR-3LUE].

hosted in North America, is expected to cause the trajectory to continue upward.[32]

B. Apple TV, The MLS, and The Future of Streaming

Apple TV is major player in the current state of the MLS.[33] The MLS and Apple TV entered into a groundbreaking 10-year, $2.5 billion deal that gives Apple TV exclusive rights to broadcast every MLS game.[34] A subscription to watch the MLS games on Apple TV costs $99 per season, dropping to $79 per season for those already subscribed to Apple TV+.[35] The new partnership, which conceals actual viewership numbers, reportedly welcomed over one million new subscribers in 2023, and that number is expected to rise into the 2024 and 2025 seasons.[36]

One only has to go back to 2014 to see how far broadcasting in the MLS has come.[37] In 2014, the MLS signed a deal with ESPN, FOX Sports, and Univision Deportes worth $720 million.[38] Nearly a decade later, the MLS signed their new deal with Apple for $2.5 billion.[39] This means there has been nearly a 300% increase in broadcasting revenue over the last decade.[40]

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[32] SPORTS BUS. J., *supra* note 30.

[33] Joe Reedy, *Apple Embraces Potential of Sports Streaming with MLS Deal*, ASSOCIATED PRESS (Feb. 1, 2023, at 11:35 AM), https://apnews.com/article/mlb-technology-sports-television-baseball-5f5ba756efea27be391d36e7d565bee8 [https://perma.cc/75BA-QJYP].

[34] *Id.*

[35] *MLS Season Pass*, MAJOR LEAGUE SOCCER, https://www.mlssoccer.com/season-pass/en [https://perma.cc/8B8K-PYE4].

[36] *See* Steve McCaskill, *Report: Apple Secures 1m MLS Season Pass Subscribers as Messi Sets TV Record*, SPORTSPRO MEDIA (July 25, 2023), https://www.sportspromedia.com/broadcast-ott/lionel-messi-mls-apple-tv-ratings-subscribers/ [https://perma.cc/ATL2-8LYE]; Safid Deen, *Apple TV Riding Lionel Messi Wave with 'Significant' Viewership Ahead of 2024 MLS Season*, USA TODAY (Feb. 21, 2024, at 9:48 PM), https://www.usatoday.com/story/sports/soccer/2024/02/21/lionel-messi-apple-tv-mls-season-pass/72691951007/ [https://perma.cc/ENZ3-TUY7].

[37] *See* Gareth, *The Evolution of MLS Broadcast Deals and Their Impact on the League*, MLS FOOTBALL (Aug. 5, 2023), https://www.mlsfootball.com/features/mls-broadcast-deals/ [https://perma.cc/9TU8-PYE6].

[38] *Id.*

[39] Reedy, *supra* note 33.

[40] *See* Dimitrije Curcic, *NBA Revenue Statistics (2001–2022)*, RUNREPEAT (Mar. 25, 2024), https://runrepeat.com/nba-revenue-statistics [https://perma.cc/2W5V-F8GN] (the nearly 300% increase is consistent with the broadcasting revenue growth of the NBA).

The new deal with Apple did not come without risks, though.[41] A major concern is the effectiveness of live streaming every game on Apple TV compared to the traditional method of broadcasting games on linear TV networks like ESPN and FOX Sports.[42] However, given that streaming has become increasingly popular among young Americans, especially MLS fans, the MLS has good reason to be confident the risk will pay off.[43]

C. The Signing of Messi

In July 2023, the MLS went from being considered a "retirement league" to one of the most talked about leagues in the world of professional soccer, simply because of the arrival of one player: Messi.[44] It is impossible to overstate the global popularity of Messi.[45] The Argentine native has won the Ballon d'Or (the award given to the best player in the world) eight times,

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[41] *See, e.g.*, A.J. Perez et al., *MLS Has Been in Business with Apple for One Year. Streaming has Changed Forever*, FRONT OFF. SPORTS (Aug. 7, 2023, at 12:07 AM), https://frontofficesports.com/apple-deal-affecting-mls-clubs-advertisers-major-league-soccer-tv/ [https://perma.cc/5GAV-A4CM] ("With global superstar Lionel Messi turbo-charging MLS at Inter Miami,the deal looks like an early win-win for MLS and Apple. But even with the Argentinian icon, MLS will have to convince fans, advertisers, and sponsors that streaming live sports really is the future.").

[42] *Id.*; Daniel Kaplan & Bill Shea, *Streaming vs. Cable and Satellite: Sports Viewers and the Evolving TV Conundrum*, THE ATHLETIC (Jan. 26, 2023), https://theathletic.com/4126045/2023/01/26/sports-tv-streaming-cable-espn/ [https://perma.cc/A5WS-YF6U].

[43] Perez et al., *supra* note 41 ("Eight out of 10 MLS fans already stream one sporting event per week, according to internal research.").

[44] Shrivathsa Sridhar, *MLS Chief Says League Not a Retirement Home After Neymar Comments*, REUTERS (Feb. 23, 2022, 11:23 PM), https://www.reuters.com/lifestyle/sports/mls-chief-says-league-not-retirement-home-after-neymar-comments-2022-02-24/ [https://perma.cc/2MAV-SB3G]; Dan Hajducky, *The Messi Effect: New Miami Star Brings Big Business to MLS*, ESPN (Aug. 1, 2023, at 10:59 AM), https://www.espn.com/soccer/story/_/id/38082893/the-messi-effect-new-miami-star-brings-big-business-mls [https://perma.cc/F28X-2YQA].

[45] *E.g.*, *Messi's Incredible Social Media Numbers: More Followers than All of South America's Population*, MARCA (Nov. 19, 2022, 10:21 AM), https://www.marca.com/en/world-cup/2022/11/19/6379013cca4741e9378b45da.html [https://perma.cc/8MZL-UCT9].

which is three more than any other player.[46] As a result, much of the soccer world considers Messi the G.O.A.T. (greatest of all time).[47]

Messi, coming off the heels of leading Argentina to a World Cup title, shocked the soccer world and chose to make Inter Miami his next home.[48] The move brought Messi together with the player who was the pioneer of global superstars coming to play in the MLS: David Beckham.[49] To nobody's surprise, Messi's arrival made ticket prices, jersey sales, and overall interest surge to record-breaking numbers.[50]

What was surprising, though, was the unprecedented contract that brought Messi to the MLS.[51] Although the official details of the contract have not been publicized, it is widely reported that it is a 2.5-year deal worth up to $150 million, which also includes equity in the team, revenue shares of new subscriptions to Apple TV, and increased profit sharing with Adidas.[52] A contract of this magnitude has never been seen before in professional sports, and carries with it the potential for other high-profile athletes to use Messi's innovative contract as inspiration for future contracts.[53]

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[46] Sam Marsden & Moises Llorens, *Ballon d'Or 2023: Messi Beats Haaland to Win for Eighth Time*, ESPN (Oct. 30, 2023, 5:31 PM), https://www.espn.com/soccer/story/_/id/38779218/ballon-dor-2023-lionel-messi-beats-erling-haaland-win-award-record-eighth [https://perma.cc/KM3M-QNR4].

[47] *E.g.*, Zach Koons, *Soccer World Debates Whether Lionel Messi is Greatest of All Time*, SPORTS ILLUSTRATED (Dec. 18, 2022), https://www.si.com/extra-mustard/2022/12/18/soccer-world-debates-lionel-messi-greatest-of-all-time [https://perma.cc/AS2W-22W9].

[48] *Inter Miami CF Signs Seven-Time Ballon d'Or Winner, World Cup Champion, Lionel Messi*, INTER MIAMI CF (July 15, 2023, at 2:14 PM), https://www.intermiamicf.com/news/inter-miami-cf-signs-seven-time-ballon-d-or-winner-world-cup-champion-lionel-mes [https://perma.cc/74S6-SL8K].

[49] *See* Jack Ross, *Messi-Palooza Would Have Never Been Possible if Not for Beckham's LA Leap*, THE GUARDIAN: SPORTSBLOG (Sept. 3, 2023, at 4:00 AM), https://www.theguardian.com /football/blog/2023/sep/03/messi-palooza-would-have-never-been-possible-if-not-for-beckhams-la-leap [https://perma.cc/J52X-JTE2].

[50] Hajducky, *supra* note 44.

[51] Shwetha Surendran, *What Messi's MLS, Apple, Adidas Deal Means for Everyone Else*, ESPN (July 11, 2023, at 7:00 AM), https://www.espn.com/soccer/story/_/id/37975000/lionel-messi-mls-apple-adidas-inter-miami [https://perma.cc/5AVP-9NS4].

