

ECONOMIC EVIDENCE, COMPLEX LITIGATION, AND TIER ONE SOCCER ACROSS BORDERS

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ABSTRACT

Because of corruption during the bid to host the 2022 World Cup, FIFA awarded the rights to the Qatar Football Association over the U.S. Soccer Federation. Economics studies of European soccer show that, when a nation hosts a soccer mega-event, its Tier One professional soccer league has a significant boost in attendance in the years before and after that event. In prior articles, these authors applied those studies to argue that Major League Soccer could win and enforce a sizeable money judgment against the mastermind of the corrupt 2022 bidding for lost profits and diminution in value related to the loss of a “World Cup bump” in attendance. Because of questions about the admissibility of econometric testimony that applies models of European soccer attendance to predict how American fans would respond to a soccer mega-event, the authors gathered data about MLS and French Ligue 1 attendance in the years before and after the Copa America Centenario and European Championship, which in 2016 were hosted by the U.S. and France, respectively. Controlling for other factors that affect attendance, a statistical analysis reveals that the European Championship had a significant impact on Ligue 1 attendance both before and after the event while the Copa America had only a slight impact on MLS attendance before the event and none after. These results call into question the viability of an MLS lawsuit for money damages related to the 2022 World Cup.

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INTRODUCTION

Perhaps no sport better epitomizes the theme of this symposium than soccer. Its governing body, the Fédération Internationale de Football Association (FIFA), transcends international (and, in some instances, intranational) borders by regulating the sport for its 211 national associations, a number greater than the 193 United Nations member states.¹ The quadrennial FIFA Men’s World Cup—which brings together 32 national teams from six regional associations²—is not only the premier event in international soccer but perhaps “the largest sporting event in the world,”³ eclipsing even the Olympics. The prestige and good-will that come from serving as host⁴ coupled with the rarity of the event⁵ cause fierce competition among national associations to win hosting rights.

1. *Compare About Us: Member Associations*, FIFA, <https://www.fifa.com/about-fifa/associations> (last visited Feb. 21, 2022) (claiming that FIFA has 211 association members), *with About Us*, UN, <https://www.un.org/en/about-us/> (last visited Feb. 21, 2022) (stating that the United Nations currently has 193 member states). Some sovereign nations have more than one national association, like the UK and its separate associations for England, Northern Ireland, Scotland, and Wales. *See About Us: Member Associations, supra*.

2. *See, e.g., The Qualifiers in Numbers*, FIFA (Thurs. 16 Nov. 2017, 02:25 (local time)), <https://www.fifa.com/tournaments/mens/worldcup/2018russia/news/the-qualifiers-in-numbers-2920457>.

3. Daniel Gandert & Harry Epstein, *The Court’s Yellow Card for the United States Soccer Federation: A Case for Implied Antitrust Immunity*, 11 VA. SPORTS & ENT. L.J. 1, 5 (2011).

4. ANDREW ZIMBALIST, CIRCUS MAXIMUS: THE ECONOMIC GAMBLE BEHIND HOSTING THE OLYMPICS AND THE WORLD CUP 54-64 (2015) (writing that part of the allure of hosting a sporting mega-event like the World Cup is increased exposure that can lead to opportunities for trade, more tourism, and heightened national pride). *See also* Wolfgang Maennig & Stan du Plessis, *World Cup 2010: South African Economic Perspectives and Policy Challenges Informed by the Experience of Germany 2006*, 25 CONTEMPORARY ECON. POL’Y 578, 588 (2007) (arguing that the “feel-good utility” of a mega-event is “among the most significant” factors in a cost-benefit analysis).

5. FIFA Men’s World Cup is staged only every four years and FIFA rules require successive World Cups to rotate continents. FIFA STATUTES art. 68(4) (2020). All current FIFA regulations can be downloaded from the FIFA website. *Rules & Reports*, FIFA, <https://www.fifa.com/legal/documents?filterId=1Ik5980rsO4CRiqjqrIXUS> (last visited Feb. 21, 2022). Our previous articles cited FIFA regulations that were in effect

This competition leads to the second aspect of the symposium theme, “out of bounds,” as it pertains to events off the field of play. FIFA has long been plagued by scandal and corruption.⁶ The most notorious example may be the bidding process to host the 2022 World Cup, where the bid from the Qatar Football Association (QFA) was selected over four others, including that of the second-place United States Soccer Federation (USSF).⁷ Half of the FIFA officials associated with the vote for the 2022 hosting rights resigned, were suspended or banned.⁸ Additionally, governmental and private entities have given credence to early speculation about vote-fixing and corruption in the bidding process. The Attorney General of FIFA’s home country, Switzerland, has investigated FIFA and frozen bank accounts,⁹ and the U.S. Department of Justice indicted numerous individuals and continues to investigate with several persons having already pled guilty

at that time, which are available for download on the FIFA website. *Regulations Archive*, FIFA, <https://www.fifa.com/legal/documents/archive> (last visited Feb. 22, 2022).

6. See, e.g., Guillermo Jorge, *Fixing FIFA: The Experience of the Independent Governance Committee*, 21 SW. J. INT’L L. 165, 167 (2014) (calling the FIFA Executive Committee [ExCo] “the setting for extensive logrolling, favor exchanges, and power-broking among global, regional, and local players.”); Mikhail Reider-Gordon, *Money Laundering, Corruption, and the World Cup: In the Wake of Brazil 2014*, 21 SW. J. INT’L L. 97, 112-15 (2014) (discussing how the global reach of FIFA leads to money crossing borders and to money laundering); Joseph Stromberg, *A Sports Governance Expert Explains Why FIFA Is So Corrupt—and How to Fix It*, VOX CULTURE (June 2, 2015, 1:08 PM), <http://www.vox.com/2015/5/27/8671925/how-to-fix-fifa> (attributing corruption to the poor governance structure of FIFA).

7. See discussion *infra* Part I(B).

8. See, e.g., *FIFA Executive Committee 2010: Where Are They Now?*, RTE SPORT, <http://www.rte.ie/sport/soccer/2015/1201/750480-fifas-executive-committee-where-are-they-now/> (last updated Dec. 1, 2015); David Conn, *Thailand FA President Worawi Makudi Gets 90-Day Football Suspension*, THE GUARDIAN (Oct. 12, 2015, 4:16 PM), <https://www.theguardian.com/football/2015/oct/12/fifa-worawi-makudi-thailand-suspended-90-days>.

