

AIMED AT THE GOAL?: THE SUSTAINABILITY OF MAJOR LEAGUE SOCCER'S STRUCTURE

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I. Introduction

Major League Soccer (“MLS”) is by far the youngest of the men’s American professional sports leagues. Because of this, it had the benefit of using other leagues, both at home and abroad, as models for development. After nearly a decade and a half, it is time to evaluate the path chosen by the MLS and whether its choices are appropriate for achieving a successful professional league in their sport.

Americans have largely been absent from professional level soccer unless playing abroad.¹ As a result, American soccer fans have begun following European leagues in lieu of an absent American league. This means not only does Major League Soccer have to compete with the National Football League (“NFL”), National Basketball League (“NBA”), Major League

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¹ *Fraser v. Major League Soccer LLC (Fraser II)*, 284 F.3d 47, 52 (1st Cir. 2002).

Baseball (“MLB”), and National Hockey League (“NHL”), but England’s Premiership, Italy’s Serie A, Spain’s Primera Division, Germany’s Bundesliga, and Netherlands’ Eredivisie. No other American league confronts any global league as powerful as it: the NFL is the global powerhouse in American football; baseball leagues are strong throughout Latin America and Japan and basketball leagues are strong in some European countries, but none have the resources or consolidated talent to rival the MLB or NBA; and while Russian and Scandinavian hockey leagues may be talented enough to compete with the NHL, sponsorships and television rights have held them back from worldwide recognition. The fact is athletes come to America to play American football, basketball, baseball, and hockey while Americans go abroad to get the best-rate soccer action.

In many ways, the MLS has developed comparably to the NFL, NBA, MLB, and NHL. These similarities include implementing a playoff system, membership of teams, and scheduling. In other ways, the MLS has had to embrace the fact that soccer is more commonly known as football worldwide. This recognition includes implementation of a reserve league and sponsorship methods. Yet still, the MLS is unique from other American leagues and European soccer leagues. These differences include selecting coaches, expansion rates, television deals, and Spanish speaking services.

This paper will begin with an overview of MLS history. It will then discuss how the MLS resembles other American sports leagues including the NFL, NBA, MLB, and NHL; the ways the MLS resembles the European soccer powerhouses in England, Italy, Spain, and others; and the ways the MLS resembles neither of these structures. The paper will conclude by examining whether the hybrid model the MLS has adopted is sustainable.

II. The History of MLS

Major League Soccer was founded as the top-flight professional soccer league in the United States.² In consideration for the 1994 World Cup bid, the U.S. Soccer Federation promised to install an upper-level professional soccer league in the United States.³ Prior to, there had not been a Division I, top-tier, professional soccer league since the North American Soccer League (“NASL”), which folded in 1985.⁴ In fact, NASL is the only other top-tier league the United States has ventured. The demise of NASL, thought largely to be because of disparities in financial resources between the league’s teams and a lack of centralized control, has been influential to the development of the MLS.⁵

In December of 1993 it was announced that a top-tier professional league would be formed.⁶ The basic composition structure was selected from League One America; the American Professional Soccer League, an existing Division II league; and Major League Professional

² *About MLS: General Overview*, MLSNET.COM

<http://web.archive.org/web/20080421114155/web.mlsnet.com/about/> (last visited Dec. 14, 2010).

³ *Fraser II*, 284 F.3d at 52-3.

⁴ *Id.* at 52.

⁵ *Id.*

⁶ *About MLS: General Overview*, *supra* note 2.

Soccer (“MLPS”).⁷ The MLPS was selected because of its better capitalization, proposed spending, business plans, and management.⁸

After the 1994 World Cup, the MLS was formed in February 1995 as a limited liability company under Delaware law.⁹ It is governed by its Limited Liability Company Agreement.¹⁰ Independent investors, in the form of corporations, partnerships, and individuals, own the league.¹¹ The league is managed by a board of governors, known as the managing committee.¹² The management committee is composed of representatives from each of the investors.¹³ As with most LLCs, investors can be active or passive.¹⁴

Major League Soccer has retained a unique structure. The league retains centralized control over individual team operations through its managing committee.¹⁵ When founded, the MLS owned all of the teams in the league – eight at the time.¹⁶ This has since changed. All intellectual property rights, tickets, supplied equipment, and broadcast rights are owned by the MLS.¹⁷ At the same time the MLS sets team schedules, negotiates stadium leases, assumes liability, pays the salaries of referees and other league personnel, and supplies select equipment.¹⁸ More unique is the amount of control the league retains over acquisition of players.¹⁹ When founded, the MLS had sole responsibility to recruit players, negotiate their salaries, pay them (from league funds), and determine, with limitations, for whom the player would play.²⁰ Players are employees of the league.²¹

Gradually the MLS has relinquished some control over team operations.²² Namely control has gone to operator investors, who would be called active investors in a more traditional LLC.²³ Control is relinquished by signing an operating agreement with the MLS.²⁴ These operator investors hire and pay, at their own expense, local staff including coaches and general managers, local office expenses, local promotional costs of home games, and half of the stadium rent plus they license local broadcast rights and sell home tickets.²⁵ The operator investor plays a role in selecting players for their team by trading players and selecting players in the league

⁷ *Fraser II*, 284 F.3d at 53.

⁸ *Id.*

⁹ *Id.*

¹⁰ *Fraser v. Major League Soccer LLC (Fraser I)*, 97 F. Supp. 2d 130, 132 (C.C.D. Mass. 2000).

¹¹ *Fraser II*, 284 F.3d at 53.

¹² *Id.*

¹³ *Fraser I*, 97 F. Supp. 2d at 130, 132.

¹⁴ *Fraser II*, 284 F.3d at 53.

¹⁵ *Id.*

¹⁶ *Id.*

¹⁷ *Id.*

¹⁸ *Id.*

¹⁹ *Id.*

²⁰ *Fraser II*, 284 F.3d 47, 53 (1st Cir. 2002).

²¹ *Fraser I*, 97 F. Supp. 2d 130, 130, 132 (C.C.D. Mass. 2000).

²² *Fraser II*, 284 F.3d at 53.

²³ *Id.*

²⁴ *Fraser I*, 97 F. Supp. 2d at 130, 132.

²⁵ *Fraser II*, 284 F.3d at 54.

drafts.²⁶ The board of governors remains responsible for hiring the commissioner, approving national television contracts, marketing decisions, developing league rules and policies including team player budgets, and the sale of interests.²⁷ Therefore, even though the operator investor may trade and draft players, the rules of trading and drafting are developed by the league.²⁸ Additionally, teams are prohibited from making trades for cash.²⁹ Operator investors are paid a management fee by the MLS that corresponds with the performance of their team plus local ticket receipts, local concessions, and broadcast revenues.³⁰ The investors share equally in the league's profits and losses.³¹ For the 2002 season, operator investors controlled nine teams and the remaining three teams were operated by the league.³² Including teams added in 2011 and the planned 2012 expansion team in Montreal, there are currently seventeen owners among nineteen teams.³³ Passive investors do not operate a team as they have not signed an operating agreement with the MLS, but they can participate in the management council.³⁴ Passive investors do not pay any team operating expenses or receive a management fee, but they can share in the distribution of the profits and losses from league operations.³⁵

In 1997, a legal battle between the MLS and some of its players began.³⁶ These players sued the MLS in the United States District Court for the District of Massachusetts alleging, most significantly, that the MLS violated § 1 of the Sherman Act by conspiring not to compete for players' services.³⁷ The league moved for summary judgment, claiming a single-entity

²⁶ *Id.*

²⁷ *Id.*

²⁸ *Id.*

²⁹ *Fraser I*, 97 F. Supp. 2d at 130, 133.