[52] *Id.*

[53] *See id.*

D. The Single Entity Defense

Antitrust law has a rich history with professional sports leagues in the United States.[54] The Sherman Antitrust Act prohibits contracts, combinations, or conspiracies that restrain trade or commerce.[55] The Act closely relates to professional sports leagues because its primary objective is to encourage competition.[56] In other words, the competition on the field to win games should also be mirrored economically off the field among teams.[57]

Section 1 of the Sherman Antitrust Act was designed to encourage competition by prohibiting anticompetitive conduct among actors.[58] However, only "unreasonable" restraints are prohibited.[59] Certain restraints are considered per se illegal, whereas other restraints are subject to the rule of reason test.[60] The rule of reason test is used to determine whether a restraint is "unreasonable" where the anticompetitive burdens are weighed against the procompetitive effects.[61] In essence, the analysis is whether the restraint has a net competitive or net anticompetitive effect.[62]

Salary caps provide an example of a restraint with a net competitive effect.[63] Salary caps prevent the wealthiest teams from buying all of the best players, and therefore the best players are, in an ideal world, divided among all of the teams in the league, fostering more competition among teams.[64]

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[54] *See, e.g.*, MacMillan, *supra* note 8, at 513.

[55] Sherman Act, 15 U.S.C. § 1 (2018) ("Every contract, combination in the form of trust or otherwise, or conspiracy, in restraint of trade or commerce among the several States, or with foreign nations, is declared to be illegal.").

[56] Tim Bezbatchenko, Note, *Bend It for Beckham: A Look Major League Soccer and Its Single Entity Defense to Antitrust Liability After the Designated Player Rule*, 76 U. CIN. L. REV. 611, 614–15 (2008).

[57] *See id.* at 619.

[58] *See* Gabriel Feldman, *The Puzzling Persistence of the Single Entity Argument for Sports Leagues: American Needle and the Supreme Court's Opportunity to Reject a Flawed Defense*, 2009 WIS. L. REV. 835, 841 (2009).

[59] Copperweld Corp. v. Indep. Tube Corp., 467 U.S. 752, 775 (1984).

[60] *See, e.g.*, Jordan, *supra* note 8, at 238.

[61] *See* Nat'l Collegiate Athletic Ass'n v. Bd. of Regents of Univ. of Okla., 468 U.S. 85, 113 (1984).

[62] *See* Feldman, *supra* note 58, at 842.

[63] Chris Neiger, *How Salary Caps Changed Sports*, INVESTOPEDIA (Dec. 4, 2022), https://www.investopedia.com/financial-edge/0910/how-salary-caps-changed-sports.aspx [https://perma.cc/JU2G-5TPF].

[64] *See id.*

On the other hand, an example of a restraint that has a net anticompetitive effect is a league rule instituting a minimum age of players.[65]

In an attempt to avoid being found in violation of antitrust laws, numerous professional sports leagues in the United States (e.g., National Football League, National Basketball Association, Major League Soccer, National Women's Soccer League)[66] have claimed to be a single entity, and therefore are able to perform concerted actions that are not subject to federal antitrust laws.[67] A single entity exists where "there is a 'complete unity of interest,' such that the parent corporation and its wholly owned subsidiary have common objectives and agree to a single course of action."[68] The single entity theory asserts that, because an agreement or conspiracy is a requirement for antitrust liability, "a single entity is exempt because it cannot conspire with itself."[69] If professional sports leagues are not single entities, any agreement or conspiracy among the league and the teams would come under scrutiny.[70] Thus, professional sports leagues argue that they are simply one entity made up of many teams, rather than the teams acting individually.[71]

The landmark case for the single entity defense is *Copperweld Corp. v. Independence Tube Corp*.[72] In *Copperweld*, Independence Tube Corp., a competitor of Copperweld Corp., alleged that Copperweld Corp. conspired with its wholly owned subsidiary in violation of Section 1 of the Sherman Antitrust Act.[73] The Court held that, "the coordinated activity of a parent and

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[65] *See* O.M. v. Nat'l Women's Soccer League, L.L.C., 544 F. Supp. 3d 1063, 1077 (D. Or. 2021).

[66] It is also worth noting that the NCAA is currently in the midst of serious litigation over their status as a single entity. Nat'l Collegiate Athletic Ass'n v. Alston, 594 U.S. 69, 74, 107 (2021) (invalidating NCAA rules limiting the education-related benefits schools may make available to student-athletes); Ohio v. NCAA, No. 1:23-CV-100, 2023 U.S. Dist. LEXIS 221953, at *41–42 (N.D. W. Va. Dec. 13, 2023) (finding the NCAA's transfer policy, which requires student-athletes to sit out one year after their second transfer, to be anti-competitive and in violation of antitrust laws).

[67] Chi. Pro. Sports Ltd. P'ship v. Nat'l Basketball Ass'n, 95 F.3d 593, 596 (7th Cir. 1996); Fraser v. Major League Soccer, L.L.C., 284 F.3d 47, 55 (1st Cir. 2002); *O.M.*, 544 F. Supp. 3d at 1068.

[68] Jordan, *supra* note 8, at 239 (quoting Copperweld Corp. v. Indep. Tube Corp., 467 U.S. 752, 771 (1984)).

[69] Bezbatchenko, *supra* note 56, at 618.

[70] *Id.* at 619.

[71] *Copperweld*, 467 U.S. at 769–70.

[72] *Id.* at 766.

[73] *Id.* at 757–58.

its wholly owned subsidiary must be viewed as that of a single enterprise for purposes of § 1 of the Sherman Act" and there is a "complete unity of interest" between the parent company and its wholly owned subsidiary.[74] The Court further compared the parent company and its wholly owned subsidiary to a "team of horses drawing a vehicle under the control of a single driver" regardless of how tight of a rein the parent company holds over the subsidiary.[75] Thus, the "unity of interest" standard was born.

In *Chicago Professional Sports Limited Partnership v. National Basketball Association*,[76] the U.S. Court of Appeals for the Seventh Circuit tightened the scope of the seemingly over-broad "unity of interest" test put forward in *Copperweld*.[77] Most importantly, the court held that professional sports leagues are "sufficiently diverse" such that it is essential to analyze "one league at a time."[78] The court rejected the single entity defense as a blanket defense applying to every league, but it called every league to the plate to show why their specific situation qualifies their league as a single entity.[79]

It is important to note that courts consider professional sports leagues to be unique entities and acknowledge that some agreements among the league and the teams must be allowed for the leagues to function.[80] This also applies to the NCAA, where, in *NCAA v. Alston*, the Court acknowledged the NCAA's need for its members to collaborate in order for it to "offer consumers the benefit of intercollegiate athletic competition."[81] On a basic level, if teams were not allowed to agree on even the rules of the game, there would be no game.[82]

The MLS has self-identified as a single entity from its inception due to its significant centralized control over the teams.[83] Through the MLS's business model, it contracts directly with the players to the point that the league "recruits the players, negotiates their salaries, pays them from league

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[74] *Id.* at 771.

[75] *Id.*

[76] 95 F.3d 593 (7th Cir. 1996).

[77] *See id.* at 598–600.

[78] *Id.* at 600.

[79] *See id* ("Sports are sufficiently diverse that it is essential to investigate their organization and ask *Copperweld*'s functional question one league at a time.").

[80] *See, e.g.*, L.A. Mem'l Coliseum Comm'n v. Nat'l Football League, 726 F.2d 1381, 1392 (9th Cir. 1984) ("Collective action in areas such as League divisions, scheduling and rules must be allowed, as should other activity that aids in producing the most marketable product attainable.").

[81] Nat'l Collegiate Athletic Ass'n v. Alston, 594 U.S. 1, 15 (2020).

[82] *Id.*

[83] *See* Fraser v. Major League Soccer, L.L.C., 284 F.3d 47, 53 (1st Cir. 2002).

funds, and, to a large extent, determines where each of them will play."[84] This structure is a sharp contrast to other leagues, like the NFL and NBA, where players contract with the teams themselves.[85] The MLS also enforces salary caps that teams are prohibited from surpassing.[86]

The unique MLS pay structure is quite complicated.[87] In its simplest terms, each MLS team is allotted a specific amount of money that serves as each team's salary cap for the year (the 2024 salary cap was $5,470,000).[88] It is important to note that the MLS distributes the money that makes up the salary cap to the teams itself, making it unique.[89] Thus, most MLS players' salaries are paid directly by the MLS itself.[90] The salary cap only applies to each team's senior roster, which is roughly twenty players.[91] Each senior roster player must have a salary somewhere between the league minimum and league maximum salary charge.[92]

Another major player in the MLS pay structure is the Designated Player Rule.[93] Each team is allowed up to three "designated players" whose salaries can exceed the maximum salary charge, but any amount over the maximum salary charge must be paid by the team itself.[94] The Designated Player Rule was created in 2006 to enable the LA Galaxy to sign global superstar David Beckham.[95] The Rule allows teams to bring in players like Thierry Henry, Wayne Rooney, Zlatan Ibrahimovic, and, most recently, Messi.[96] Much

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[84] *Id.*; Bezbatchenko, *supra* note 56, at 626.

[85] *Fraser*, 284 F.3d at 56; Bezbatchenko, *supra* note 56, at 626.