9. Travis L. Marmara, Note, *Free Kick: FIFA’s Unintended Role in Illuminating Jurisdictional Gaps of International Criminal Courts*, 41 BROOK. J. INT’L L. 1393, 1396, (2016); *The Office of the Attorney General of Switzerland Seizes Documents at FIFA*, FEDERAL COUNCIL (May 27, 2015), <https://www.admin.ch/gov/en/start/documentation/media-releases.msg-id-57391.html>.

and agreed to provide evidence.¹⁰ In addition, former U.S. Attorney Michael Garcia led a FIFA internal investigation that resulted in a lengthy report detailing many improprieties in the bidding process for the 2018 and 2022 World Cups.¹¹ Furthermore, two *Sunday Times* investigative journalists published a book based on eyewitness reports, voluminous computer data, and secret recordings that detail bribery and vote-swapping.¹² Some of the most damning evidence relates to Mohamad Bin Hammam, a Qatari billionaire who participated in the voting for the 2022 World Cup hosting rights and who FIFA subsequently banned for life.¹³

While even casual fans of international soccer are likely intrigued by the dirty details of the scandal surrounding the bidding saga, in 2016 this evidence of corruption inspired us to consider what legal remedies were available to entities harmed by the corruption. For example, two economic studies have correlated a nation's hosting a soccer mega-event, like the World Cup or European Championship, with an increase in attendance for that nation's Tier One professional soccer league.¹⁴ We applied those studies to Major League Soccer (MLS), the Tier One league for the United States (U.S.) and Canada, and found that the loss of hosting a World Cup and the subsequent bump in attendance would

10. Bruce W. Bean, *An Interim Essay on FIFA's World Cup of Corruption: The Desperate Need for International Corporate Governance Standards at FIFA*, 22 ILSA J. INT'L & COMP. L. 367, 367-69 (2016).

11. Michael J. Garcia & Cornel Borbély, *Report on the Inquiry into the 2018/2022 World Cup™ Bidding Process*, FIFA ETHICS COMMITTEE, http://resources.fifa.com/mm/document/affederation/footballgovernance/02/89/87/97/aus_bel_ned_eng_esp_por_jpn_kor_qat_report_neutral.pdf [<https://perma.cc/NJD6-H4E9>].

12. HEIDI BLAKE & JONATHAN CALVERT, *THE UGLY GAME: THE CORRUPTION OF FIFA AND THE QATARI PLOT TO BUY THE WORLD CUP 2-3* (2015).

13. *Bin Hammam Resigns, FIFA Bans Him for Life*, REUTERS (Dec. 17, 2012, 8:46 AM), <https://www.reuters.com/article/uk-soccer-fifa-binhammam/binhammam-resigns-fifa-bans-him-for-life-idUKBRE8BG0SN20121217>; See discussion *infra* Part II(B).

14. Bastien Drut & Stefan Szymanski, *The Private Benefit of Public Funding: The FIFA World Cup, UEFA European Championship and Attendance at Host Country League Football* (Apr. 2014) (unpublished manuscript) (on file with the University of Michigan Department of Kinesiology), <http://www.soccernomics-agency.com/wordpress/wp-content/uploads/2014/04/The-private-benefit-of-public-funding.pdf>; Jean-Marc Falter et al., *Impact of Overwhelming Joy on Consumer Demand: The Case of a Soccer World Cup Victory*, 9 J. SPORTS ECON. 20 (2008).

result in lower revenue (and potentially lost profits) as well as diminished business value.¹⁵ Therefore, we argued that MLS could win and enforce a nine-figure judgment for tortious interference with prospective economic advantage against Bin Hammam, whose corruption during the bidding process caused the U.S. to lose the 2022 World Cup hosting rights.¹⁶

In a follow-up article in 2018, we analyzed MLS attendance data leading up to the U.S. hosting the 2016 Copa America Centenario—a tournament similar to the World Cup that featured the U.S. national team as well as fifteen other national teams from North, Central and South America and the Caribbean—and found an increase correlated with that tournament.¹⁷ These findings therefore “bolster[ed] the assumption that MLS would have seen a World Cup bump comparable to that of the European leagues.”¹⁸

This symposium motivated us to revisit those articles for a number of reasons. First, we could necessarily use only that data which was available when we wrote the articles in 2016 and 2017 to calculate attendance and revenues for a hypothetical lawsuit that would occur in 2022. This forced us to assume how many teams would be in MLS, what the franchise values of those teams would be, and what MLS revenues would be.¹⁹ We now know that: (1) MLS has 28 teams in the 2022 season; (2) individual teams are now valued over \$300 million on

15. Jeff Todd & R. Todd Jewell, *Major League Soccer and the Corrupted 2022 FIFA World Cup Bidding: Proving Harm and Recovering Damages*, 41 VT. L. REV. 23, 26-28 (2016) [hereinafter Todd & Jewell, *MLS*].

16. *Id. passim*.

17. Jeff Todd & R. Todd Jewell, *A 2016 Copa America Bump for Major League Soccer? Strengthening the Case for Legal Action Arising from the Corrupted 2022 World Cup Bid*, 9 WM. & MARY BUS. L. REV. 619, 626-27 (2018) [hereinafter, Todd & Jewell, *Copa America*]; see Sam Stejskal, *Copa America*, MAJOR LEAGUE SOCCER (June 2, 2016), <https://www.mlssoccer.com/news/copa-america-centenario-101-all-details-about-this-summer-s-big-tournamen-290630> (providing details about the tournament).

18. Todd & Jewell, *Copa America*, *supra* note 17, at 670.

19. See Todd & Jewell, *MLS*, *supra* note 15, at 35-43; Todd & Jewell, *Copa America*, *supra* note 17, at 640-41.

average;²⁰ and (3) annual league revenue was about \$800 million prior to the pandemic.²¹

Second, in our previous articles, we relied on an unpublished study by Drut and Szymanski concerning attendance following soccer mega-events.²² That study was revised and published in 2020 in the peer-reviewed *Journal of Sports Economics*.²³ Whereas the draft study focused primarily on tournaments in Western Europe (as well as the 1998 World Cup in Japan and South Korea), the published study added the 2010 World Cup in South Africa and the European Championship co-hosted in Poland and Ukraine.²⁴ It also detailed attendance results by country.²⁵ The published study found that, when all of the data are pooled, “post-event club attendance [is] strongly significant,” but a regression analysis of individual tournaments shows no significant attendance increase for several of them.²⁶

Third, we wanted to revisit our articles out of concern that the findings from studies of foreign (primarily European) soccer attendance may not be applicable to MLS and its fanbase. U.S. courts are skeptical about admitting into evidence economic expert testimony based upon studies of products and markets that differ from those in the lawsuit.²⁷

20. The most recent expansion fee paid by a team to join MLS was about \$325 million. Chris Smith, *Major League Soccer's Most Valuable Teams 2019: Atlanta Stays on Top as Expansion Fees, Sale Prices Surge*, FORBES (Nov. 4, 2019, 9:40 a.m. EST), <https://www.forbes.com/sites/chris-smith/2019/11/04/major-league-soccer-most-valuable-teams-2019-atlanta-stays-on-top-as-expansion-fees-sale-prices-surge/?sh=e553bbc51b58>.