³⁰ *Fraser II*, 284 F.3d at 54.

³¹ *Id.*

³² *Id.*

³³ See MLS, <http://www.mlssoccer.com/> (last visited Dec. 14, 2010); CHICAGO FIRE, <http://www.chicago-fire.com/> (last visited Dec. 14, 2010); COLUMBUS CREW, <http://www.thecrew.com/> (last visited Dec. 14, 2010); D.C. UNITED, <http://www.dcunited.com/> (last visited Dec. 14, 2010); NEW ENGLAND REVOLUTION, <http://revolutionsoccer.net/> (last visited Dec. 14, 2010); NEW YORK RED BULLS, <http://www.newyorkredbulls.com/> (last visited Dec. 14, 2010); PHILADELPHIA UNION, <http://www.philadelphiaunion.com/> (last visited Dec. 14, 2010); SPORTING KANSAS CITY, <http://www.sportingkc.com/> (last visited Dec. 14, 2010); TORONTO FC, <http://www.torontofc.ca/> (last visited Dec. 14, 2010); CHIVAS USA, <http://www.cdchivasusa.com/> (last visited Dec. 14, 2010); COLORADO RAPIDS, <http://www.coloradorapids.com/> (last visited Dec. 14, 2010); FC DALLAS, <http://www.fcdallas.com/> (last visited Dec. 14, 2010); HOUSTON DYNAMO, <http://www.houstondynamo.com/> (last visited Dec. 14, 2010); LOS ANGELES GALAXY, <http://www.lagalaxy.com/> (last visited Dec. 14, 2010); REAL SALT LAKE, <http://www.realsaltlake.com/> (last visited Dec. 14, 2010); SAN JOSE EARTHQUAKES, <http://www.sjearthquakes.com/> (last visited Dec. 14, 2010); SEATTLE SOUNDERS FC, <http://www.soundersfc.com/> (last visited Dec. 14, 2010); MONTREAL IMPACT, <http://www.montrealmls2012.com/> (last visited Dec. 14, 2010); PORTLAND TIMBERS, <http://www.portlandmls2011.com/> (last visited Dec. 14, 2010); VANCOUVER WHITECAPS, <http://www.whitecapsfc.com/> (last visited Dec. 14, 2010).

³⁴ *Fraser I*, 97 F. Supp. 2d at 130, 132.

³⁵ *Id.*

³⁶ *Fraser II*, 284 F.3d 47, 54 (1st Cir. 2002).

³⁷ *Id.* at 54-55 (the players also alleged the MLS violated § 2 of the Sherman Act by monopolizing or attempting monopolizing the market for premiere, division one soccer played in the United States).

defense.³⁸ At the district court level, the MLS was likened to a corporation because of its limited liability corporation structure.³⁹ This, plus the fact that investors owned undivided interests and shared profits and losses in accordance with those interests, led the court to conclude that the MLS was a single-entity for the purposes of antitrust analysis.⁴⁰ The players appealed to the United States Court of Appeals for the First Circuit, which refused to definitively answer the single-entity question because there may not be a “complete unity of interests,” meaning that a corporation may not be an appropriate comparison.⁴¹ The court proposed a hybrid arrangement, somewhere between a single-entity and collaboration of independent competitors.⁴² The court did not have to opine on the application of a single-entity defense to the proposed hybrid arrangement because the court found the players had not proven market power, an essential element in an antitrust claim.⁴³ Therefore, it remains unclear whether the MLS is single-entity, i.e. protected from § 1 Sherman Act claims by players; however, there is a judicial indication that the single-entity defense would be applicable.⁴⁴ Although highly unlikely, the MLS potentially will become the first league since the MLB to successfully limit players’ salaries without violating antitrust law under the Sherman Act.⁴⁵

Numerous changes have occurred within the MLS, in terms of structure and product, since *Fraser*. First, current Commissioner Don Garber took the throne in August 1999.⁴⁶ Just three months later the Commissioner already knew he wanted to change things from simple rules of play to aligning teams in divisions and signing new television contracts.⁴⁷ Those changes have continued over Garber’s eleven year tenure. Perhaps most notable was the 2006 announcement of the designated player rule, also known as the “Beckham Rule.”⁴⁸

From a labor standpoint, in 2003 the Major League Soccer Players’ Union was certified as the players’ representative under the National Labor Relations Act.⁴⁹ The league and players’ union entered into their first collective bargaining agreement (“CBA”), which expired in 2010. After strenuous negotiation, the league and players agreed to a new collective bargaining agreement through the end of December 2014.⁵⁰ The major changes under the new CBA are more guaranteed contracts for players, an increase in player salaries and compensation, and a re-

³⁸ *Id.* at 55.

³⁹ *Fraser I*, 97 F. Supp. 2d at 134-35.

⁴⁰ *Id.* at 135.

⁴¹ *Fraser II*, 284 F.3d at 56-57.

⁴² *Id.* at 58.

⁴³ *Id.* at 60-61.

⁴⁴ The Supreme Court’s recent decision in *American Needle, Inc. v. Nat’l Football League*, 130 S. Ct. 2201 (2010), may provide some clarification as to the single-entity question, although that case was decided in the context of the National Football League. That is beyond the scope of this paper.

⁴⁵ Paul D. Abbott, *Antitrust and Sports – Why Major League Soccer Succeeds Where Other Sports Leagues Have Failed*, 8 SPORTS LAW. J. 1, 1-2 (2001).

⁴⁶ *About MLS: General Overview*, *supra* note 2.

⁴⁷ *Id.*

⁴⁸ Robert M. Bernhard, Comment, *MLS’ Designated Player Rule: Has David Beckham Single-Handedly Destroyed Major League Soccer’s Single-Entity Antitrust Defense*, 18 MARQ. SPORTS L.J. 413, 415-26 (2008).

⁴⁹ *About MLS: General Overview*, *supra* note 2.

⁵⁰ Kerith Gabriel, *Players strike averted for Major League Soccer*, PHILADELPHIA DAILY NEWS, March 22, 2010, at A1, available at 2010 WLNR 5945059.

entry draft for players out of contract.⁵¹ The players had sought for more control over their rights in free agency, but the league refused to bend on this subject.⁵² As a result of the new agreement, the league and players avoided a work stoppage, whether a strike or lock out.⁵³ Any work stoppage would have had the potential to destroy the league because of its young existence.

While the league retained its LLC status, by 2008 operator investors controlled all fourteen clubs, with the league controlling none.⁵⁴ In the post-*Fraser* era through today, the MLS has seen growth through its recent expansions, construction of soccer-specific stadiums, and the addition of new investors.⁵⁵ For example, in the past decade, the MLS has grown from ten to nineteen clubs for the 2012 playing season.⁵⁶ These developments of the league were said to “indicate a promising trend for MLS in terms of financial stability and viability, as more investors are getting involved and the league is garnering more and more media attention.”⁵⁷ Whether this is true is dependent on the structure and future plan of the league, which, as will be discussed, is based on American professional sports leagues, European soccer leagues, and logical thinking on the part of Major League Soccer executives.

III. HOW MLS RESEMBLES OTHER AMERICAN SPORTS LEAGUES

America is rich in storied professional sports leagues. Luckily for the MLS, it has been able to build on the experiences of these leagues as they serve as models of successful organizations. On the other hand, the MLS has had to modify its league in order to avoid direct competition with these leagues.