[86] *Fraser*, 284 F.3d at 54.

[87] *See 2024 MLS Roster Rules and Regulations*, MAJOR LEAGUE SOCCER (July 18, 2024), https://www.mlssoccer.com/about/roster-rules-and-regulations [https://perma.cc/665G-9XRK].

[88] *Id.*

[89] *Id.*

[90] *See id.*

[91] *Id.*

[92] *Id.*

[93] *See id.* For more on the Designated Player Rule, *see* Bezbatchenko, *supra* note 56, at 632–42.

[94] *2024 MLS Roster Rules and Regulations*, *supra* note 87.

[95] *See* Bezbatchenko, *supra* note 56, at 612.

[96] *Category:Designated Players (MLS)*, WIKIPEDIA, https://en.wikipedia.org/w/index.php?title=Category:Designated_Players_(MLS) [https://perma.cc/BYN5-L935].

discussion in the MLS world currently revolves around the Designated Player Rule and how it may change moving forward.[97]

There are more rules that constitute the MLS pay structure, such as General Allocation Money, Targeted Allocation Money, Homegrown Players, U22 Initiative Players, etc.[98] The nuanced details of these different rules are not important here, but what is important is the level of control the MLS has over the payment and movement of players.[99]

Another layer of complexity in the MLS structure is the collective bargaining agreement (CBA).[100] The MLS and its players entered into their first collective bargaining agreement in 2004, and their current agreement, signed by the parties in 2020, runs through 2027.[101] The CBA and its ramifications will be discussed later.[102]

MLS team operation is just as complex as the pay structure.[103] Even though the MLS, as an entity, owns the rights to all of the teams, the independent investors who own the league actually operate the individual teams.[104] The relationship the league has with the investors that operate the teams provides the investors with the exclusive right to manage and fund their teams out of

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[97] *E.g.*, Martina Alcheva, *MLS Set to Introduce New DP Rules in 2024 Impacting All Clubs*, WORLD SOCCER TALK (Nov. 25, 2023), https://worldsoccertalk.com/news/mls-set-to-introduce-new-dp-rules-in-2024-impacting-all-clubs-20231125-WST-472524.html. [https://perma.cc/CU8F-KCFL].

[98] *2024 MLS Roster Rules and Regulations*, *supra* note 87.

[99] *See id.* For a flowchart showing the insanity of the pay structure, *see* Alexander Abnos, *How Can MLS Teams Sign Players? The Ultimate Roster Rules Flowchart*, SPORTS ILLUSTRATED (Feb. 8, 2017), https://www.si.com/soccer/2017/02/08/mls-roster-rules-acquisitions-flowchart-how-to-sign-players [https://perma.cc/3J8N-M7RF].

[100] Collective Bargaining Agreement Between Major League Soccer & Major League Soccer Players Ass'n Feb. 1, 2020–Jan. 31, 2028 (Feb. 1, 2020) [hereinafter CBA 2020–2028] (on file with the MLS Players Association).

[101] *MLSPA History*, MLS PLAYERS ASS'N (last visited Mar. 20, 2024), https://mlsplayers.org/about-us/history [https://perma.cc/W78M-4SAZ]; *MLS & MLSPA Ratify New Collective Bargaining Agreement*, MAJOR LEAGUE SOCCER (Feb. 8, 2021, at 1:52 PM), https://www.mlssoccer.com/news/major-league-soccer-mlspa-ratify-new-collective-bargaining-agreement-0 [https://perma.cc/AGQ8-XLP6].

[102] *See* discussion *infra* Section I.G.

[103] Fraser v. Major League Soccer, L.L.C., 284 F.3d 47, 53 (1st Cir. 2002) (distinguishing the MLS from other sports leagues as it operates with a centralized model, owning all teams and controlling scheduling, stadium leases, operational costs, and handles broadcast rights, intellectual property, and provides equipment).

[104] *Id.* at 53.

their own pocket[105], which includes hiring the coaching staff, hiring front office personnel, advertising locally, and selling tickets to home games.[106]

The investors who operate their own MLS team are just as much investing in the MLS as a business as they are operating their own professional soccer team.[107] The better the MLS does as a whole, the more money the investors will make.[108] This is exemplified in ticket sale revenue.[109] As of 2017, MLS investors kept 70% of the revenue from ticket sales for home matches, while the other 30% went to the league and was ultimately redistributed to the individual teams.[110] Thus, higher ticket sales by every team in the MLS means higher returns for every team.[111]

The investors receive a management fee from the league, which consists of shares of revenue including ticket sales and broadcast revenue.[112] The management fee correlates to the success of the individual teams.[113] For example, more tickets sold means more revenue.[114] MLS teams take advantage of this by signing former world-class players who draw a crowd wherever they play.[115] Thus, at first glance it appears as though there is no unity of interest between the MLS itself and its individual teams. The plan, hypothetically, should be simple: sign high-profile players who, in turn, will attract more fans and therefore create more revenue for individual teams.[116]

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[105] As previously mentioned, this generally does not include paying player salaries. *2024 MLS Roster Rules and Regulations*, *supra* note 87.

[106] *Fraser*, 284 F.3d at 53–54.

[107] *See* Isaac Krasny, *Unpacking the Major League Soccer Business Model*, MEDIUM (June 7, 2017), https://medium.com/@isaac_krasny/unpacking-the-major-league-soccer-business-model-827f4b784bcd [https://perma.cc/7TPM-KN77] ("MLS Investor-Operators are all financially invested in the same business entity—Major League Soccer, LLC—and succeed and fail together.").

[108] *See id.*

[109] *See id.*

[110] *Id.* Relevant data and information regarding the inner workings of the MLS are hard to come by, so some of the data and information is not as recent as I would like.

[111] *See id.*

[112] Fraser v. Major League Soccer, L.L.C., 284 F.3d 47, 54 (1st Cir. 2002).

[113] *Id.*

[114] *See id.*

[115] *See, e.g.*, Ben Valentine, *'I Gave Them Zlatan' – Ibrahimovic Delivers for Galaxy Fans on Debut*, GOAL (Mar. 31, 2018, at 6:37 PM), https://www.goal.com/en-us/news/i-gave-them-zlatan---ibrahimovic-delivers-for-galaxy-fans-on-debut/ouk2ohuclqio1qbr1xpjrdmjz [https://perma.cc/9XN9-9Z2K].

[116] *See* Krasny, *supra* note 107.

However, the remaining revenue held by the league is distributed equally among the investors.[117] This revenue sharing scheme means the MLS and its teams live together, and they die together.[118] If an individual team is making money, so is the MLS.[119] At the same time, if an MLS team is losing money, so is the MLS.[120] This paradox is what makes the MLS so unique and is what caused the court in *Fraser* to identify the MLS as a "hybrid arrangement."[121] This paradox is also thoroughly discussed later in this note regarding the effect of Messi's signing and who benefits from his arrival.[122] Nonetheless, this paradoxical hybrid arrangement is the driving force behind the MLS's self-identification as a single entity.[123]

As enticing as the single entity defense appears, history has shown that courts can shut down the defense just as quickly as it is used by professional sports leagues.[124] Most notably, the MLS has been challenged on its single entity status once before in *Fraser*.[125]

E. Fraser v. Major League Soccer

After its first season, the MLS quickly found itself in litigation.[126] MLS players sued the league, nine investors, and the United States Soccer Federation (USSF) alleging antitrust violations.[127] The main issue involved the considerable level of control the MLS asserts over player employment.[128]

The players alleged that, by agreeing not to compete for player services, the MLS and the investors violated Section 1 of the Sherman Antitrust Act.[129] Section 1 states that, "[e]very contract, combination in the form of trust or otherwise, or conspiracy, in restraint of trade or commerce among

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[117] *Fraser*, 284 F.3d at 54.

[118] *See id.*

[119] *See id.*

[120] *See id.*

[121] *Id.* at 58.

[122] *See* discussion *infra* Part III.

[123] *See Fraser*, 284 F.3d at 58.

[124] *See* Dean V. Williamson, Organization, Control and the Single Entity Defense in Antitrust 22 (Jan. 2006) (unpublished discussion paper) (on file with the U.S. Department of Justice Antitrust Division) ("[C]ourts . . . have sometimes rejected single entity defenses in contexts in which they have acknowledged that teams constitute complementary inputs.").

[125] *Fraser*, 284 F.3d at 52, 55.

[126] *See id.* at 52.

[127] *Id.*

[128] *Id.* at 53.