21. Graham Ruthven, *Investors Have Paid \$325M for a Place in MLS. But for How Much Longer?*, THE GUARDIAN (Apr. 5, 2021, 5:00 p.m. EDT), <https://www.theguardian.com/football/2021/apr/05/mls-cost-for-new-team-soccer-us>.

22. See Drut & Szymanski, *supra* note 14.

23. See Stefan Szymanski & Bastien Drut, *The Private Benefit of Public Funding: The FIFA World Cup, UEFA European Championship, and Attendance at Host Country League Soccer*, 21 J. SPORTS ECON. 723 (2020).

24. Compare Drut & Szymanski, *supra* note 14, at 5, with Szymanski & Drut, *supra* note 23, at 729.

25. Szymanski & Drut, *supra* note 23, at 729.

26. *Id.* at 724.

27. Jeff Todd & R. Todd Jewell, *Dubious Assumptions, Economic Models, and Expert Testimony*, 42 DEL. J. CORP. L. 279, 300-01, 308-09 (2018) [hereinafter Todd & Jewell, *Dubious*].

One purpose of our 2018 article was to produce data that would confirm a U.S. attendance bump comparable to European leagues.²⁸ While our data did show increased attendance, that increase was much smaller than that found in Drut and Szymanski's unpublished study.²⁹

In addition, several leagues in Szymanski and Drut's revised study had an attendance spike around the time of the mega-event that fell thereafter.³⁰ Because our preliminary data was for attendance immediately before and during the same year as the Copa America, it may likewise show only a temporary spike in MLS attendance. Without a continuing bump in attendance that could be correlated with a 2022 World Cup USA, MLS will not be able to prove damages (or at least damages significant enough to warrant the time and expense of litigation). This concern prompted us to consider whether a comparative analysis that considers attendance for both MLS and an established European Tier One league would reveal that the tournament bump differs depending on the league and the market in which it plays.

Fortunately, this question does not have to remain speculative. This is due in part to fortuitous timing: France hosted the European Championship the same summer that the U.S. hosted the Copa America.³¹ The European Championship is a regional tournament similar to the Copa America,³² and France's Ligue 1 is similar in quality to MLS but is more established because it was founded a century earlier.³³ This is also due to the award of several grants from our college that allowed us to hire research assistants to gather data on MLS and Ligue 1 attendance in the years before and after each league's nation

28. Todd & Jewell, *Copa America*, *supra* note 17, at 627.

29. *Id.* at 668-70.

30. Szymanski & Drut, *supra* note 23, at 732.

31. Todd & Jewell, *Copa America*, *supra* note 17, at 662-63.

32. *Id.* at 663.

33. Joe Prince-Wright, *MLS Ranked Seventh Best Soccer League Globally*, NBCSPORTS (Apr. 23, 2013, 9:04 a.m. EDT), <http://soccer.nbcsports.com/2013/04/23/mls-ranked-seventh-best-soccer-league-globally-can-it-break-into-the-top-five/> (ranking MLS just ahead of Ligue 1 for league quality of play); *compare France>>Ligue 1>>Champions*, WORLDFOOTBALL, <http://www.worldfootball.net/winner/fra-ligue-1/> (last visited Feb. 22, 2022) (listing the first champion of Ligue 1 as crowned in 1894), *with History: Timeline*, U.S. SOCCER, <https://www.ussoccer.com/history/timeline> (last visited Feb. 22, 2022) (listing the first season of MLS play as 1996).

hosted its respective 2016 tournament.³⁴ As discussed in more detail in Part IV, we conducted statistical analyses of that data, analyses that controlled for more variables that affected attendance (like betting odds) than our preliminary study or the studies of European league attendance. These analyses revealed that the European Championship had a significant impact on Ligue 1 attendance both before and after the event while the Copa America had an impact on MLS attendance before the event but not afterward.³⁵

These results call into doubt the viability of a tortious interference cause of action by MLS against Bin Hammam. Our current study found a statistically significant attendance increase (5.6 percent) only in the games leading up to the Copa America. Applying that increase to the two seasons prior to when the 2022 World Cup USA would have been played (and ignoring the pandemic-related disruptions in the 2020 and 2021 seasons), MLS could have gained about \$72 million in total revenue—but with none of that translating into profits.³⁶ More importantly, the attendance bump was temporary because it disappeared in the seasons following the tournament, so MLS would not have a claim for diminution of business value.³⁷

These findings also have implications beyond our hypothetical lawsuit. For example, the findings suggest that the U.S. market for professional soccer differs from the European markets, so more comparative economic studies are needed to refine the understanding of those differences. Our study is also relevant to MLS antitrust issues. The league has faced two different lawsuits challenging its unique single-entity structure and the USSF rules that designate it as the only Tier One league in the U.S.³⁸ Our findings provide some evidence that

34. Funding came from three grants awarded through the McCoy College of Business Research Grant Program. Our research assistants were Hannah Faulkner, Grant Thain, and Hailey Wingfield. This article would not be possible without the hundreds of hours they devoted to gathering and organizing data.

35. See discussion *infra* Part IV.

36. See *infra* Part V(A).

37. *Id.*

38. *N. Am. Soccer League, LLC v. U.S. Soccer Fed'n, LLC*, 883 F.3d 32, 45 (2d Cir. 2018) (denying preliminary injunction brought for lower-tier league in antitrust lawsuit against the USSF and MLS); *Fraser v. Major League Soccer*, 284 F.3d 47, 71 (1st Cir. 2002) (affirming summary judgment and jury verdict in favor of MLS in antitrust lawsuit brought by players).

the U.S. market differs from the markets for established European leagues. Finally, our findings could impact the standards for admitting economic expert testimony into evidence: while some commentators have argued for a low admissibility threshold, our results show that even plausible assumptions about markets and products (namely that studies of foreign soccer attendance are applicable to U.S. soccer attendance) could be disconfirmed by data and, therefore, be unrealistic.³⁹

Part I opens with a survey of economic studies of sporting mega-events before summarizing the bidding process for hosting rights to the 2022 World Cup and the evidence of corruption in the bid, focusing on corruption related to Bin Hammam. Part II summarizes our 2016 article, which applied an economic study of European soccer attendance to show how MLS could have been harmed by the loss of a World Cup USA and the viability of a tortious interference lawsuit to recover money damages for that harm. Part III then addresses the evidentiary challenge of admitting expert testimony based on questionable assumptions about the comparability of the American and European soccer products and markets, including a summary of our 2018 article that analyzed MLS attendance data related to the Copa America. In Part IV, we describe our current study of how MLS and Ligue 1 attendance correlate with each league's nation hosting a similar soccer mega-event, the Copa America and European Championship, respectively. This Part also discusses some of the potential reasons why U.S. and French fans responded differently to those tournaments. Part V addresses specific and general implications of our study. This article concludes with suggestions for additional research that include analyzing U.S. fan responses to the U.S. co-hosting the World Cup in 2026.