A. Playoff System

Commissioner Don Garber recently stated, “[w]e will never do away with playoffs. There is absolutely no reason to do that.”⁵⁸ In fact, in November 2010, the playoff field was expanded from eight to ten teams.⁵⁹ The idea of expansion was to “creat[e] more meaningful games.”⁶⁰ But, others argue that the expansion may reduce attention to the regular season as there would be little incentive to play.⁶¹ Regardless of its effect, the playoffs of the MLS are a complicated structure, not traditionally used in soccer leagues.⁶² For example, the only time the

⁵¹ *Id.*

⁵² *Id.*

⁵³ *Id.*

⁵⁴ Bernhard, *supra* note 48, at 424.

⁵⁵ *About MLS: General Overview*, *supra* note 2.

⁵⁶ Tripp Mickle, *MLS expansion plans extend beyond FIFA's 20-team guideline*, SPORTS BUSINESS JOURNAL (Dec. 14, 2010), <http://www.sportsbusinessjournal.com/article/66450>.

⁵⁷ Bernhard, *supra* note 48, at 424.

⁵⁸ Nancy Armour, *MLS reserve league will return for 2011*, YAHOO! SPORTS (Dec. 14, 2010), <http://sports.yahoo.com/mls/news?slug=ap-mls-garber>.

⁵⁹ Jeff Maurer, *MLS proposes changes ... oh, and Colorado are the champs*, BOX SEATS BLOG (Dec. 14, 2010), http://voices.washingtonpost.com/box-seats/2010/11/mls_proposes_changesoh_and_col.html.

⁶⁰ *Id.*

⁶¹ *Id.*

⁶² MLS PLAY-OFFS, <http://www.mlssoccer.com/playoffs/format> (last visited Dec. 14, 2010).

English Premier League uses a playoff game is if two or more teams are tied for relegation purposes.⁶³ The championship is awarded to the leader at the end of the regular season.⁶⁴ The MLS seems to be leaning towards an American model of playoffs, perhaps to avoid alienating American fans and earn the additional revenue associated with playoffs. The tradeoff, as suggested by commentators opposed to the playoff expansion, is the regular season may become less significant with less meaningful games.

B. Membership

Fédération Internationale de Football Association (“FIFA”) suggests that members limit their home league to twenty members.⁶⁵ FIFA has even suggested a reduction in the limit to sixteen, although this suggestion is largely ignored by all.⁶⁶ The top leagues in Germany, Spain, Italy, France, and England are all in compliance with the twenty team suggestion.⁶⁷ The MLS, however, has suggested it could become the first top-flight soccer league to expand beyond twenty teams.⁶⁸ Commission Garber has acknowledged that the league does not view twenty as a hard restriction: “Our league includes two countries, massive landmass across four time zones, and I have no doubt our league will be larger than 20 teams when [we are] fully expanded,” adding that there is no specific plan to exceed twenty teams at this time.⁶⁹ Dave Checketts, a member of the MLS expansion committee and co-owner of Real Salt Lake, explained why expansion over twenty might be appropriate: “We have perfectly defined models with the NBA, NHL, and NFL. These are 30- and 32-teams and they work.”⁷⁰

Over twenty team expansion is unprecedented in soccer because of FIFA’s recommendation. The MLS clearly faces a conflict between traditional soccer leagues and American leagues, and seems intent on following the course drafted by the NBA, NHL, NFL, and MLB. A FIFA Executive Committee member has noted the regulation “is about how many games a player plays in a year, so if you construct a scenario where the same number of games are played in divisional play and then everyone funnels up into a national championship, that could work.”⁷¹ This would mean abandoning the traditional European competition formatting schedule, under which each team plays each other home and away, for a conference based competition schedule like in other American professional leagues.

⁶³ Premier League Handbook, *available at* <http://www.premierleague.com/staticFiles/4f/53/0,,12306~152399,00.pdf>, at 102.

⁶⁴ *Id.* at 101.

⁶⁵ Mickle, *supra* note 56.

⁶⁶ *FIFA head Blatter calls for team limits*, YAHOO! SPORTS (Dec. 14, 2010), <http://sports.yahoo.com/soccer/news?slug=blatterleaguecaps>.

⁶⁷ *Id.*; Mickle, *supra* note 56.

⁶⁸ Mickle, *supra* note 56.

⁶⁹ *Id.*

⁷⁰ Mickle, *supra* note 56.

⁷¹ *Id.*

C. Competitive Balance

The notion of competitive balance has been discussed by most American leagues at one point or another.⁷² The idea is that playing talent should be distributed evenly, or as close thereto, throughout the league.⁷³ It is often used as a justification as to why certain league rules, such as salary caps, must exist.⁷⁴ Major League Soccer was built off this notion from the start. In retaining control over player acquisitions, salaries, and mobility, the league was able to balance talent among teams.⁷⁵

Recently, the MLS has exemplified competitive balance in many regards. In the 2010 season, many teams expected a big-city marquee match-up between the New York Red Bulls and Los Angeles Galaxy in the championship game.⁷⁶ Both have used the designated player to bolster their rosters, with two of the most notable acquisitions being David Beckham and Thierry Henry.⁷⁷ Instead, however, the Colorado Rapids played FC Dallas in Toronto.⁷⁸ These teams show that clubs using player development and properly-timed trades can have success.⁷⁹ The same thing happened in the 2009 season when Real Salt Lake beat the highly-touted Los Angeles Galaxy in penalty kicks.⁸⁰ Real Salt Lake was deemed an “unlikely champion,” having come into the MLS Cup tournament as the eight seed.⁸¹ Real Salt Lake went from one of the weakest teams in the league at its 2004 expansion date to MLS Cup Champion by 2009.⁸² Three of the four teams Real Salt Lake beat had a designated player.⁸³ It was thought the designated player rule would create a disparity between the rich and poor teams that would disrupt competitive balance.⁸⁴ The history of MLS Champions suggests this is not always the case.

Although not in the context of competitive balance, Deputy Commissioner Ivan Gazidis has noted, “the reality of MLS budgets is that teams [do not] have the money to go out and become Chelsea or Arsenal.”⁸⁵ The MLS has been concerned with the financial spending of teams because of soccer’s history with NASL. Therefore, the league has tried to distribute talent

⁷² See James B. Perrine, International Sports Law Perspective, *Media Leagues: Australia Suggests New Professional Sports Leagues for the Twenty-First Century*, 12 MARQ. SPORTS L.J. 703, 721 (2002).

⁷³ *Id.*

⁷⁴ See *Id.*

⁷⁵ *Fraser II*, 284 F.3d 47, 53 (1st Cir. 2002); *Fraser I*, 97 F. Supp. 2d 130, 132 (C.C.D. Mass. 2000).

⁷⁶ Geoffrey Arnold, *Don Garber bullish on MLS future*, THE OREGONIAN (November 16, 2010), http://www.oregonlive.com/timbers/index.ssf/2010/11/don_garber_bullish_on_mls_futu.html.

⁷⁷ *Id.*

⁷⁸ *Id.*

⁷⁹ Kip Kesgard, *MLS State of the Union Address- Commissioner Garber speaks*, OREGON LIVE BLOG (Nov. 16, 2010), http://blog.oregonlive.com/timbers/2010/11/mls_state_of_the_union_address.html.

⁸⁰ Michael C. Lewis, *Transformation of RSL into champion is complete*, THE SALT LAKE TRIBUNE, November 29, 2009, available at 2009 WLNR 23677190.

⁸¹ *Id.*

⁸² *Id.*

⁸³ *Id.*

⁸⁴ Tim Bezbatchesenko, Comment, *Bend it for Beckham: A Look at Major League Soccer and Its Single Entity Defense to Antitrust Liability After the Designated Player Rule*, 76 U. CIN. L. REV. 611, 633-34 (Winter 2008).