[129] *Id.* at 54–55.

the several Sates, or with foreign nations, is declared to be illegal."[130] Unsurprisingly, the MLS argued they were a single entity and therefore not liable under Section 1 of the Sherman Antitrust Act.[131] The Massachusetts District Court agreed with the MLS, granting the league summary judgment due to their status as a single entity.[132]

The district court treated the MLS (an LLC) as a corporation, where the members (here, operator-investors) are treated as officers and shareholders.[133] Thus, there can be no concerted action claim "unless the members are acting not in the interest of the entity, but rather in their own separate self-interest."[134] The district court reasoned that, because local success equates to greater profit sharing for all members, the operator-investors are acting for the benefit of the single entity that is the MLS.[135]

The appellate court disagreed with the district court's ruling that the MLS was a single entity.[136] The court highlighted the unique structure of the MLS as a roadblock in trying to place a specific label on the league.[137] The court called it a "hybrid arrangement, somewhere between a single company (with or without wholly owned subsidiaries) and a cooperative arrangement between existing competitors."[138]

The court listed numerous activities that MLS investors partake in that lean against granting the MLS single entity status, such as independent hiring, out-of-pocket investments in their own teams, retaining significant revenue from their own teams, and limited sale rights in relation to assets.[139] In essence, the individual teams were making independent investments that would benefit only their team, and thus there is not a "complete unity of interest[s]."[140]

Ultimately, the court opted to not definitively rule whether or not the MLS was a single entity because a decision on the issue was not necessary to resolve the case.[141] In the years since the decision, there has been much debate over whether the MLS could still defend itself as a single entity and

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[130] Sherman Act, 15 U.S.C. § 1 (2018).

[131] *Fraser*, 284 F.3d at 55.

[132] *Id.*

[133] Fraser v. Major League Soccer, L.L.C., 97 F. Supp. 2d 130, 135 (D. Mass. 2000).

[134] *Id.*

[135] *Id.* at 136.

[136] *Fraser*, 284 F.3d at 59.

[137] *Id.* at 58.

[138] *Id.*

[139] *Id.* at 57.

[140] Copperweld Corp. v. Indep. Tube Corp., 467 U.S. 752, 771 (1984).

[141] *Fraser*, 284 F.3d at 59.

what potential ramifications exist for the future of the league.[142] However, the league has not been challenged since *Fraser*, which is due in large part to CBAs[143] entered into by the players and the MLS.[144] The single entity defense stayed relatively quiet until *O.M.* was decided in 2021.[145]

F. O.M. v. National Women's Soccer League

Controversy surrounding the single entity defense was reignited in 2021 when a fifteen-year-old girl was denied the opportunity to play professional women's soccer.[146] A lawsuit followed, alleging the National Women's Soccer League (NWSL) violated the Sherman Antitrust Act by requiring players be at least 18 years of age to be eligible to play.[147] The plaintiff alleged that the NWSL teams violated Section 1 of the Act by agreeing among themselves "not to contract with soccer players under the age of 18, without regard to their talents or their ability to compete in the League."[148] The plaintiff also alleged that the NWSL has a monopoly on professional women's soccer in the United States.[149]

The single entity defense was raised by the NWSL but was quickly shut down by the Oregon District Court, finding that the teams in the league "function as separate economic entities competing for player rights."[150] Thus, since they were in competition with one another, their objective was to promote their own economic interest rather than the economic interest of the league as a whole.[151] The court referenced provisions of the NWSL's Operating Agreement that further show the league and teams serve as separate economic entities competing for player rights:

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[142] *See* Bezbatchenko, *supra* note 56, at 643; MacMillan, *supra* note 8, at 504; Velarde, *supra* note 8, at 978.

[143] *See* discussion *infra* Section I.G.

[144] *See* MacMillan, *supra* note 8, at 507.

[145] *See* O.M. v. Nat'l Women's Soccer League, LLC, 544 F. Supp. 3d 1063, 1069–70 (D. Or. 2021); Christopher R. Deubert & Brandon Wurl, *Major League Soccer at Twenty-Five: Legal and Financial Considerations for the Next Quarter Century*, 12 ARIZ. ST. SPORTS & ENT. L.J. 1, 21 (2022).

[146] *O.M.*, 544 F. Supp. 3d at 1066.

[147] *Id.*

[148] *Id.*

[149] *Id.*

[150] *Id.* at 1068.

[151] *See id.*

Each Team Operator is required to deposit a "Collateral Deposit" amount in cash into a Collateral Account, in order to ensure each and every team operator meets its financial obligations.

Each Team Operator has the exclusive right to operate a team in its Home Territory.

Each Team Operator's accounting and operational records, annual budget, and business and marketing plan are kept confidential from other Team Operators and parties.

Each Team Operator is authorized to (i) license Local Broadcast Rights and sell Local Commercial Affiliations, (ii) sell tickets to home games, (iii) market and sell NWSL-sponsored, local promotional programs, (iv) sell and collect revenues generated by stadium concessions, parking, and other revenue-producing sources under the Stadium Lease, (v) sell team-branded merchandise in the Home Territory or vie team website, and (vi) manage, promote, and sell and take other actions in connection with team-branded soccer camps, clinics, training, and academy and local soccer club affiliations.

Each Team Operator is also authorized to negotiate agreements with players, conduct all local marketing within the Home Territory, and take other such actions on behalf of NWSL, as NWSL shall expressly authorize.

Each Team Operator hires its own general manager or executive in charge of soccer operations for the Team, head coach and assistant coaches, and local office staff and other personnel to carry out its obligations under the form Operating Agreement.

Each Team Operator selects players for the team from NWSL's pool of eligible players pursuant to the rules and procedures established by the NWSL.

The Team Operator is entitled to, upon the prior written consent of the NWSL, trade players to other NWSL teams pursuant to rules and procedures established by NWSL.

Each Team Operator must carry its own insurance.

> Each Team Operator Executes its own Stadium Lease and pays all rent, expenses, and any other fees, penalties, and interest under the lease.
>
> The Team Operator is required to provide uniforms and certain type of equipment.
>
> Each Team Operator is required to pay all travel expenses associated with players and team staff.
>
> Each Team Operator is required to pay for players' per-diem expenses and any ticket deductions.[152]

Thus, in reliance on these factors, the court definitively ruled the NWSL is not a single entity, finding that, "its member teams formed an agreement to enforce the Age Rule, and that the member teams play a central role in its continued implementation."[153] The court further went on to find that the age limit rule served no procompetitive benefit.[154] "Procompetitive benefits are those that improve or broaden competitive choices and include increasing output, creating operating efficiencies, making a new product available, enhancing product or service quality, and widening consumer choice."[155] The NWSL argued that allowing minors to play could increase administrative costs, which the court rejected as a valid procompetitive benefit.[156] The court granted the plaintiff a preliminary injunction.[157] The NWSL later settled with the player.[158]

G. Collective Bargaining Agreements

The MLS has avoided further litigation in the time since *Fraser* by entering into CBAs with the players.[159] CBAs are exempt from antitrust liability,

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[152] *Id.* at 1070.

[153] *Id.* at 1068.

[154] *Id.* at 1074.

[155] *Id.* at 1073–74.

[156] *Id.*

[157] *Id.* at 1077–78.

[158] *NWSL, Olivia Moultrie Reach Settlement over Antitrust Lawsuit*, ATHLETIC (July 30, 2021), https://theathletic.com/4203718/2021/07/30/nwsl-olivia-moultrie-reach-settlement-over-antitrust-lawsuit/ [https://perma.cc/C52K-L87V].

[159] *See, e.g.*, MLS PLAYERS ASS'N, *supra* note 101; *MLS Players Union Announces that It Has Ratified Collective Bargaining Agreement*, MAJOR LEAGUE SOCCER (July 16, 2015, at 5:17 PM), https://www.mlssoccer.com/news/mls-players-union-announces-it-has-ratified-collective-bargaining-agreement [https://perma.cc/RDT3-H43N]; *MLS & MLSPA Ratify New Collective Bargaining Agreement*, *supra* note 101.

stemming from the "'nonstatutory' labor exemption from antitrust laws," which means the agreements within the CBA are free from challenge.[160] The logic behind this exemption is that immunity from some antitrust violations is necessary for the bargaining process to occur efficiently.[161]

MLS players have primarily leveraged CBAs to increase their pay.[162] This has allowed the players to push the envelope on their salaries, while still allowing the MLS to be in control.[163] The players pushed the envelope even further in 2015 when they signed a new CBA with the MLS that, for the first time in league history, instituted free agency.[164] The establishment of free agency allows players who are out of contract to choose which team they want to play for next, which was never before the case.[165]

The institution of free agency relaxed some of the control the MLS has over the movement of players within the league, but not by as much as it may appear.[166] For example, from 2020–2025, players are only eligible for free agency if they are at least twenty-four-years-old and have played in the MLS for at least five years.[167] Thus, while free agents are free to play for whatever team they desire, free agent eligibility is still heavily restricted.[168]

Under the CBA, in return for player benefits like increased salaries and free agency, the MLS gets the legal assurance that the players will not push back on the league in the form of a protest or strike.[169] Thus, the CBA keeps the players happy and protects the MLS from any litigation or challenges from the players.[170] The existence of the CBA is what keeps the league

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[160] Brown v. Pro Football, Inc., 518 U.S. 231, 235–36 (1996).