I. THE LEGACY OF WORLD CUP SOCCER: ECONOMICS AND CORRUPTION

Hosting a mega-event like the World Cup can provide the host with a legacy for that sport. Some legacy effects, like prestige and goodwill or the growth of a nation's soccer culture, are difficult to quantify. Others, such as increased attendance at a nation's Tier One professional soccer league, can be more easily quantified. Whether pursuing better

39. See *infra* Part V(B), for a detailed discussion of all three implications.

recognition or more fans, a soccer legacy can drive national associations to compete for hosting rights to a World Cup—and can provide the incentive to engage in corrupt means to secure them. It is therefore unsurprising that details of serious corruption emerged after the QFA won the 2022 World Cup bid despite serious logistical and other concerns about hosting. The most significant evidence involves former FIFA executive Mohamad Bin Hammam, who—although not affiliated with the QFA and its bid committee—had the political and financial means to steer the tournament to his home country.

A. The Economics of International Soccer

The economics literature on sporting mega-events addresses the economic impact of events like the National Football League (NFL) Superbowl,⁴⁰ U.S. college football games,⁴¹ and large-scale, international events like the Olympics and the World Cup.⁴² These studies analyze outcomes of national or regional economic measures like GDP growth,⁴³ employment,⁴⁴ income,⁴⁵ and tourism.⁴⁶

40. Dennis Coates & Craig A. Depken, *Mega-Events: Is Baylor Football to Waco What the Super Bowl Is to Houston?*, 12 J. SPORTS ECON. 599 (2011).

41. Robert A. Baade et al., *Assessing the Impact of College Football on Local Economies*, 9 J. SPORTS ECON. 628 (2008).

42. ZIMBALIST, *supra* note 4, *passim*.

43. See Stan du Plessis & Cobus Venter, *The Home Teams Scores! A First Assessment of the Economic Impact of the World Cup 2010* (July 2010) (unpublished manuscript) (Stellenbosch Economic Working Papers) (on file with the Department of Economics at Stellenbosch University in South Africa).

44. See Florin Hagn & Wolfgang Maennig, *Employment Effects of the Football World Cup 1974 in Germany*, 15 LABOUR ECON. 1062 (2008); Florin Hagn & Wolfgang Maennig, *Large Sport Events and Unemployment: The Case of the 2006 World Cup in Germany*, 41 APPLIED ECON. 3295 (2009) [hereinafter Hagn & Maennig, *Large Sport Events*].

45. See Swantje Allmers & Wolfgang Maennig, *Economic Impacts of the FIFA Soccer World Cups in France 1998, Germany 2006, and Outlook for South Africa 2010*, 35 E. ECON. J. 500 (2009); Robert A. Baade & Victor A. Matheson, *The Quest for the Cup: Assessing the Economic Impact of the World Cup*, 38 REGIONAL STUDS. 343 (2004).

46. See Stan du Plessis & Wolfgang Maennig, *The 2010 FIFA World Cup High-Frequency Data Economics: Effects on International Tourism and Awareness for South Africa*, 28 DEV. S. AFR. 349 (2011).

These economic analyses fall into two broad categories: ex-ante and ex-post.⁴⁷

Ex-ante studies are typically conducted by consulting firms hired by supporters of the sporting event, while ex-post studies are usually done by academic researchers with no financial incentive in the event.⁴⁸ Ex-ante studies tend to overestimate economic benefits like the number of tourists and their spending and underestimate the costs of stadium construction and infrastructure upgrades, which results in net revenue being doubly overestimated.⁴⁹ Ex-post studies usually find that the economic value of hosting a mega-event is minimal and that costs generally outweigh revenues—sometimes to a large degree.⁵⁰

Since objective, ex-post studies prepared by neutral researchers show little-to-no economic benefit, it does not seem to make sense for cities and nations to vie for hosting rights, let alone to engage in corrupt means to win those rights. Nations that already have a strong infrastructure or are unconcerned about cost, however, might be motivated less by an event's economic impact and more by its legacy. Rather than short-term effects, legacy captures the long-term benefits that hosting provides.⁵¹ Many legacy effects are largely non-pecuniary,

47. See ZIMBALIST, *supra* note 4, at 33-41, for a discussion on the ex-ante and ex-post methods.

48. Jeff Todd & R. Todd Jewell, *Reclaiming Economic Legacy: One Legal Strategy for a 2022 FIFA World Cup USA*, 44 CAP. U. L. REV. 245, 285 (2016) [hereinafter Todd & Jewell, *Reclaiming*].

49. Michiel de Nooij, *Mega Sports Events: A Probabilistic Social Cost-Benefit Analysis of Bidding for the Games*, 15 J. SPORTS ECON. 410, 411 (2014) (claiming that pre-mega-event predictions are plagued with a “substantial underestimation of the actual costs and an overestimation of the benefits”); Brian Sturgess & Chris Brady, *Hosting the FIFA World Cup*, 7 WORLD ECON. 145, 147, 149 (2006) (criticizing how ex-ante studies inflate the benefits and fail to account for what is displaced in the economy).

50. ZIMBALIST, *supra* note 4, at 37-41. See, e.g., Thomas Peeters et al., *Tourism and the 2010 World Cup: Lessons for Developing Countries*, 23 J. AFRICAN ECON. 290, 293 (2014) (concluding in a post-event study that 220,00 foreigners visited South Africa for the 2010 World Cup).

51. Owen Gibson, *London 2012 Has “Raised the Bar” on Legacy Planning, Says IOC President*, THE GUARDIAN (Mar. 27, 2012, 6:59 PM EDT), <http://www.theguardian.com/sport/2012/mar/27/london-2012-ioc-legacy>. See also Sam Tighe, *The Tangible Legacy of FIFA and the 2014 World Cup: A Network to Nowhere*, BLEACHER REP. (Feb. 17, 2014),

like goodwill or “international image,”⁵² although economists have attempted to quantify these, such as through contingent valuation that surveys citizens of a host nation about what they are willing to pay to host the event.⁵³ Another legacy effect is building a sporting—in particular, a soccer—culture within the host nation.⁵⁴

Consider the example of Germany, which hosted the World Cup in 2006.⁵⁵ The economic impact of the event was negligible: the World Cup had a small positive effect on net spending in tourism, no appreciable effect on unemployment, and little-to-no effect on other economic activity like retail sales and urban development.⁵⁶ The legacy of the World Cup, however, has been positive. For example, there has been “an improved international perception of Germany.”⁵⁷ Further, Germany’s Tier One soccer league, the Bundesliga, continues to have both on-field and financial success.⁵⁸ Indeed, Hertha Berlin SC benefited directly because it plays in the Olympiastadion, which underwent a €242 million renovation for the World Cup.⁵⁹

<http://bleacherreport.com/articles/1962867-the-tangible-legacy-of-fifa-and-the-2014-world-cup-a-network-to-nowhere>.