⁸⁵ Steve Davis, *Desire to maintain quality drives foreign player rule*, ESPN (Dec. 26, 2007), <http://soccer.net.espn.go.com/news/story?id=493683&cc=5901>.

and limit spending. All of this has led to competitive balance among teams. Arguably, the MLS has taken an American league strategy and implemented it more successfully.

It has been said that a Premier League, Serie A, or La Liga model would not work in America because only three or four teams ever have a chance of winning.⁸⁶ American fans, particularly in small markets, want to know they can compete.⁸⁷ This encourages these teams to invest in scouting, coaching, and player development.⁸⁸ This is beneficial to the league as more teams are scouring for talent. Further, if fans believe their team cannot win championships, they will stop investing their money.⁸⁹

D. Season Scheduling

Since its founding, MLS has played a spring to fall schedule, running from March to November.⁹⁰ But this conflicts with all European leagues, which typically run from late-summer to May, often with a Christmas/winter break.⁹¹ While this is a strange soccer schedule, it avoids conflict with arguably the most powerful American sport: the NFL. In addition, the NBA and NHL operate on a fall to spring schedule. Only the MLB begins in the spring. In essence, the MLS had to choose between a traditional schedule and a conflict with the NFL, NBA, and NHL or a non-traditional schedule and competition with only the MLB. It chose to compete in a non-traditional manner with only the MLB.⁹² But the decision ignored that national team tournaments are often in the summer, the transfer windows would be more accommodating because they would align with European windows and training schedules (meaning players coming over would not be transitioning from off-season to competing in late-season games), and the U.S. would stand to bolster its success in CONCACAF Champions League play.⁹³ It would also avoid World Cup conflicts like those of 2010, when MLS players in South Africa were out of play for a month.⁹⁴ For the first time, in the 2010 World Cup the MLS took a two week break.⁹⁵ However, the World Cup lasts four weeks and remains a large disruption to the league's quality of play.

In June 2009 FIFA President Sepp Blatter spoke before a U.S.-Brazil Confederations Cup match.⁹⁶ His message to the MLS was that in order to compete internationally, they would need to adopt the international soccer schedule.⁹⁷ His reasoning was that many Americans on the

⁸⁶ Gabriel, *supra* note 50.

⁸⁷ *Id.*

⁸⁸ *Id.*

⁸⁹ *Id.*

⁹⁰ Michael Lewis, *FIFA president Blatter says MLS needs to adopt int'l calendar to compete*, N.Y. DAILY NEWS (June 18, 2009), http://www.nydailynews.com/sports/more_sports/2009/06/18/2009-06-18_fifa_president_sepp_blatter.html.

⁹¹ *Id.*

⁹² *MLS is not cold about sked change*, THE STAR LEDGER (Newark, New Jersey), November 23, 2010, available at 2010 WLNR 23351594.

⁹³ *Id.*

⁹⁴ Maurer, *supra* note 59.

⁹⁵ Jack Bell, *World Cup Break Will Be Welcome Timeout for Red Bulls*, N.Y. TIMES, May 25, 2010, at B, available at 2010 WLNR 10736792.

⁹⁶ Lewis, *supra* note 89.

⁹⁷ *Id.*

national team roster are playing professionally in Europe.⁹⁸ He also reasoned, “You are not in the good international season, specifically in Europe and some other countries. What is the result? The result is that you do not attract star players to play for six-seven months with the exceptional case of [David] Beckham. On the other hand, your best players are in Europe.”⁹⁹ This articulates the concern the MLS must acknowledge of balancing how to better both the MLS and America’s place as a soccer country, which includes the performance of its national team. Another concern is when international games take place: usually in the summer. A choice arises when filling in rosters: the MLS team sends their star player and the club’s quality of play is diminished during his absence or the MLS team does not send their player and the national team’s performance suffers as a result. The performance of the MLS and the national team, at least while operating on a non-traditional soccer schedule, are interconnected and in delicate balance.

In November 2010, for the first time, Commissioner Garber acknowledged that the league would consider a calendar change.¹⁰⁰ He noted that should this happen, and there are no definitive plans yet, “it would be the biggest single change in MLS history and one that tells the American sports fan that soccer no longer fears another sport and is willing to go head to head if it is for the good of the league.”¹⁰¹ A large part of this change is that MLS teams no longer share NFL stadiums.¹⁰²

E. Soccer-Specific Stadiums

When the MLS was founded, teams played in arenas used for other sports, mostly NFL stadiums although the Kansas City Wizards played in a minor league baseball stadium.¹⁰³ The high usage of NFL stadiums forced the MLS into its non-traditional March to November format.¹⁰⁴ In 2002, Los Angeles Galaxy was the first team to break ground on a soccer-specific stadium.¹⁰⁵ More recently, nine of the sixteen 2010 season teams played in a soccer-specific stadium.¹⁰⁶

One reason to avoid non-soccer stadiums is simply avoiding depression: few things are more disconcerting for a fan than going to a sporting event in a giant NFL stadium to find only the lower level of stadium with fans (and not even all of that is full). It does not make a positive impression when a fan attends a New England Revolution playoff game at Gillette Stadium, also

⁹⁸ *Id.*

⁹⁹ *Id.*

¹⁰⁰ *MLS is not cold about sked change, supra* note 91.

¹⁰¹ *Id.*

¹⁰² *Id.*

¹⁰³ Peter J. Schwartz and Kurt Badenhausen, *Major League Soccer’s Most Valuable Teams* FORBES.COM (Sept. 9, 2008), http://www.forbes.com/2008/09/09/mls-soccer-beckham-biz-sports-cz_kb_0909mlsvalues.html.

¹⁰⁴ Lewis, *supra* note 89.

¹⁰⁵ *About MLS: General Overview, supra* note 2.

¹⁰⁶ Schwartz and Badenhausen, *supra* note 102.

home of the Patriots, to find that 10,000 fans have come to a stadium that can hold over 68,000.¹⁰⁷

More importantly, the difference is in revenue.¹⁰⁸ As an owner of its stadium, the team can rent out that stadium for other events, retain profits from concessions, and entice fans by limiting the supply of tickets, hence increasing demand.¹⁰⁹ So essential is a stadium to revenue that some have suggested that only teams with great, soccer-specific, stadiums and corresponding sponsorships will have the ability to turn a profit.¹¹⁰

IV. HOW MLS RESEMBLES EUROPEAN SOCCER LEAGUES

While soccer's American history is not lengthy, that is not the case in other countries. For that reason, the MLS has had to embrace soccer's worldwide culture in the marketing and structure of its league. It has done this in several ways.

A. Reserve League

Major League Soccer has had a love-hate relationship with its reserve league. In April 2005 the MLS first instituted the reserve league.¹¹¹ It was disbanded in 2008 because of concerns over costs, varying interest levels by teams, and logistics problems.¹¹² Most recently, on November 16, 2010 Commissioner Don Garber announced the reserve league would return in 2011.¹¹³ With a ten-game regular season plus playoffs, the goal of the reserve league is to give young players experience on a consistent basis.¹¹⁴ Top European soccer leagues usually have similar systems.¹¹⁵ Garber described the "reserve division as an essential part of our player development ladder in the United States."¹¹⁶ In order to replicate European player development, the MLS has decided to use this European structure.

B. Homegrown Player Restrictions and Advantages

The 2007-instituted homegrown player rule is an incentive for teams to create and utilize a MLS Academy to develop local players.¹¹⁷ Players in a team's MLS Academy benefit because they can be signed directly by the MLS team, meaning they do not have to enter the MLS

¹⁰⁷ *Id.*; *Gillette Stadium Quick Facts*, GILLETTE STADIUM.COM http://www.giltestadium.com/stadium_information/index.cfm?ac=quick_facts (last visited Dec. 14, 2010).