[161] *See id.* at 236.

[162] *See generally* Collective Bargaining Agreement Between Major League Soccer & Major League Soccer Players Union Feb. 1, 2015–Jan. 31, 2020 (Feb. 1, 2025) (on file with the MLS Players Association) [hereinafter CBA 2015–2020]; CBA 2020–2028, *supra* note 100.

[163] *See* CBA 2020–2028, *supra* note 100, at 31.

[164] *MLS Players Union Announces that It Has Ratified Collective Bargaining Agreement*, *supra* note 159. *See also* Jeff Carlisle, *What the New MLS CBA Deal Means for Owners, Players and the '26 World Cup*, ESPN (Feb. 9, 2021, at 12:41 PM), https://www.espn.com/soccer/story/_/id/37613845/what-new-mls-cba-deal-means-owners-players-26-world-cup [https://perma.cc/CN38-88TJ].

[165] *See MLS Players Union Announces that It Has Ratified Collective Bargaining Agreement*, *supra* note 159.

[166] *2024 MLS Roster Rules and Regulations*, *supra* note 87.

[167] CBA 2020–2028, *supra* note 100, at 101.

[168] *Id.*

[169] *Id.* at 17.

[170] *See id.* at 17, 101.

afloat, and the absence of the CBA is what could put the MLS back in the courtroom in the future.[171]

H. Shaky Ground

It has been a quarter-century since the MLS first asserted its single entity defense, and its validity is still largely unknown.[172] Numerous CBAs have kept tensions from boiling over between the league and the players, but they are just band-aids on a bullet wound.[173] As soccer has continued to rise in popularity on the global scale and explode domestically in the United States, MLS players have only seen miniscule progress in their earning potential and freedom of contract compared to other leagues across the world.[174] This begs the question: What can the players do? How can they gain leverage at the negotiating table?

Thankfully, from the players' perspective, the ruling in *O.M.* showed that there may be light at the end of the tunnel.[175] The next part of this note will show how, when *Fraser* is revisited in light of the ruling in *O.M.*, the MLS's single entity defense takes another blow.[176] With the single entity defense potentially gone, the players can enter the next CBA negotiations with significantly more leverage or take a more aggressive route and refuse to agree to a new CBA, forcing the league to officially embrace a new structure.

II. REVISITING FRASER V. MAJOR LEAGUE SOCCER IN LIGHT OF O.M. V. NATIONAL WOMEN'S SOCCER LEAGUE

O.M. is where the MLS's single entity defense once again comes under heavy fire.[177] As stated previously, the Oregon District Court cited numerous

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[171] *See id.*; Paul Barvincak, *The Importance of the Upcoming MLS Collective Bargaining Agreement*, CIN. SOCCER TALK (Oct. 2, 2019), https://cincinnatisoccertalk.com/2019/10/02/the-importance-of-the-upcoming-mls-collective-bargaining-agreement/ [https://perma.cc/5ZQE-QQ5T] (noting that the CBA, by securing higher salaries for skilled players, helps attract top talent and enhance the league's quality, which in turn boosts fan support and financial viability essential for the league's existence).

[172] *See* Fraser v. Major League Soccer, L.L.C., 284 F.3d 47, 59 (1st Cir. 2002).

[173] *See* CBA 2015–2020, *supra* note 162, at 4; CBA 2020–2028, *supra* note 100, at 4.

[174] Jared Young, *CBA Talk: Comparing MLS Player Salaries to Leagues Around the World*, AM. SOCCER ANALYSIS (Apr. 29, 2019), https://www.americansocceranalysis.com/home/2019/4/22/cba-talk-comparing-mls-player-salaries-to-leagues-around-the-world [https://perma.cc/HP8R-T9JX].

[175] *See* O.M. v. Nat'l Women's Soccer League, LLC, 544 F. Supp. 3d 1063, 1068 (D. Or. 2021).

[176] *See* discussion *infra* Part II.

[177] *O.M.*, 544 F. Supp. 3d at 1070–71.

provisions in the NWSL Operating Agreement as evidence that the NWSL teams serve as separate economic entities competing for player rights.[178] Given these relevant provisions, it is wise to revisit the decision in *Fraser* by analyzing what similarities the MLS shares with the NWSL in this manner. The analysis will cover each relevant provision separately.

A. Each Team Operator is required to make a collateral deposit

Under the NWSL Operating Agreement, each Team Operator is required to deposit a "Collateral Deposit" amount in cash into a Collateral Account, in order to ensure each and every team operator meets its financial obligations.[179] The mirror image of this in the MLS is the expansion fee every new investor must pay.[180] The expansion fee is a specified amount of money a new investor must pay to acquire a new team and therefore invest in the MLS as a company.[181] Expansion fees for new MLS teams have hit an all-time high, requiring a whopping $500 million to purchase the newest MLS team: San Diego FC.[182] The deposit shows at least some "unity of interest," given that it ensures not only the stability of the team who made the deposit but also the league as a whole.[183]

B. Exclusive right to operate in home territory.

Under the NWSL Operating Agreement, each Team Operator has the exclusive right to operate a team in its Home Territory.[184] MLS Team Operators also have the exclusive right to operate a team in its Home Territory.[185] However, the MLS has allowed multiple teams to be located in the same city or within close proximity to each other.[186] Allowing teams to

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[178] *Id.* at 1070.

[179] *Id.*

[180] *See* Krasny, *supra* note 107.

[181] *See id.*

[182] Pablo Maurer, *MLS Expansion into San Diego: What You Need to Know About Team Name, Owner and Local History*, ATHLETIC (May 18, 2023), https://theathletic.com/4531733/2023/05/18/mls-san-diego-expansion-explained/ [https://perma.cc/M3HE-PD5S].

[183] Copperweld Corp. v. Indep. Tube Corp., 467 U.S. 752, 771 (1984)

[184] *O.M.*, 544 F. Supp. 3d at 1070.

[185] Fraser v. Major League Soccer, L.L.C., 284 F.3d 47, 53–4 (1st Cir. 2002).

[186] Thomas Schlachter, *'El Tráfico' Soccer Match Between LA Galaxy and LAFC Smashes MLS Attendance Record*, CNN (July 5, 2023, at 6:09 AM), https://www.cnn.com/2023/07/05/sport/el-trafico-smashes-mls-attendance-record-spt-intl/index.html [https://perma.cc/UXW8-KH9F]; *By the Numbers: A Numerical Guide to RBNY vs. NYCFC*,

(*continued*)

be located in the same city/market leans toward a showing of a unity of interest for the MLS because the focus is more on the overall success of the league, not necessarily the success of specific teams.[187]

C. Confidential business records.

Under the NWSL Operating Agreement, each Team Operator's accounting and operational records, annual budget, and business and marketing plan are kept confidential from other Team Operators and parties.[188] MLS Team Operators are required to disclose business records with the MLS on a yearly basis, but the records are kept anonymous, and therefore are confidential from the other teams.[189] Surrounding the businesses records in confidentiality goes against a unity of interest, because if there was a true unity of interest, it would make more sense for the teams to openly share their business records with each other.[190]

D. Operators are authorized to perform actions in the local area.

Under the NWSL Operating Agreement, each Team Operator is authorized to (i) license Local Broadcast Rights and sell Local Commercial Affiliations, (ii) sell tickets to home games, (iii) market and sell NWSL-sponsored, local promotional programs, (iv) sell and collect revenues generated by stadium concessions, parking, and other revenue-producing sources under the Stadium Lease, (v) sell team-branded merchandise in the Home Territory or via team website, and (vi) manage, promote, and sell and take other actions in connection with team-branded soccer camps, clinics, training, and academy and local soccer club affiliations.[191] Under the 2017 MLS Constitution, Team Operators have the right to enter into local sponsorship and broadcast agreements.[192] Team Operators also have the right to sell local sponsorships.[193] However, the 10-year exclusive streaming deal with Apple TV that started in 2023 makes it that Team Operators do not

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N.Y. RED BULLS (May 8, 2015, at 4:57 PM), https://www.newyorkredbulls.com/news/numbers-numerical-guide-rbny-vs-nycfc-x2170. [https://perma.cc/67QF-UMMV].

[187] Schlachter, *supra* note 186.

[188] O.M. v. Nat'l Women's Soccer League, LLC, 544 F. Supp. 3d 1063, 1070 (D. Or. 2021).

[189] MLS Const. as of Jan. 1, 2017, 25 (Jan. 1, 2017) (on file with author).

[190] *Id.*

[191] *O.M.*, 544 F. Supp. 3d at 1070.

[192] MLS Const., *supra* note 189, at 7.