52. Du Plessis & Maennig, *supra* note 46, at 360.

53. Giles Atkinson et al., *Are We Willing to Pay Enough to “Back the Bid”?: Valuing the Intangible Impacts of London’s Bid to Host the 2012 Summer Olympic Games*, 45 URB. STUD. 419, 420 (2008); *See Hosting the 2026 FIFA World Cup Could Create More Than \$5 Billion in Economic Activity for North America*, U.S. SOCCER (Feb. 8, 2018), <https://www.ussoccer.com/stories/2018/02/hosting-the-2026-fifa-world-cup-could-create-more-than-5-billion-in-economic-activity-for-north-amer> (discussing the economic and social benefits of hosting the FIFA World Cup in North America).

54. Todd & Jewell, *Reclaiming*, *supra* note 48, at 283 (equating hosting a World Cup with “the potential growth in soccer culture”).

55. 2006 FIFA World Cup Germany: Matches, FIFA, <http://www.fifa.com/worldcup/archive/germany2006/matches/index.html> (last visited Feb. 23, 2022).

56. Hagn & Maennig, *Large Sport Events*, *supra* note 44, at 3299; Wolfgang Maennig, *One Year Later: A Re-Appraisal of the Economics of the 2006 Soccer World Cup*, 10 HAMBURG CONTEMP. ECON. DISCUSSIONS 1, 16 (2007).

57. Maennig, *supra* note 56, at 16.

58. *Id.*

59. 2006 FIFA World Cup Germany: Matches, *supra* note 55; Olympiastadion, STADIUMDB.COM, http://stadiumdb.com/tournaments/world_cup/2006/olympiastadion_berlin (last visited Feb. 23, 2022).

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Like Germany, the U.S. has a strong tourism and sporting infrastructure.⁶⁰ If the U.S. were to host the World Cup, then (like Germany) the costs of hosting would likely not outweigh the non-pecuniary benefits since the U.S. would not need to engage in expensive infrastructure projects.⁶¹ Consider that FIFA requires World Cup stadiums to have a seating capacity ranging from 40,000 for group play to 80,000 for big matches (e.g., opening and final matches).⁶² The U.S. has over 20 municipal and college stadiums that can seat over 80,000 and dozens more that seat over 40,000.⁶³ Yet it is the primary purpose for those same stadiums that highlight the need for a World Cup legacy: almost all of them are home to gridiron football teams in the NFL or for major college programs.⁶⁴ Hosting the premier soccer event in the world would give the USSF an opportunity to lure gridiron football fans to the sport that the rest of the world calls “football”: soccer.⁶⁵

60. See Robert Baumann & Victor Matheson, *Infrastructure Investments and Mega-Sports Events: Comparing the Experience of Developing and Industrialized Countries* 9 (Cross Works Econ. Dep’t, Working Paper No. 1305, 2013) https://crossworks.holycross.edu/econ_working_papers/147/ (exploring how developed countries like the U.S., Japan, and those in Western Europe, can better take on the economic challenges of hosting a mega event like the World Cup or Olympic Games than developing nations); see also *id.* at 10 (explaining how the U.S. bid for the 2022 World Cup listed 56 stadiums and thus “demonstrated that it could meet FIFA’s stadium requirements five times over without any new spending on sports facilities”).

61. Todd & Jewell, *Reclaiming*, *supra* note 48, at 292.

62. *Guide to the Bidding Process for the 2026 FIFA World Cup™*, FIFA, https://web.archive.org/web/20171108093904/http://resources.fifa.com/mm/document/affederation/administration/02/91/88/61/en_guidetothebiddingprocessforthe2026ifaworldcup_neutral.pdf (last visited Dec. 18, 2021).

63. *Stadiums in United States of America*, STADIUMDB.COM, <http://stadiumdb.com/stadiums/usa> (last visited Dec. 18, 2021).

64. *Id.* For example, no MLS stadium seats 80,000, and the five that seat more than 40,000 are shared with NFL teams or the New York Yankees. Further, every NFL stadium seats over 60,000, with four of those at 80,000 or more. *Id.* See FIFA, 2022 FIFA WORLD CUP BID EVALUATION REPORT: USA 11-14 (2010) (<https://digitalhub.fifa.com/m/76da846ef1eeb577/original/d4891lz6nqwqha8vcvk-pdf.pdf>) [hereinafter USA BID EVALUATION REPORT] (listing 18 proposed stadiums for World Cup matches, all of which were home to NFL teams and the UCLA Bruins football team).

65. Todd & Jewell, *Copa America*, *supra* note 17, at 629-30 (“another World Cup in the United States would fulfill MLS Commissioner Don Garber’s goal of the United States ‘becoming a soccer nation’”) (citing *Major League Soccer Attendance*

Consider some legacy impacts from the first time the U.S. hosted in 1994, which was the best-attended World Cup in history.⁶⁶ Not only have broadcasts of subsequent World Cup games regularly drawn significant U.S. viewership,⁶⁷ but MLS was born from that event: ten MLS teams first took the field in 1996 after the USSF agreed to launch a division-one professional soccer league in the U.S as part of winning the World Cup hosting rights.⁶⁸

Although MLS has grown considerably over the last twenty-five years—both in terms of average attendance and by almost tripling the number of teams⁶⁹—a second World Cup USA could mean an evolutionary leap for the league. Many legacy effects are difficult if not impossible to quantify, but one that can be quantified is the impact of hosting a World Cup on professional soccer attendance. For example, one 2008 study examined attendance at Ligue 1 matches after France hosted and won the 1998 World Cup.⁷⁰ The authors found that “consumer demand [attendance and ticket sales] . . . positively,

Is Up, but TV Ratings Lag as U.S. Soccer Mulls Future, USA TODAY (Nov. 17, 2017, 8:50 PM), <https://www.usatoday.com/story/sports/mls/2017/11/17/mls-attendance-up-tv-ratings-lag-as-us-mulls-future/107770250/>; see *id.* at 666 (“MLS operates in an ultracompetitive market for sports entertainment.”).

66. *Average and Total Attendance at FIFA Football World Cup Games from 1930-2018*, STATISTA, <https://www.statista.com/statistics/264441/number-of-spectators-at-football-world-cups-since-1930/> (last visited Dec. 18, 2021) (showing that the 1994 World Cup had the highest total and average per-game attendance at 3,568,567 and 68,626, respectively).