¹⁰⁸ Schwartz and Badenhausen, *supra* note 102.

¹⁰⁹ *Id.*

¹¹⁰ *Id.*

¹¹¹ *About MLS: General Overview*, *supra* note 2.

¹¹² *MLS reserve league is back; rosters expand to 30*, THE SOCCER ROOM (Nov. 16, 2010), <http://thesoccerroom.com/?p=18893>.

¹¹³ *Id.*

¹¹⁴ *Id.*

¹¹⁵ *Id.*

¹¹⁶ *Id.*

¹¹⁷ *MLS Homegrown Player Policy*, REDBULLSACADEMY.COM http://www.redbullsacademy.com/academy/overview/homegrown_player_policy.aspx.

Draft.¹¹⁸ Teams were required to create a program, separate from its first team program, with at least two youth teams to encourage the use of homegrown player status.¹¹⁹

Teams benefit because homegrown players do not apply against the MLS salary cap, a mere \$2,675,000 in 2011.¹²⁰ Teams also receive a larger portion of the transfer fee if a homegrown player elects to play abroad, up to three-quarters from one-third, one-half, or two-thirds depending on the player sold.¹²¹ This means that if a homegrown player is signed and leaves, the team still stands to gain a profit.¹²² It also allows teams to sign talent after evaluation, as opposed to the often risky method of drafting a player.¹²³

For a local player to be eligible, he must reside in a team's Home Territory for at least one year prior to being placed on the team's Home Grown Player List, must be placed on the team's Home Grown Player List prior to entering a four-year college (they will retain homegrown status if they enter college after being placed on the list), and cannot be a member of the U-17, U-20, or U-23 U.S. National Team (if signed before being on the national team, the player retains homegrown status).¹²⁴ Originally teams were limited to signing two players each year from their homegrown list.¹²⁵ Late in the 2010 season, this was extended by two spots, bringing the total four.¹²⁶ This addition was seen as necessary to bring young talent into the league in order to promote its expansion and to reward clubs that have invested money in their academies.¹²⁷ In fact, some have gone as far as suggesting that the homegrown player rule is more significant to improving the quality of MLS play than the designated player rule because it develops American talent as opposed to inviting stars past their prime.¹²⁸ Another reason to praise the homegrown rule is it provides stability to youth development and access to those players who, though talented, cannot afford elite training with expensive travel teams and academies.¹²⁹

In November 2010 the MLS announced that the homegrown player program would be expanded for the 2011 season.¹³⁰ Teams may now, as long as the league approves it, sign an

¹¹⁸ *Id.*

¹¹⁹ Brian Lewis, *MLS expands roster, loosens academy rules*, N.Y. POST (April 8, 2010), http://www.nypost.com/p/blogs/soccerblog/mls_expands_roster_loosens_academy_ZMR4yz1khl7pKIAyKE3wXN.

¹²⁰ *Id.*; *New (MLS) Rules*, BIGAPPLESOCCER.COM http://www.bigapplesoccer.com/sections/mls2.php?article_id=26376.

¹²¹ *Id.*

¹²² *Id.*

¹²³ Tobias Lopez, *Development of home-grown players the way forward for MLS*, INSIDE SOCCER (Sept. 2, 2010), http://sportsillustrated.cnn.com/2010/writers/tobias_lopez/09/02/mls.academy/index.html#ixzz16WLRZJIv.

¹²⁴ *MLS Homegrown Player Policy*, *supra* note 116.

¹²⁵ *2011 MLS Roster Rules*, MLSSOCCER.COM, <http://www.mlssoccer.com/2011-mls-roster-rules> (last visited Dec. 14, 2010).

¹²⁶ Lewis, *supra* note 118.

¹²⁷ *Id.*

¹²⁸ Lopez, *supra* note 122.

¹²⁹ Kesgard, *supra* note 78.

¹³⁰ *Id.*

unlimited number of players under this program as long as they meet the regular requirements of the rule (participants have resided in the home territory for at least one year and have not entered college or a U.S. national team).¹³¹ This rule, in combination with NCAA rule allowing amateur players to play with professionals as long as they do not receive payment, means MLS teams can call-up young academy players to events like the U.S. Open Cup, international friendlies, and SuperLiga games without those players sacrificing their NCAA eligibility. Further, noting that the MLS does not count homegrown players against the salary cap, an unlimited number of homegrown players could now be signed without salary cap implications.¹³² The MLS believes that the unlimited signing of homegrown players to contracts will later overflow into the reserve league and will incentivize residency programs.¹³³

Another recent change to homegrown player restrictions occurred before the start of the 2010-2011 season in the English Premier League.¹³⁴ The Premier League now restricts teams to a twenty-five man roster at the end of each transfer window.¹³⁵ Teams are further limited because eight of those twenty-five players must be homegrown.¹³⁶ The league defines homegrown players as those players who have trained in England or Wales for three years before their twenty-first birthday.¹³⁷ If a team does not have all eight homegrown player spots filled, their roster will be restricted accordingly (ex. with seven homegrown players, the team is restricted to twenty-four players; with six homegrown players, the team must have a roster of twenty-three).¹³⁸ The league believed this would increase the quality of English players.¹³⁹ Commentators have proposed several reasons why this may not be the case: clubs will hesitate to send talented players on loan in case of injuries, meaning young players will get less playing time in the prime of their development and the age restriction of twenty-one means teams can scour other countries to find under-eighteen talent, bring them to train with English clubs younger, and be in compliance with the rule.¹⁴⁰ On the other hand, teams have an extra incentive to invest heavily in their youth training programs.¹⁴¹ Regardless of the method chosen, there are arguments to be made on either side. It is interesting to see that the English Premier League continues to debate the role of homegrown versus international talent; a debate that will be continued in the offices of MLS executives.

C. Sponsorships

One way European soccer and American leagues differ, while seemingly mindless at first, is sponsorship on jerseys. American leagues have, thus far, been against advertisements on

¹³¹ *Id.*; Drew Epperly, *Home Grown Player Rules Relaxed*, WV.HOOLIGAN.COM SOCCER BLOG (Nov. 16, 2010 9:00 am) <http://wvhoooligan.com/2010/11/16/home-grown-player-rules-relaxed/>.

¹³² *Id.*

¹³³ *Id.*

¹³⁴ *English Premier League: The short and long term squad restriction consequences*, INTELLIGENT SOCCER (Aug. 3, 2010), <http://intelligentsoccer.com/?p=1187>.

¹³⁵ *Id.*

¹³⁶ *Id.*

¹³⁷ *Id.*

¹³⁸ *Id.*

¹³⁹ *Id.*

¹⁴⁰ *Id.*

¹⁴¹ *Id.*

players' uniforms, as noted by Doug Quinn, President of MLS' business and promotions arm titled Soccer United Marketing ("SUM").¹⁴² NASCAR is the only other American sports league to permit advertising on team jerseys.¹⁴³ In contrast, the practice is accepted in Europe, Asia, and Latin America, and not just on soccer jerseys but in other sports as well.¹⁴⁴ Since inception, the MLS has sold advertising space on the backs of jerseys and on shorts.¹⁴⁵ For example, Herbalife, sponsor of the Los Angeles Galaxy, signed an agreement after David Beckham joined the team worth \$4 million.¹⁴⁶

That the MLS has embraced this form of sponsorship is both smart and a change for the league. It is a smart business move because it gives the MLS an extra source of revenue besides media deals, stadium amenities (which at the time jersey sponsorships were enacted, most teams did not own their own stadium so this was almost obsolete), and merchandise.¹⁴⁷ It also marked the league embracing and cooperating with owners as the clubs are allowed to sell their own jersey rights for the front of jerseys, and keep a majority of the revenue.¹⁴⁸ The league does establish a minimum amount to be received and collect a fee, but these are minor restrictions compared to the control the league exerted at its inception in 1996.¹⁴⁹ When asked if jersey advertisements would alienate fans, Shawn Hunter, President of AEG's sports division and operator of four MLS teams, said, "it's so accepted everywhere else," shrugging away the implication.¹⁵⁰

Sponsorships differ in another manner from American leagues. Soccer is not a prevalent sport in America, but every four years for a month long period, the World Cup takes hold of the country. The MLS, then, has the opportunity to "piggy back" on the success of the U.S. team.¹⁵¹ This is not unique to the MLS, as other soccer leagues also have this wave of interest following the World Cup. It is different from other American leagues. In those leagues, the culmination of the sport is, for example, the SuperBowl or World Series. After these events, however, the season ends and the sport is not played again until the next season. An MLS team can profit from additional ticket sales post-World Cup.¹⁵² There is overlap between World Cup stars and MLS players. The MLS and European soccer leagues uniquely benefit from the cyclical nature of the World Cup.