[193] *Id.* at 6.

have the right to enter into local broadcast agreements.[194] The new broadcasting agreement with Apple TV leans much stronger toward a unity of interest because the league itself and the individual teams all benefit from higher viewership numbers, whereas previous local broadcasting agreements primarily benefitted the local team.[195]

E. Operators are authorized to negotiate agreements with players and conduct local marketing.

Under the NWSL Operating Agreement, each Team Operator is also authorized to negotiate agreements with players, conduct all local marketing within the Home Territory, and take other such actions on behalf of NWSL, as NWSL shall expressly authorize.[196] MLS Team Operators are also authorized to conduct local marketing.[197] Further, MLS Team Operators are authorized to negotiate agreements with players when they sign them as designated players.[198] However, as previously mentioned, each team has a maximum of three designated players, which means MLS teams are only able to truly negotiate with those three players, whereas the teams' negotiations with the other players are severely restricted by the MLS's roster rules and regulations.[199] Thus, the freedom to negotiate with designated players tends to go against a unity of interest because individual teams can compete for those players by offering more money.[200] However, the ability to negotiate freely with designated players and therefore bring higher profile players to the MLS benefits the league as a whole and shows a strong unity of interest.

F. Operators hire their own staff to run the club.

Under the NWSL Operating Agreement, "each Team Operator hires its own general manager or executive in charge of soccer operations for the Team, head coach and assistant coaches, and local office staff and other personnel to carry out its obligations under the form Operating Agreement."[201] MLS Team Operators are required to hire front office and team staff.[202] Requiring teams to

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[194] Reedy, *supra* note 33.

[195] *See id.*

[196] *O.M.*, 544 F. Supp. 3d at 1070.

[197] MLS Const., *supra* note 189, at 25.

[198] Bezbatchenko, *supra* note 56, at 634.

[199] *See 2024 MLS Roster Rules and Regulations*, *supra* note 87.

[200] *See* Bezbatchenko, *supra* note 56, at 633–34.

[201] *O.M.*, 544 F. Supp. 3d at 1070.

[202] MLS Const., *supra* note 189, at 5.

hire their own front office and team staff signals a de-centralization of control by the MLS, which tends to show a lack of a unity of interest.

G. Operators select eligible players from pool according to league rules.

Under the NWSL Operating Agreement, each Team Operator selects players for the team from NWSL's pool of eligible players pursuant to the rules and procedures established by the NWSL.[203] In the same way, MLS Team Operators select available players from relevant pools according to MLS rules.[204] The selection of available players from pools regulated by the MLS shows a unity of interest because the league, in cooperation with the teams, is controlling who is able to play in the league. Otherwise, the league could create a free market and let every team sign any player they want from anywhere in the world.[205] This control of player selection is foundational for the MLS and their steady growth as a league, which shows they prioritize their own long-term health and stability over the ability of one team to dominate the league.[206]

H. Operators can trade players with other teams.

Under the NWSL Operating Agreement, each "Team Operator is entitled to, upon the prior written consent of the NWSL, trade players to other NWSL teams pursuant to rules and procedures established by NWSL."[207] MLS Team Operators are also able to trade players to other teams pursuant to league rules.[208] The ability to trade players with other teams may show an individual interest by the teams, but that is not necessarily the case. For example, if Inter Miami thought trading experienced Sergio Busquets for a younger central midfielder like Aiden Morris would make them a better team, and if the Columbus Crew thought trading young Aiden Morris for a more experienced central midfielder like Sergio Busquets would make them a better team, the trade would benefit both teams, and the league as whole, therefore showing a unity of interest.

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[203] *O.M.*, 544 F. Supp. 3d at 1070.

[204] Fraser v. Major League Soccer, L.L.C., 284 F.3d 47, 54 (1st Cir. 2002).

[205] *Cf.* Ian Curtis, *The Glorious Life and Painful Death of the NASL*, GRIT DAILY (Oct. 29, 2019), https://gritdaily.com/life-death-nasl/ [https://perma.cc/L26S-3ZD7].

[206] *See* Krasny, *supra* note 107.

[207] *O.M.*, 544 F. Supp. 3d at 1070.

[208] *Fraser*, 284 F.3d at 54.

I. Operators must carry their own insurance.

Under the NWSL Operating Agreement, "each Team Operator must carry its own insurance."[209] There is no evidence that explicitly states MLS Team Operators must carry their own insurance.[210] However, MLS Next, a subsidiary of the MLS, requires its clubs to have their own insurance.[211] Therefore, it would be reasonable to assume the MLS requires its teams to have their own insurance.[212] Requiring each team to carry their own insurance shows a lack of a unity of interest because, if the MLS and its teams really were a single entity, it would make more sense for the single entity itself to carry its own insurance.

J. Operators handle all stadium situations.

Under the NWSL Operating Agreement, "each Team Operator executes its own Stadium Lease and pays all rent, expenses, and any other fees, penalties, and interest under the lease."[213] MLS Team Operators are similarly required to execute and operate their own Stadium Lease.[214] The same reasoning from the insurance requirement applies here. Requiring each team to execute and operate their own stadium leases shows a lack of a unity of interest because, if the MLS and its teams really were a single entity, it would make more sense for the single entity to handle all stadium matters.

K. Operators provide uniforms and equipment.

Under the NWSL Operating Agreement, "each Team Operator is required to provide uniforms and certain type of equipment."[215] Although not explicitly stated, it is likely that providing uniforms and equipment is included in the Team Operators duty of "general team administration."[216] The same reasoning applies here as the last two points. However, providing uniforms and equipment are

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[209] *O.M.*, 544 F. Supp. 3d at 1070.

[210] Heike K. Sullivan, Fraser v. Major League Soccer*: The MLS's Single-Entity Structure Is a Sham*, 73 TEMP. L. REV. 865, 877 (2000).

[211] *MLS NEXT Rules and Regulations 2023–24*, MLS NEXT, https://www.mlssoccer.com/mlsnext/resources/rules-and-regulations/ [https://perma.cc/A73U-Q3HT] ("Each Club shall carry and maintain liability insurance and, upon request by [Player Development, L.L.C. ("PDev")] and at Club's insurance renewals, shall provide PDev with certificate(s) of insurance evidencing the Club's insurance coverage in the amounts and for the coverages required by PDev and the MLS NEXT Rules and Policies.").

[212] *See Id.*

[213] *O.M.*, 544 F. Supp. 3d at 1070.

[214] MLS Const., *supra* note 189, at 7.

[215] *O.M.*, 544 F. Supp. 3d at 1070.

[216] Fraser v. Major League Soccer, L.L.C., 97 F. Supp. 2d 130, 133 (D. Mass. 2000).

insignificant costs in light of the other costs of operating a professional sports team, so it is not unreasonable that, even if the MLS is a single entity, the league would have the individual teams cover these expenses.[217]

L. Operators must pay all travel expenses for players and staff.

Under the NWSL Operating Agreement, "each Team Operator is required to pay all travel expenses associated with players and team staff."[218] Likewise, MLS Team Operators are required to cover travel expenses for the players.[219] The same reasoning applies here as the point on providing uniforms and equipment. Each team having to individually pay the travel expenses for players and staff is not characteristic of a single entity, but the costs are so insignificant that it is not unreasonable to have the teams cover the cost.[220]

M. Operators must pay players' per-diem expenses and any ticket deductions.

Under the NWSL Operating Agreement, "each Team Operator is required to pay for players' per-diem expenses and any ticket deductions."[221] MLS Team Operators are also required to pay for players' per-diem expenses.[222] The same reasoning as above applies here as the previous point.

N. Conclusion

A quick comparison of the relevant provisions shows how the MLS and NWSL are nearly mirror images of each other (though they are not without their differences).[223] As stated above, the Oregon District Court cited these provisions as evidence that the NWSL is not a single entity because the provisions show the NWSL teams serve as separate economic entities competing for player rights.[224] The MLS has its own version of most, if not all, of the provisions cited to by the district court, which is bad news for the MLS.[225]

If a court were to revisit the single entity status of the MLS today, it is likely to reach the same decision as the court in *O.M.*. The provisions that bolstered

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[217] *See* Krasny, *supra* note 107.

[218] *O.M.*, 544 F. Supp. 3d at 1070.

[219] CBA 2020–2028, *supra* note 100, at 48.

[220] *See Major League Soccer's Single-Entity Structure*, LEX SPORTIVA (Oct. 9, 2019), https://lexsportiva.blog/2019/10/09/mls/ [https://perma.cc/S5TF-T6GL]; Krasny, *supra* note 107.

[221] *O.M.*, 544 F. Supp. 3d at 1070.

[222] CBA 2020–2028, *supra* note 100, at 46.

[223] *O.M.*, 544 F. Supp. 3d at 1070; CBA 2020–2028, *supra* note 100, at 46, 48.

[224] *O.M.*, 544 F. Supp. 3d at 1070.