67. See, e.g., Warren S. Grimes, *The FIFA World Cup and Dysfunctional Television Distribution in the United States*, 21 SW. J. INT’L L. 155, 155 (2014) (finding that the 2014 World Cup U.S.–Belgium match drew 21.6 million U.S. viewers and the final between Germany and Argentina drew 26.5 million U.S. viewers).

68. See Gandert & Epstein, *supra* note 3, at 35 (“MLS is a creation of the USSF. MLS was created as part of a promise from USSF to FIFA that a professional soccer league would be started in exchange for being able to host the 1994 FIFA World Cup.”).

69. See Jed Hughes, *NBA and NHL Get the Boot: MLS is the 3rd Most Attended Sports League in America* (Aug. 8, 2012), <https://bleacherreport.com/articles/1290390-nba-and-nhl-get-the-boot-mls-is-the-3rd-most-attended-sports-league-in-america>; *Clubs*, MAJOR LEAGUE SOCCER, <https://www.mlssoccer.com/clubs/> (last visited Dec. 18, 2021) (listing 28 MLS teams for the 2021 season).

70. Falter et al., *supra* note 14, *passim*.

significantly, and durably shifted following France's victory."⁷¹ Attendance increased by almost twenty percent for the two seasons following the tournament, and the effect was statistically significant in each season, which suggests that the effect is more than transitory.⁷² The authors therefore concluded that international competitions, such as the World Cup, lead to increased interest in soccer."⁷³

Another study considered professional soccer attendance in the years before and after six World Cups (five of them in Europe, the other co-hosted by Japan and Korea) and four European Championships.⁷⁴ Although the authors did not find a clear trend in the years leading up to the events, they did find a significant spike in attendance in the season immediately prior to the events and in each of the two years that followed. Over those three years, attendance increased between fifteen and twenty-five percent.⁷⁵ Moreover, clubs whose cities hosted a tournament match saw an increase of between seventeen and twenty-one percent in the five years following the event compared to the season before the event. Even those clubs whose cities did not host a match saw an increase between eight and twenty percent for the same period.⁷⁶

As a relatively young league that lacks the hefty broadcast packages of other U.S. professional sports leagues, MLS depends on game-day attendance for its viability.⁷⁷ Years of double-digit-percentage growth would therefore have a huge impact. Teams that play in smaller venues would be pushed to stadium capacity, while those with already-strong attendance could approach NFL attendance numbers.⁷⁸ A more vibrant league would attract more interest by cities wanting an expansion team and allow the league to command a higher expansion fee from new entrants.⁷⁹ Because MLS does not franchise but instead owns all of the

71. *Id.* at 38.

72. *Id.* at 28-33.

73. *Id.* at 37.

74. Drut & Szymanski, *supra* note 14, at 5-8.

75. *Id.* at 6.

76. *Id.* at 2.

77. Todd & Jewell, *MLS*, *supra* note 15, at 43-44.

78. *Id.* at 31.

79. *Id.*

teams, higher attendance would also mean higher revenues for the league and an increased business value.⁸⁰

Such legacy effects may have lured MLS to support the USSF bid to host the 2022 World Cup. After all, MLS Commissioner Don Garber stated, “Our ownership recognizes the enormous value to the League, the sport and our country should we win the bid to host the World Cup in 2022.”⁸¹ MLS support extended beyond the linguistic. For example, Garber was part of the U.S. bid committee, and MLS provided office space in its New York headquarters for the committee.⁸² MLS and its marketing arm also contributed \$2 million to the bid committee.⁸³ FIFA’s evaluation of the USSF bid even noted that the high marketing potential of soccer in the U.S. was due in part to MLS’s increase in professionalism over its first decade.⁸⁴

The QFA also sought to build a legacy in its desire to host a World Cup, though for different reasons than the USSF and MLS. Without the existing sports infrastructure of the U.S.,⁸⁵ and with a population under 2.5 million,⁸⁶ Qatar would not see a return on investment in the form of professional soccer attendance sufficient to justify building several world-class stadiums to host a one-month tournament. Hosting the World Cup is but one piece, however, of Qatar’s larger vision of being a global leader in international soccer.⁸⁷ For example, the Qatari

80. *Id.* at 35-36.

81. *MLS, Club Owners and Soccer United Marketing Donate \$2 Million to USA Bid Committee*, OUR SPORTS CENTRAL (Nov. 19, 2010), <https://www.oursportscentral.com/services/releases/mls-club-owners-and-soccer-united-marketing-donate-2-million-to-usa-bid-committee/n-4118036>.

82. *Id.*

83. *Id.*

84. USA BID EVALUATION REPORT, *supra* note 64, at 29.

85. FIFA, 2022 FIFA WORLD CUP BID EVALUATION REPORT: QATAR 4 (2010) (<https://digitalhub.fifa.com/m/3041e390c9c0afea/original/fd4w8qgexnrqmquwsb7h-pdf.pdf>) [hereinafter QATAR BID EVALUATION REPORT] (noting that nine stadiums would need to be built, so the “significant construction work involved merits consideration, especially in terms of stadium readiness”).

86. *World Factbook: Qatar*, CENT. INTEL. AGENCY, <https://www.cia.gov/the-world-factbook/countries/qatar/> (last visited Nov. 23, 2021) (estimating Qatar’s population in July 2021 to be 2,479,995).

87. Todd & Jewell, *MLS*, *supra* note 15, at 33 (“The Emirate of Qatar made a push to become a presence in international sports and international soccer, in particular.”).

government owns the wealthiest Ligue 1 team, Paris St. Germain, and Qatar Airways sponsors one of the most popular teams in the world, Barcelona FC of Spain's La Liga.⁸⁸ Further, Qatari-based Al Jazeera started beIN Sports, which broadcasts soccer matches from the world's top leagues to viewers around the globe, including in the U.S.⁸⁹ This leadership desire is epitomized by the fact that, in addition to a local organizing committee, Qatar established by Emiri decree the Supreme Committee for Delivery and Legacy to oversee long-term projects like stadium construction.⁹⁰ The Secretary General of the Supreme Committee recently stated: "This is the biggest legacy this part of the world will be able to offer, showcasing the Arab world, not just Qatar. It's a great opportunity to showcase the culture, the heritage and hospitality of this part of the world."⁹¹ Finally, the cost of hosting is insignificant to Qatar: not only did Qatar already have infrastructure projects like highways and a national metro system planned as part of Qatar's National Vision 2030,⁹² but it is one of the richest nations in the world per capita.⁹³

88. Simeon Kerr, *Qatar Lashes Out at "Racist" World Cup Criticism*, FIN. TIMES (June 15, 2015, 4:53 PM), <https://www.ft.com/content/1752d956-1277-11e5-bcc2-00144feabdc0>.