¹⁴² Jon Weinbach, *Major League Soccer to sell ad space on jerseys*, THE WALL STREET JOURNAL (Sept. 28, 2006), <http://www.post-gazette.com/pg/06271/725842-28.stm>.

¹⁴³ *Id.*

¹⁴⁴ *Id.*

¹⁴⁵ *Id.*

¹⁴⁶ Schwartz and Badenhausen, *supra* note 102.

¹⁴⁷ Weinbach, *supra* note 141.

¹⁴⁸ *Id.*

¹⁴⁹ *Id.*

¹⁵⁰ *Id.*

¹⁵¹ Kerith Gabriel, *MLS should cash in on World Cup popularity*, PHILADELPHIA DAILY NEWS, June 25, 2010, at A1, available at 2010 WLNR 12834841.

¹⁵² *Id.*

D. Foreign Player Limitations

International player restrictions and homegrown player restrictions differ as the first is based on the nationality of the player and the later the training destination of the player.¹⁵³ After the 2007 season, Commissioner Garber announced the limitations on international players would change.¹⁵⁴ Formerly clubs were allowed to carry seven international spots, divided as four “senior internationals” and three “youth internationals.”¹⁵⁵ After 2007, and as it is currently, a team (with special definitions of international player for Toronto and Vancouver) may carry eight international players, and there is no longer a senior/youth divide.¹⁵⁶ It was said, “the desire to maintain quality drove the decision.”¹⁵⁷ It was also thought that the domestic player pool would be unable to sustain the league’s growth, which went from twelve teams in 2006 to sixteen in 2009 and eighteen in 2011, particularly while maintaining quality.¹⁵⁸ Another change was all international slots are now tradable.¹⁵⁹ In essence, teams were granted the flexibility to chase the best deals in foreign talent available.¹⁶⁰

No other American league limits international members. FIFA, however, attempted to institute what was known as the “6 + 5 Rule,” which required that at the beginning of the match a team field at least six players eligible to play for the national team of the country of the club.¹⁶¹ This rule was expected to be in place by the 2012-2013 season,¹⁶² but was abandoned in 2010 because its discrimination contradicts with European Union labour laws.¹⁶³ The MLS rule has not been challenged under American law yet, although any challenge under antitrust laws would be complicated by the *Fraser* decision.¹⁶⁴

V. WAYS THE MLS RESEMBLES NEITHER AMERICAN NOR EUROPEAN MODELS

While the MLS has used American professional leagues in other sports and European professional soccer leagues as models of success, in many ways the MLS has blazed its own trail. In part, this is because of its short history.

¹⁵³ *FIFA scraps plans for “home-grown” player rule*, BBC SPORT (June 10, 2010),

<http://news.bbc.co.uk/sport2/hi/football/8733164.stm>.

¹⁵⁴ Davis, *supra* note 85.

¹⁵⁵ *Id.*

¹⁵⁶ *Id.*; *Competition Rules and Regulations*, MLSSOCCER.COM <http://www.mlssoccer.com/competition-rules-and-regulations> (last visited Dec. 14, 2010).

¹⁵⁷ Davis, *supra* note 85.

¹⁵⁸ *Id.*

¹⁵⁹ *Id.*; *Competition Rules and Regulations*, *supra* note 155.

¹⁶⁰ Davis, *supra* note 85.

¹⁶¹ *FIFA vote for limit on foreign players*, THE TIMES (London) (May 30, 2008),

<http://www.timesonline.co.uk/tol/sport/football/article4031314.ece>.

¹⁶² *Id.*

¹⁶³ *Id.*

¹⁶⁴ *See infra* Section II.

A. Coaching

There is no denying the MLS is young. While many of the problems this creates, like resources and attractiveness to fans, are obvious, one may not be: coaching. In other countries, and indeed in other American sports, when players retire, they go into coaching.¹⁶⁵ Of course not all of these athletes-turned-coaches have been successful, but many have.¹⁶⁶ Regardless of whether a successful playing career is indicative of a successful coaching career, “it is rare around the world when a successful coach does not have a background as a player.”¹⁶⁷ Because of the history of European and other American leagues, there is never a lack of candidates for elite jobs.¹⁶⁸

The United States works differently in finding and developing soccer coaches. The U.S. tends to use lifetime coaches, who have moved up from college, to the professional level, and, ideally for them, to the international level.¹⁶⁹ From 1995 to mid-2011, the national team was coached by Steve Sampson, Bruce Arena, and Bob Bradley.¹⁷⁰ Each came to this position in an identical fashion: all were longtime college coaches who eventually moved to the MLS before being selected the national team coach.¹⁷¹ Only on July 29, 2011 did U.S. Soccer break the mold by selecting Juergen Klinsmann, former German star and coach, as the newest men’s national team coach.¹⁷²

Some have stated, “the problem in this country is that the great players from the past two decades have spurned coaching for other ventures.”¹⁷³ Claudio Reyna, Alexi Lalas, and John Harkes are all examples of Hall of Fame, or future Hall-of-Fame, players who have spurned MLS and U.S. international team coaching to be involved in soccer in other ways.¹⁷⁴

Of the sixteen 2010 MLS coaches, Peter Vermes at Kansas City, Jason Kreis at Real Salt Lake, Dominic Kinnear at Houston, Martin Vasquez at Chivas USA, and Ben Olsen at D.C. United have played for the U.S. national team.¹⁷⁵ Of those, only Vermes and Kinnear’s careers could be described as substantial.¹⁷⁶ Of those same sixteen coaches, eight come from outside the U.S.¹⁷⁷ In short, more coaches come from abroad than American leagues and four times as many

¹⁶⁵ *U.S. needs top players to coach*, THE STAR-LEDGER (Newark, New Jersey), August 24, 2010, available at 2010 WLNR 16873235.

¹⁶⁶ *Id.*

¹⁶⁷ *Id.*

¹⁶⁸ *Id.*

¹⁶⁹ *Id.*

¹⁷⁰ *U.S. needs top players to coach*, *supra* note 164.

¹⁷¹ *Id.*

¹⁷² *Juergen Klinsmann hired as coach*, ESPN (July 29, 2011), http://www.espn.go.com/sports/soccer/news/_id/6815761/juergen-klinsmann-hired-coach-us-men-soccer-national-team.

¹⁷³ *Id.*

¹⁷⁴ *Id.*

¹⁷⁵ *Id.*

¹⁷⁶ *Id.*

¹⁷⁷ *Juergen Klinsmann hired as coach*, *supra* note 171.

coaches are foreign-trained than have substantial U.S. national team playing careers.¹⁷⁸ In other American leagues and European soccer leagues, these ratios would never hold.