[225] *See id.*

the case for the NWSL not being a single entity will do the same for the MLS. *O.M.* all but put a definite end to the MLS's single entity defense.[226]

III. MESSI TO THE RESCUE

Saudi Arabia, Barcelona, or Miami. These were Messi's three options when his contract at Paris Saint Germain ended.[227] The eight-time Ballon d'Or winner decided against an emotional return home to Barcelona and a jaw-dropping $1.5 billion, three-year offer from Saudi Arabia, choosing South Beach and a $50 million, two-and-a-half-year contract.[228] This left fans and critics alike wondering why Messi chose Miami.[229]

For starters, out of his three options, Miami shares the most qualities with the South American culture of Messi's home country, Argentina.[230] Another reason, given by Messi himself, is the lifestyle Miami offers his family.[231] Regardless of the actual, non-financial reasoning behind the move to Miami, the deal appears to be more financially lucrative than it looks on paper.[232]

The $20.4 million per year guaranteed salary pales in comparison to money Messi was making at Barcelona and Paris Saint Germain.[233] However,

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[226] *See O.M.*, 544 F. Supp. 3d at 1070–71.

[227] Jack Cunningham, *Where Will Lionel Messi Go After PSG? David Beckham Link-Up, Barcelona Return and Saudi All Options for Superstar*, TALKSPORT (June 1, 2023, at 5:15 PM), https://talksport.com/football/1413540/lionel-messi-psg-exit-wages-future-barcelona-saudi-arabia-america-cristiano-ronaldo/ [https://perma.cc/WWQ8-NUUY].

[228] Ronald Blum, *Lionel Messi Earns $20.4 Million Under Contract with Major League Soccer's Inter Miami*, ASSOCIATED PRESS, https://apnews.com/article/messi-mls-salary-a5947e417aacc9582c4d0858895f4da9 (Oct. 18, 2023, at 1:01 PM) [https://perma.cc/JWE6-7QVK]; Rachel Shin, *Lionel Messi just spurned a reported $400 million contract in Saudi Arabia to play for David Beckham's team in Miami*, YAHOO! FINANCE (June 7, 2023), https://finance.yahoo.com/news/goat-pink-lionel-messi-reportedly-164224744.html [https://perma.cc/HNK8-GCSQ].

[229] *See Lionel Messi Explains Why He Chose Inter Miami Over Barcelona, Saudi Arabia*, FOX SPORTS (June 7, 2023, at 7:54 PM), https://www.foxsports.com/stories/soccer/lionel-messi-explains-why-he-chose-inter-miami-over-barcelona-saudi-arabia [https://perma.cc/Y5SN-5CZT].

[230] *See id.*

[231] *Id.*

[232] *See* Surendran, *supra* note 51.

[233] Blum, *supra* note 228; Kurt Badenhausen, *Messi Career Earnings to Reach $1.6B with Miami MLS Deal*, SPORTICO (July 15, 2023, at 12:01 PM), https://www.sportico.com/personalities/athletes/2023/lionel-messi-career-earnings-billion-mls-1234730823/ [https://perma.cc/DRF3-V35G].

what Messi's Miami contract has that the others do not is a deal with Apple.[234] Knowing that a $20 million salary might not be enough to lure the prolific goal-scorer to Miami, the Inter Miami ownership group, along with the MLS front office, had to get creative.[235] It has been reported that the creativity culminated in an offer for Messi to receive a share in the revenue of every new subscriber to MLS Pass on Apple TV after his arrival.[236]

The deal could not make more sense for both parties. From Apple's perspective, having the best player in the world come to the MLS is certainly going to cause the number of subscribers to skyrocket.[237] From Messi's perspective, getting a cut of the revenue from fans across the world subscribing to Apple TV to see him play would serve as a healthy supplement to the $20 million salary.[238] The deal appears to be beneficial to both parties so far, exemplified by 110,000 new subscribers on the day Messi debuted for Inter Miami.[239] MLS and Apple TV reveal very little regarding subscription numbers, but it is reported that the total number of MLS Season Pass subscriptions on Apple TV climbed from under a million prior to Messi's late July arrival to over 2,000,000 at the end of the 2023 season.[240] Messi and Apple appear to have hit the ground running. Yet, the question remains: How does the signing of Messi save the MLS's single entity defense?

A. A Unity of Interests

Along with the trophy he won and the attention he brought to Miami, Messi's first season in the MLS saved its single entity defense.[241] While *O.M.* cast heavy doubt on the MLS's single entity defense, Messi's contract,

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[234] Surendran, *supra* note 51.

[235] Chris Moore, *MLS Offers Messi Profit Sharing of Apple's MLS Season Pass*, WORLD SOCCER TALK (July 15, 2023), https://worldsoccertalk.com/tv/mls-offers-messi-profit-sharing-of-apples-mls-season-pass-20230607-WST-436401.html [https://perma.cc/3EGR-2YAD].

[236] *Id.*; Surendran, *supra* note 51.

[237] *See* Alex Silverman, *Sources: MLS Season Pass Surpassed 2M Subs in '23*, SPORTS BUS. J. (Feb. 15, 2024), https://www.sportsbusinessjournal.com/Articles/2024/02/15/mls-season-pass-subscriptions [https://perma.cc/KN4F-VDAX].

[238] *E.g.*, Jordan Valinsky, *Leo Messi Sparks a Surge in Major League Soccer Subscription Sign-Ups*, CNN (Sept. 5, 2023, at 10:56 AM), https://www.cnn.com/2023/09/05/business/leo-messi-apple-tv-signups/index.html [https://perma.cc/GZC4-EDFU].

[239] *Id.*

[240] Silverman, *supra* note 237.

[241] Jonathan Sigal, *Lionel Messi Sets World Record as Inter Miami Win Leagues Cup*, MAJOR LEAGUE SOCCER (Aug. 20, 2023, at 12:53 AM), https://www.mlssoccer.com/news/lionel-messi-sets-world-record-as-inter-miami-win-leagues-cup [https://perma.cc/ZJ7J-92GP].

and the unity of interest it shows between the MLS and its teams, strengthens its single entity defense.[242]

As stated above,[243] a single entity exists where "there is a 'complete unity of interest,' such that the parent corporation and its wholly owned subsidiary have common objectives and agree to a single course of action."[244] The actual details of Messi's contract have not been released (and likely never will be). However, if the reports of the cooperation and agreement between the MLS front office and Inter Miami are correct, it appears that the MLS and Inter Miami had a unity of interest and common objective: bring Messi to the MLS to raise revenue and increase interest for both parties.[245]

Bringing Messi to the MLS already made the MLS and Inter Miami significant amounts of money.[246] Further, the money collected through various avenues (ticket sales, media, concessions, etc.) gets split between the team and the MLS.[247] Thus, the more money the MLS makes, the more money Inter Miami makes.[248] There is a unity of interest: bring Messi to Miami, sell more product, and both parties will make more money.

B. The Messi Effect

Speaking of money, American soccer fans are willing to pay whatever it takes to watch Messi play.[249] After Messi's arrival in the latter half of the 2023 MLS season, ticket prices for Inter Miami home games increased by almost 500%.[250] Assuming the revenue sharing structure is similar to 2017, a 500% increase in ticket prices has a significant impact on the 70% of ticket

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[242] *See* Deubert & Wurl, *supra* note 145, at 24.

[243] *See* discussion *supra* Section I.D.

[244] Jordan, *supra* note 8, at 239 (quoting Copperweld Corp. v. Indep. Tube Corp., 467 U.S. 752, 771 (1984)).

[245] Paul Tenorio & Pablo Maurer, *MLS Willing to Be Flexible in Order to Seal Lionel Messi Transfer—Don Garber*, THE ATHLETIC (Mar. 3, 2023), https://www.nytimes.com/athletic/4273478/2023/03/03/lionel-messi-mls-don-garber-comments/ [https://perma.cc/NJ86-MK83].

[246] David Rumsey, *Inter Miami Scores Record Revenue with Messi. How Much Bigger Can It Get?*, FRONT OFF. SPORTS (Dec. 4, 2023, at 4:44 PM), https://frontofficesports.com/inter-miami-scores-record-revenue-with-messi-how-much-bigger-can-it-get/ [https://perma.cc/ZE22-RA3N].

[247] Fraser v. Major League Soccer, L.L.C., 284 F.3d 47, 54 (1st Cir. 2002).

[248] Krasny, *supra* note 107.

[249] *See* Mike Winters, *With Lionel Messi Playing Soccer in the U.S., Single-Game Ticket Prices Surge by More than 1,700%*, CNBC (Aug. 20, 2023, at 9:00 AM), https://www.cnbc.com/2023/08/20/lionel-messi-joins-the-mls-single-game-ticket-prices-surge.html [https://perma.cc/P2BT-P3BT].

[250] *Id.*

sale revenue Inter Miami gets to keep for itself and the 30% of ticket sale revenue that goes directly to the MLS.[251] Thus, a unity of interest exists: Inter Miami and MLS succeed together, or they fail together.