89. See BEINSPORTS, <https://www.beinsports.com/us/> (last visited Nov. 23, 2021) (offering access to Ligue 1, La Liga, and other Tier One national leagues as well as international tournaments); see also Leila Abboud, *Al Jazeera Sees Sporting Chance of Global Media Brand*, REUTERS (Apr. 2, 2012), <https://www.reuters.com/article/aljazeera-sports-idUSL6E8ET9BX20120402> ("The Qataris see sport as being an entree for themselves on the world stage, and the next piece in the jigsaw puzzle is a really big rights acquisition," said Graham Shear, a lawyer specialising in sports matters.>").

90. Todd & Jewell, *Reclaiming*, *supra* note 48, at 256-57 (citing FAQ, SUPREME COMMITTEE FOR DELIVERY & LEGACY, <http://www.sc.qa/en/media/faq> (last visited Feb. 16, 2022)).

91. Andrew Warshaw, *Qatar 2022: Fanfare for Final Year Countdown but Skepticism Still Lurks Despite Legacy Hopes*, INSIDE WORLD FOOTBALL (Nov. 22, 2021 16:01 GMT), www.insideworldfootball.com/2021/11/22/qatar-2022-fanfare-final-year-countdown-scepticism-still-lurks-despite-legacy-hopes/.

92. *Supreme Committee for Delivery & Legacy: FAQ*, QATAR 2022, <http://qatar2022.qa/en/about/faq> (last visited Nov. 23, 2021). The Supreme Committee's share of costs is nevertheless significant because its budget is an estimated \$6.5 billion. *Id.*

93. See *World Factbook: Qatar*, *supra* note 86 (placing Qatar at sixth in the world for GDP per capita).

One of the wealthiest Qatari citizens, billionaire Mohamad Bin Hammam, was also likely influenced by a World Cup legacy. Perhaps he was motivated by financial gain, given the event-related infrastructure projects that might flow to his construction company.⁹⁴ Perhaps it was national pride, since he already represented Qatar at FIFA by serving as a member of the Executive Committee (ExCo), the small-but-powerful body charged with selecting the World Cup hosts for 2018 and 2022.⁹⁵ Whatever the motivation, he used his wealth and influence to bring the 2022 World Cup to his home country.

B. The Corrupted Bid for the 2022 World Cup

In 2008, FIFA solicited bids for the rights to host the 2018 and 2022 World Cups, with the decision on each to be decided in a single day of voting.⁹⁶ While the 2018 bidders were all from Europe, the 2022 bidders represented other parts of the globe: Australia, Japan, Korea, Qatar, and the U.S.⁹⁷ Each national association's bid committee submitted a bid book; FIFA representatives visited each nation; and the ExCo prepared Bid Evaluation Reports that analyzed logistical, legal, and financial issues.⁹⁸ In December 2010, twenty-two ExCo members voted by secret ballot.⁹⁹ After selecting Russia to host the 2018 World Cup, the ExCo turned to the 2022 bidders: the Australian, Japanese, and Korean bids

94. See *Rise and Fall of Mohamed bin Hammam—Timeline*, THE GUARDIAN (June 1, 2014, 14:20 EDT), <https://www.theguardian.com/football/2014/jun/01/mohamed-bin-hammam-timeline> (reporting that Bin Hammam “made his fortune in construction, with his company, Kemco, during Qatar’s oil boom from the 1970s.”).

95. Todd & Jewell, *Copa America*, *supra* note 17, at 632.

96. Frank Keogh, *The World Cup in Their Hands: Who Are the FIFA 22?*, BBC SPORT (Dec. 2, 2010, 8:23 GMT), <http://news.bbc.co.uk/sport2/hi/football/9101371.stm>.

97. Garcia & Borbély, *supra* note 11, at 35.

98. *Id.* at 27-30; see Todd & Jewell, *Reclaiming*, *supra* note 48, at 254 (citing USA BID EVALUATION REPORT, *supra* note 64, at 3; QATAR BID EVALUATION REPORT, *supra* note 85, at 3) (claiming that the bid evaluation reports analyzed logistical issues like “stadiums, transportation, and security” as well as legal and financial issues like the submissions of FIFA-mandated agreements and government guarantees of “concessions to FIFA for customs, taxation, and licensing rights.”).

99. Garcia & Borbély, *supra* note 11, at 34-35.

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were eliminated in successive rounds, and in the final round, the QFA prevailed against the USSF by fourteen to eight.¹⁰⁰

The QFA's bid had some strengths, in part because its bid committee poured tremendous resources into pursuing the bid.¹⁰¹ For example, Qatar would be the first Middle Eastern country to host a World Cup, and it promised to build several new stadiums with advanced cooling technology to counter the dangerous desert heat.¹⁰² Further, the QFA argued that the small size of the nation was an advantage because teams and tourists could lodge in one location for the entirety of the event, allowing fans to attend more than one match in a single day.¹⁰³ Perhaps most important to FIFA, Qatar conceded to every condition in the Government Guarantees, including altering its laws to allow for customs, taxation, and licensing rights that were favorable to FIFA.¹⁰⁴

However, the logistics of hosting the World Cup leaned heavily toward the U.S. Rather than mere promises of new stadiums and non-existent cooling technologies, the U.S. already had numerous stadiums in locations with relatively mild summers.¹⁰⁵ Rather than cram all of the teams and visitors into one city served by a single international airport, the U.S. could spread them across different cities for each stadium.¹⁰⁶ Rather than no experience hosting a sporting mega-event, the U.S. had hosted the 1994 Men's World Cup, the 1999 and 2003 Women's World Cup, and four Olympics since 1980.¹⁰⁷

100. *Id.* at 35-36.

101. See Caitlin Murray, *Is the US Ready—Or Even Willing—to Host the 2026 World Cup?*, THE GUARDIAN (Apr. 4, 2016, 5:00 PM), <http://www.theguardian.com/football/blog/2015/aug/10/is-the-us-ready-or-even-willing-to-host-the-2026-world-cup> (reporting that the Qatar Bid Committee spent at least \$42 million on marketing alone, which is over four times as much as the total U.S. Bid Committee budget of \$10 million).

102. QATAR BID EVALUATION REPORT, *supra* note 85, at 4, 8.

103. *Id.* at 8-9.

104. *Id.* at 33.

105. USA BID EVALUATION REPORT, *supra* note 64, at 8, 11-13.

106. *Id.* at 14.

107. *Id.* at 8.