B. Expansion

When the MLS began, it consisted of eight teams.¹⁷⁹ As of November 2010, the Commissioner has noted that besides wanting a twentieth team in New York, meaningful discussions have occurred about expansion to Miami, Tampa, Orlando, Atlanta, and San Diego.¹⁸⁰ This would clearly require expansion beyond twenty teams.¹⁸¹ Despite FIFA suggestions, the MLS has said it would consider expansion beyond twenty.¹⁸² Of course the money that flows from expansion is a large carrot to dangle in front of the MLS management council. Seattle and Philadelphia paid \$30 million each to join the league, the Vancouver Whitecaps and Portland Timbers, both new in 2011, paid \$40 million to enter the MLS, and other team owners are not beyond paying \$50 million.¹⁸³ When Toronto joined the MLS for the 2007 season, it paid \$10 million.¹⁸⁴ The rising costs that teams are willing to pay to join the league cannot be ignored by the Commissioner and management council. When one considers that in 2008 the average value of a MLS franchise was \$37 million, asking \$30-\$40 million of potential expansion teams during that timeframe is not unreasonable.

But few leagues have expanded at the rate and as quickly as Major League Soccer has. The NFL was formed when the National Football League and American Football League combined. The MLB was formed when precursors to the National League and American League merged. The NBA was formed when the Basketball Association of America and the American Basketball League merged. The largest NHL expansion was spurred by the Western Hockey League declaring itself a league. In short, rivalries are the spur of these leagues. It was decided in selecting the MLS as the top-tier professional league that there would not be a second league to compete against it in order to pool resources.¹⁸⁵ The MLS has doubled the size of its league within the last fifteen years. Other American leagues have only had such rapid expansion by combining with a competing league, and that league's resources.

C. Television

MLS has secured long-term national television agreements with ESPN/ABC, Univision, Fox Soccer Channel, HDNet, and Fox Sports en Español.¹⁸⁶ All MLS teams also have regional television agreements.¹⁸⁷ In March 1994, the MLS signed their first broadcast agreement with ABC Sports and ESPN for three years.¹⁸⁸ Per that agreement, ten games were broadcast on

¹⁷⁸ *Id.*

¹⁷⁹ *About MLS: General Overview, supra note 2.*

¹⁸⁰ Kesgard, *supra note 78.*

¹⁸¹ *Id.*

¹⁸² Mickle, *supra note 56.*

¹⁸³ Schwartz and Badenhausen, *supra note 102.*

¹⁸⁴ *Id.*

¹⁸⁵ *Fraser II*, 284 F.3d 47, 53 (1st Cir. 2002).

¹⁸⁶ *About MLS: General Overview, supra note 2.*

¹⁸⁷ *Id.*

¹⁸⁸ *Id.*

ESPN, twenty-five on ESPN2 and the championship game on ABC.¹⁸⁹ This agreement was extended in 1999.¹⁹⁰ In 2002, this agreement was extended again and modified.¹⁹¹ As part of its deal for the rights to show MLS games through 2006, ESPN and ABC networks also received the rights to the 2002 and 2006 FIFA World Cup tournaments and the 2003 Women's World Cup.¹⁹² In 2003, Fox Sports International gained the rights to twenty-five regular season games and eight playoff games.¹⁹³ More significantly, broadcasts were extended to Fox affiliated networks in Latin America and the Middle East.¹⁹⁴ In 2006, broadcast agreements with Fox Soccer Channel and ESPN/ABC were extended for five and eight years, respectively.¹⁹⁵

MLS' current goals include working with their broadcast partners to make sure their matches stand out in a cluttered landscape. In August 2010, ESPN began broadcasting English Premier League, Bundesliga, Serie A, Eredivisie, and La Liga. Several games a week are available for streaming on ESPN3.com as well. In order to compete with the instant accessibility of top European leagues, MLS is trying to improve the quality of its matches and find ways to distinguish their product from these leagues.¹⁹⁶ Yet, it is still very young in its existence and is already marketing itself internationally.

D. Spanish Language Services

In November 1995, Univision became the first Spanish-language broadcaster of the MLS.¹⁹⁷ In 2006 this agreement was extended for eight years.¹⁹⁸ April 2002 saw a partnership with Radio Unica to provide Spanish-language radio coverage for the league.¹⁹⁹

Major League Soccer has tried to attract Latin American fans in other ways too. For example, in 2003, the MLS began a 4-v-4 soccer tournament called MLS Futbolito.²⁰⁰ This program was a grassroots program that targeted the league's Hispanic fan base.²⁰¹ Chivas USA is owned by Jorge Vergara, also an owner of Mexican club CD Guadalajara.²⁰² Further, the MLS has teamed up with InterLiga and MLS now owns the promotional and broadcast rights to that league within the United States.²⁰³ Teams often play each other in exhibitions and tournaments like the Copa Libertadores.²⁰⁴ Other American leagues have started playing abroad, but in Europe or Canada. The MLS is the first to embrace the growing Hispanic population of America, Latin America's proximity to the US, and its love of soccer.

¹⁸⁹ *Id.*

¹⁹⁰ *Id.*

¹⁹¹ *Id.*

¹⁹² *Id.*

¹⁹³ *Id.*

¹⁹⁴ *Id.*

¹⁹⁵ *Id.*

¹⁹⁶ Kesgard, *supra* note 78.

¹⁹⁷ *About MLS: General Overview*, *supra* note 2.

¹⁹⁸ *Id.*

¹⁹⁹ *Id.*

²⁰⁰ *Id.*

²⁰¹ *Id.*

²⁰² *Id.*

²⁰³ *Id.*

²⁰⁴ *Id.*

E. The Designated Player Rule

January 11, 2007 is an infamous date in MLS history; it was the date AEG announced the signing of David Beckham to the Los Angeles Galaxy under the designated player rule.²⁰⁵ “The designated player rule allows the League to sign players whose salary will fall outside of team salary budget and whose cost above the salary budget charge will be the financial responsibility of the club for which they play.”²⁰⁶ Beginning in the 2012 season, the amount the designated player will count towards the salary cap will vary dependent on age.²⁰⁷ For example, players twenty or younger will be charged \$150,000 against a team’s salary budget, players twenty-one to twenty-three will count \$200,000, and \$335,000 will be charged for all other designated players.²⁰⁸ The rule was changed because, “[w]e’re getting players that are good players, veteran players, but we’ve been out of the market for the most part in young, promising players.”²⁰⁹ MLS executives acknowledge that young designated players would likely come from South and Central America or Mexico, not Europe.²¹⁰ The decreased charge to salary cap is intended to allow teams to take more risks in signing young players by removing the financial deterrent.²¹¹ The 2011 salary cap is \$2.675 million.²¹² Teams have the opportunity to sign two designated players.²¹³ As of 2010, the MLS has expanded the rule by permitting clubs the option of purchasing a third slot for \$250,000.²¹⁴ The \$250,000 fee is distributed to clubs who do not have three designated players.²¹⁵ Additionally, the designated player slots can no longer be traded between clubs.²¹⁶ Todd Durbin, an MLS executive, said, “[i]t represents a continued commitment by the league to see that there are mechanisms in place to improve the quality and play and improve the product on the field. The driving force behind it is to allow teams that want the ability to do that, but do it in a way that is competitively neutral.”²¹⁷

VI. IS THIS HYBRID MODEL SUSTAINABLE?

Unfortunately for the MLS, it has been faced with a series of choices involving seemingly contradictory options: become American or become European; domestic talent or international talent; protect assets or spend cash; single-entity or distribute power. As with all two-sided issues, balance is the answer for the MLS’ success. Balance can be hard to achieve.