Not only have ticket prices for Inter Miami home games increased, but ticket sales have as well.[252] For example, when Inter Miami hosted Toronto FC in 2022, the attendance was 14,388.[253] On year later, after the arrival of Messi, 19,659 were in the crowd when Inter Miami hosted Toronto FC.[254] The rise in attendance for Inter Miami home games stayed consistent throughout the remainder of the 2023 season.[255] Thus, the increase in ticket sales and ticket prices, and therefore revenue, for both Inter Miami and the MLS as an entity shows a unity of interest in bringing Messi to Miami.

While the increase in ticket prices and revenue for Inter Miami (and the MLS) is a strong argument showing a unity of interest, an even stronger argument is the impact Messi has had on ticket prices and revenue of the other MLS teams.[256] After Messi's arrival in the latter half of the 2023 MLS season, ticket prices for Inter Miami away games increased by roughly 1,000%.[257]

Further, just as is the case for Inter Miami home games, away games also see an increase in quantity of tickets sold.[258] An obvious example of this was when the New York Red Bulls hosted Inter Miami at the end of the 2023 season.[259] 21,374 fans filled Red Bull Arena in 2022 when the New York Red

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[251] *See* discussion *supra* Section I.D.

[252] Anne M. Peterson, *Messi Mania Has Grabbed Hold in Major League Soccer, but Will It Be a Long-Lasting Boost?*, ASSOCIATED PRESS (Sept. 26, 2023, at 2:34 PM), https://apnews.com/article/lionel-messi-inter-miami-major-league-soccer-open-cup-f8a054882a38cef1fa69b85774ff89a3 [https://perma.cc/G6N2-WTSZ].

[253] *2022 Major League Soccer, Regular Season, Miami vs. Toronto*, ESPN, https://www.espn.com/soccer/match/_/gameId/623532/toronto-fc-inter-miami-cf [https://perma.cc/9W3L-G77S].

[254] *2023 Major League Soccer, Regular Season, Miami vs. Toronto*, ESPN, https://www.espn.com/soccer/match/_/gameId/659988/toronto-fc-inter-miami-cf [https://perma.cc/AT52-8FZ5].

[255] *See* Peterson*, supra* note 252.

[256] Winters, *supra* note 250.

[257] *Id.*

[258] *See* Eben Novy-Williams, *Messi Millions Follow Months of Planning for New York Red Bulls*, SPORTICO (Aug. 25, 2023, at 12:01 AM), https://www.sportico.com/leagues/soccer/2023/messi-red-bulls-ticket-strategy-1234735186/ [https://perma.cc/K2EX-M2H8].

[259] *Id.*

Bulls hosted Inter Miami.[260] Almost exactly one year later, Red Bull Arena was filled to the brim with 26,276 fans to watch Messi play in the Big Apple.[261] 5,000 more tickets sold at the heavily increased prices leads to a significant revenue increase.[262] And, again, a slice of that revenue goes to the MLS to ultimately be redistributed among teams at the end of the season.[263]

C. Slicing up the Apple TV Pie

On top of increased ticket sale revenue, the MLS broadcasting deal with Apple TV will also benefit every MLS team.[264] Under the current CBA, once media revenue surpasses a certain mark, the MLS is required to take a cut of the revenue and put it toward increasing the salary cap and general allocation money each team receives.[265] Thus, the cycle begins.

First, per the CBA, the MLS uses a percentage of the media revenue over a certain amount to increase the salary cap.[266] Next, the teams use the increased salary cap to spend more money on buying high-quality players.[267] Those high-quality players attract a larger audience in the stands and on Apple TV, which increases the revenue for each team and starts the cycle all over again.[268]

It's worth noting that the salary cap increase that results from the sharing of media revenue applies evenly to all teams.[269] This means that even if only

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[260] *2022 Major League Soccer, Regular Season, NY Red Bulls vs. Miami*, ESPN, https://www.espn.com/soccer/match/_/gameId/623537/inter-miami-cf-new-york-red-bulls [https://perma.cc/87SP-LD3N].

[261] *2023 Major League Soccer, Regular Season, NY Red Bulls vs. Miami*, ESPN, https://www.espn.com/soccer/match/_/gameId/659930/inter-miami-cf-new-york-red-bulls [https://perma.cc/SPH5-3WMG].

[262] *See* Novy-Williams, *supra* note 258.

[263] *See* discussion *supra* Section I.D.

[264] *See* Sam Stejskal & Paul Tenorio, *How Will MLS' Apple TV Deal Affect the League? Everything We Know About the Agreement*, THE ATHLETIC (June 14, 2022), https://theathletic.com/3365616/2022/06/14/mls-media-rights-deal-facts/ [https://perma.cc/B967-GVBT].

[265] *Id.*

[266] CBA 2020–2028, *supra* note 100, at 43.

[267] *E.g.*, Tim Hotze, *The Key Changes in MLS Roster Rules for 2024*, MIR97 MEDIA (Feb. 20, 2024), https://meninred97.com/the-key-changes-in-mls-roster-rules-for-2024/ [https://perma.cc/94W8-G5MH].

[268] *See* Jared Young, *What Does the New Apple TV Deal Mean for MLS?*, AM. SOCCER ANALYSIS (June 28, 2022), https://www.americansocceranalysis.com/home/2022/6/22/what-does-the-new-apple-tv-deal-mean-for-mls [https://perma.cc/H4G2-ANX4].

[269] CBA 2020–2028, *supra* note 100, at 43.

one team (Inter Miami), or even one player (Messi), causes a substantial increase in Apple TV subscriptions, Inter Miami is not going to have their salary cap increased more than a small-market team like the Colorado Rapids.[270] An increase in Apple TV subscriptions benefits all MLS teams equally, no matter who the fans are tuning in to watch.[271]

When pairing this revenue sharing agreement from the CBA with the effect Messi has had on Apple TV subscriptions,[272] it becomes crystal clear that the signing of Messi is beneficial to all MLS teams, not just Inter Miami. Thus, the more fans that tune in to watch Messi play, the better off every MLS team will be. As the old adage goes: "a rising tide lifts all boats," and Messi is the rising tide.

D. The Team of Horses

Not only is Messi the rising tide for the MLS, but he is also leading the pack of horses. As discussed previously, in *Copperweld*, the Court compared the parent company and its subsidiary to a "team of horses drawing a vehicle under the control of a single driver," regardless of how tight of a rein the parent company holds over the subsidiary.[273] Messi has been leading the MLS, Inter Miami, and every other team forward ever since he scored that iconic free kick in his debut.[274]

To keep with the analogy, the team of horses consists of every MLS team with Messi and Inter Miami leading the pack. The MLS is the single driver who controls the team of horses. In this analogy used by the Court in *Copperweld*, both the team of horses (the MLS teams) and the single driver (the MLS) are completely dependent on each other.[275] The MLS only moves forward if the teams move forward.[276] At the same time, the MLS teams only successfully move forward as a unit if the MLS keeps a tight rein on them.[277] In other words, the MLS and its teams have a unity of interest.

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[270] *See id.*

[271] *See* Stejskal & Tenorio, *supra* note 264.

[272] *See* discussion *supra* Section I.B.

[273] Copperweld Corp. v. Indep. Tube Corp., 467 U.S. 752, 771 (1984).

[274] ESPN FC, *supra* note 1.

[275] *See Copperweld Corp.*, 467 U.S. at 771.

[276] *See id.*

[277] *See id.*

IV. CONCLUSION

In 2025, the MLS kicked off its 30th season, nearly doubling the lifespan of its predecessor, the NASL.[278] San Diego FC is the new kid on the block, becoming the league's 30th team.[279] 30 seasons, 30 teams, and endless possibilities on the horizon.[280] How has the MLS managed to pull it off? Two words: control and cooperation.

The unique structure of the MLS helped it sustain growth in the league's infancy, and it is what helps the league flourish today. After *Fraser*, the MLS stayed steady for a quarter-century until the decision was handed down in *O.M.*[281] The future of the MLS's single entity defense looked bleak. Yet, everything changed when Inter Miami and the MLS worked together to do the unthinkable: bring Messi to the MLS. Messi's arrival means two things: the sky is the limit for American soccer, and the single entity defense is here to stay.

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[278] *See* Lewis, *supra* note 18.

[279] Cesar Hernandez, *San Diego Awarded 30th MLS Team, Will Debut in 2025*, ESPN (May 18, 2023, at 1:31 PM), https://www.espn.com/soccer/story/_/id/37676377/mls-names-san-diego-30th-team-debut-2025 [https://perma.cc/8DP4-4R2V].

[280] *See, e.g.*, *Messi's Impact on Inter Miami, MLS in 2023 and Beyond*, ESPN (Oct. 24, 2023, at 9:24 AM), https://www.espn.com/soccer/story/_/id/38704303/messi-impact-inter-miami-mls-2023-beyond [https://perma.cc/Y2QN-DD6S].

[281] *Compare* Fraser v. Major League Soccer, L.L.C., 284 F.3d 47, 58–59 (1st Cir. 2002), *with* O.M. v. Nat'l Women's Soccer League, LLC, 544 F. Supp. 3d 1063, 1068 (D. Or. 2021).