²⁰⁵ *Id.*

²⁰⁶ *Competition Rules and Regulations*, MLSSOCCER.COM <http://www.mlssoccer.com/competition-rules-and-regulations> (last visited Dec. 14, 2010).

²⁰⁷ Jack Bell, *M.L.S. Tweaks Designated Player Rule*, THE NEW YORK TIMES SOCCER BLOG (August 16, 2011, 6:41 pm), <http://goal.blogs.nytimes.com/2011/08/16/m-l-s-tweaks-designated-player-rule/>.

²⁰⁸ *Id.*

²⁰⁹ *Id.*

²¹⁰ *Id.*

²¹¹ *Id.*

²¹² *New (MLS) Rules*, *supra* note 119.

²¹³ *Competition Rules and Regulations*, *supra* note 205.

²¹⁴ Jeffery Marcus, *M.L.S. Expands Designated Player Rule*, THE NEW YORK TIMES SOCCER BLOG (April 1, 2010, 12:33 pm), <http://goal.blogs.nytimes.com/2010/04/01/m-l-s-expands-designated-player-rule/>.

²¹⁵ *Id.*

²¹⁶ *Id.*

²¹⁷ *Id.*

Thus far, although a delicate line, the MLS has done well in balancing where talent is found, but not in targeting a fan base.

A. MLS Hybrid Model Is Adept at Finding Talent

It has been said, “the future of the league is finding and developing talent.”²¹⁸ MLS executive Durbin said, “[w]hat differentiates our league from other leagues is that critical decisions about players are made collectively by the group, while it is important to the owners that every fan of every team believes they have a chance to win.”²¹⁹ He added, “[i]n the rest of world, teams make decisions in their own interests.”²²⁰ In targeting talent, the MLS faces the choice of domestic or international talent. To a large extent the choice is economic and the North American Soccer League venture has never escaped the minds of MLS planners. It is said the biggest reason for NASL’s demise was uncontrolled spending.²²¹ Teams were buying stars to attract consumers, but those salaries were too extravagant for what the team could pay. This is one reason the MLS organized by centralizing player personnel decisions and a huge factor in setting a planned salary budget. The budget is up to \$2.675 million per team, plus the designated player and homegrown player rules.²²² But the economics of finding players has factored into other rules as well. The homegrown player rule, on one hand, incentivizes finding and developing local talent while the designated player rule, opposingly, allows team the flexibility to select international stars.

What these player personnel decisions come down to is long- and short-term success. Just as international stars attracted media attention in the NASL days, so too do they now. The signing of David Beckham may have brought more press to the league than all other signings before. International stars are good for the short-term. However, if the league becomes a retirement home for international stars past their prime, the long-term stability of the league will suffer. Fans want to see a quality product, and eventually that product will have to compete against top European leagues. On the other hand, if the league used domestic players in the short-term, fans would not be attracted because the product would look unpolished compared to top-flight European leagues. The MLS would need time to acquaint new talent with fans.

What the league has developed, by using both international and domestic talent, is a mix. Even better for the league, teams have found success both using designated players and not. This means some teams are attracting fans with international name recognition. Teams without designated players serve as “David” and have the responsibility of taking down the designated player ridden “Goliaths.” It has been argued that smaller, or less financially-enabled, MLS clubs cannot let themselves be bullied into participating in the mass spending that New York and Los Angeles have.²²³ Thus far small market teams have avoided this. This allows the MLS to achieve both goals of attracting fans to arenas now and building a relationship with the fans so they will come to arenas in the future.

²¹⁸ Maurer, *supra* note 59.

²¹⁹ Bell, *supra* note 206.

²²⁰ *Id.*

²²¹ *Fraser II*, 284 F.3d 47, 52 (1st Cir. 2002).

²²² *New (MLS) Rules*, *supra* note 119.

²²³ John Smallwood, *MLS teams should not buy trouble*, PHILADELPHIA DAILY NEWS, February 16, 2010, at 47, available at 2010 WLNR 3223593.

B. The MLS Hybrid Model is Harming Its Marketing, Finding a Fan Base

Just as they have in acquiring player personnel, the MLS has tried to balance being an American professional sports league and an international soccer league in order to attract fans. Unfortunately, the MLS has been less successful here than with player personnel strategies. This is likely because balancing where players come from does not require isolation of other places, but in choosing which amenities fans are more likely to enjoy, it is at the exclusion of other fans' preferred amenities. For example, when selecting the operating season, the MLS chose to run spring to fall. This is at the exclusion of the international schedule operating from fall to spring.

While professional sports leagues around the world are similar in many ways, the sheer number of top-tier American leagues with international recognition creates a hurdle for the MLS. As said earlier, the NFL, NBA, MLB, and NHL are all the top destinations for athletes in their sports. These are the professional leagues American fans are accustomed to: top athletes assembled in one place. That is not the case with American soccer. In fact, the higher-level teams are abroad, and at this time the MLS is not competitive with these leagues. So far, the MLS has tried to cater to American fans with such amenities as soccer specific stadiums, to European markets with television contracts abroad, and to Hispanic fans with television and radio deals and marketing-specific strategies. It appears that the MLS has tried to cast a wide net, and see which fans it reels in. Unfortunately, the choices with regards to targeting fans are not as complimentary as with targeting players. While the MLS could have been improving the televised product in the United States, which lags behind the coverage and quality of other American sports, it has chosen to instead broadcast to European and Latin American nations. This is an example of casting too wide of a net.

What the MLS risks ignoring is that tickets must be sold in America. If American fans do not feel targeted by MLS marketing, they will not attend games. With soccer-specific stadiums, concessions and tickets will be the largest sources of league revenues. In fact, developing locally and expanding nationally is how all other American professional sports leagues have developed. Only recently have the NFL, MLB, NBA, and NHL begun to bring their games outside of the U.S. Before live games were played there, they expanded into television and other marketing. But first came developing a product that would be fancied by American fans. The MLS, in order to conserve resources, should adapt accordingly and specify their marketing to the American market before expanding too rapidly into international favor.

With that said, the MLS' relationship with Hispanic fans has been commendable and unique from the other American sports. It is clear that the Hispanic population and culture are becoming more prevalent in the United States. The MLS is wise to target this fan base and offer services to them, like television and radio in Spanish. Still, the MLS should heed caution that expansion beyond the United States risks wearing the MLS' resources thin before they have gained a stronghold in the American market.

VII. CONCLUSION

The MLS has been more successful than many expected. With over fifteen years under its belt, the MLS is expanding rapidly, offering new amenities and experiences to fans, gaining

strength financially, and attracting better talent to the league. The MLS has had to focus on attracting players and attracting fans, all while balancing the nuisances of international soccer and domestic professional sports culture. In many ways, it has been a success. The rules it has developed to attract international stars and develop domestic talent indicate the league has star-power now and quality players in the future. This is a good sign for the future of the league. On the other hand, the MLS is less targeted in its approach for attracting fans. The MLS has tried to attract American fans while gaining international fame as well. In the long-term, both are important, but the MLS should remember that American fans are the ones purchasing tickets and concessions. If the MLS does not highlight the significance of American fans in its marketing, it risks losing them. Without a stronghold in the domestic market, it will be hard for the MLS to expand internationally. While international relevance should be the MLS' goal, it should not lose sight of domestic fans whose revenue is significant to the league. While the MLS could arguably do a better job in this regard, it is certainly not an insurmountable hurdle. In fact, the MLS has begun making fan experiences more enjoyable through their stadium selections and has made the game more accessible to fans nationwide with their rapid league expansion. When the MLS gains a stronghold in the American market, it can sell that to international fans. With American and international fans, and American and international players, the league stands to profit from a successful future.