In response to speculation about corruption by the QFA and its bid committee,¹⁰⁸ Qatari officials denied any impropriety related to the bidding process.¹⁰⁹ The evidence of corruption by ExCo members, however, was substantial: half of those who voted on the bids were suspended or banned by FIFA, resigned voluntarily from FIFA while under investigation, or were indicted or investigated by law enforcement agencies in various countries.¹¹⁰

Based on sources that include FIFA's internal investigation by a former U.S. Attorney, indictments and investigations by the DOJ, and a book by investigative journalists at the *Sunday Times*, a common thread in the narrative of corruption was Bin Hammam. For example, he leveraged his position as voter to make two pacts ahead of the vote: he arranged for other Asian members (from Japan and Korea) to support each other in later voting rounds once their bids were eliminated, and he provided Asian votes for the joint Spanish/Portuguese bid for the 2018 World Cup in exchange for votes from Spain, Argentina, and Brazil to support the QFA bid for 2022.¹¹¹ He also tapped into his

108. See, e.g., Andrew Spalding et al., *From the 2014 World Cup to the 2016 Olympics: Brazil's Role in the Global Anti-Corruption Movement*, 21 SW. J. INT'L L. 71, 80 (2014) ("When the small Persian Gulf nation of Qatar was awarded the 2022 World Cup over larger countries such as Japan, Australia, and notably the United States, suspicion of corruption immediately erupted.").

109. See, e.g., Hamad bin Khalifa bin Ahmad Al Thani, *Qatar Had the Strongest Bid for the 2022 FIFA World Cup. Here's Why*, THE GUARDIAN (June 20, 2014), <http://www.theguardian.com/commentisfree/2014/jun/20/why-qatar-had-strongest-bid-for-2022-fifa-world-cup>; *Qatar FA Hits Back at English Football Chief Dyke*, DAILY MAIL (June 3, 2015), <http://www.dailymail.co.uk/wires/afp/article-3108896/Qatar-hits-English-football-chief-Dyke.html> (quoting statement from Sheik Hamad bin Khalifa bin Ahmad Al-Thani welcoming the Swiss investigations and noting that a prior internal investigation cleared the organization of "any wrongdoing"); *Qatar 2022 World Cup Bid Committee Denies Corruption Allegations and Says Mohamed Bin Hammam Had No Association with Them*, DAILY MAIL (June 1, 2014), <http://dailym.ai/1nTEUj0>.

110. See, e.g., *FIFA Executive Committee 2010: Where Are They Now?*, *supra* note 8 (reporting on the indictments, investigations, suspensions, and bans of the 2010 ExCo members); Conn, *supra* note 8 (reporting that FIFA suspended or banned nine voters for the 2022 World Cup and that two more "resigned before being exposed for having taken bribes.").

111. BLAKE & CALVERT, *supra* note 12, at 176-77, 212; Garcia & Borbély, *supra* note 11, at 232-33. See Owen Gibson, *FIFA under New Pressure over Mohamed Bin Hammam's Qatar 2022 Role*, THE GUARDIAN (Apr. 22, 2015), <http://www.theguardian.com/football/2015/apr/22/fifa-mohamed-bin-hammam>

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personal wealth to buy votes, such as providing lavish junkets and cash payments to some African members and Jack Warner of Trinidad and Tobago.¹¹² In addition, he paid hundreds of thousands of dollars in legal and detective fees for the appeal of suspended ExCo member Reynald Temarii, which effectively kept Temarii's seat vacant and thereby eliminated a vote that would have gone to the USSF.¹¹³ Combined, Bin Hammam's actions brought nine votes to the QFA and prevented the USSF from having one, which was more than enough to flip the outcome in favor of the QFA.¹¹⁴

II. THE WORLD CUP BUMP: ECONOMICS PROVIDES THE THEORETICAL BASIS FOR LEGAL ACTION

Based on corruption in the bidding process, pundits and scholars have explored the possibility of stripping the QFA of hosting rights and re-awarding them to the U.S. (or another nation).¹¹⁵ That possibility is

qatar-2022-world-cup (reporting that former FIFA president Sepp Blatter "confirmed that a 'bundle' of votes were traded between Qatar and Spain/Portugal.").

112. BLAKE & CALVERT, *supra* note 12, at 390-97; Garcia & Borbély, *supra* note 11, at 233-37. See Superseding Indictment at 34, United States v. Hawit, No. 15-252 (E.D.N.Y. Nov. 25, 2015) (identifying "Co-Conspirator #8" as "a high-ranking official of FIFA and AFC, the regional confederation representing much of Asia."); *id.* at 124 (alleging that Co-Conspirator #8 wired over \$1 million to a bank account controlled by Warner).

113. BLAKE & CALVERT, *supra* note 12, at 256-57, 261-63, 266; Garcia & Borbély, *supra* note 11, at 240-49. See David Bond, *FIFA Bans Adamu and Temarii over World Cup Vote Claims*, BBC SPORT (Nov. 18, 2010), <http://news.bbc.co.uk/sport2/hi/football/9203378.stm>.

114. Todd & Jewell, *Copa America*, *supra* note 17, at 639-40.

115. See, e.g., Samuel Morris, Comment, *FIFA World Cup 2022: Why the United States Cannot Successfully Challenge FIFA Awarding the Cup to Qatar and How the Qatar Controversy Shows FIFA Needs Large-Scale Changes*, 42 CAL. W. INT'L L.J. 541 (2012); Kate Youd, Comment, *The Winter's Tale of Corruption: The 2022 FIFA World Cup in Qatar, the Impending Shift to Winter, and Potential Legal Actions Against FIFA*, 35 NW. J. INT'L L. & BUS. 167 (2014); Scott Davis, *FIFA May Not Be Able to Change the Hosts of the 2018 and 2022 World Cups Even if They Want To*, BUS. INSIDER (June 10, 2015), <http://www.businessinsider.com/fifa-russia-qatar-world-cups-2015-6>; Mark Morgenstein, *FIFA: No Grounds to Strip Russia or Qatar of World Cup*, CNN (June 9, 2015), <http://edition.cnn.com/2015/06/08/football/fifa-scandal/>; Dan Murphy, *FIFA Scandal: Could Host Qatar Forfeit the 2022 World Cup (+Video)*, CHRISTIAN SCI. MONITOR (May 29, 2015), <http://www.csmonitor.com/layout/set/print/World/Security->

explored in one of our articles, where we argued that FIFA rules provide the means for the USSF to seek an order from the Court of Arbitration for Sport under Swiss unfair competition laws that would enjoin the QFA from hosting in 2022, thus forcing FIFA to award the 2022 tournament to another national association, which would most likely be the USSF.¹¹⁶ However, the last few years have made it clear that the USSF is unlikely to pursue such an order. First, such an action would require “sufficient evidence of corruption attributable to the QFA.”¹¹⁷ Although the evidence of corruption in the bidding process is considerable, it is insufficient to prove improper acts by Qatari soccer officials.¹¹⁸ Second, in 2018, the USSF won the right to co-host the 2026 World Cup.¹¹⁹ Hosting in 2026 is arguably better than hosting in 2022: the 2026 World Cup will be the first tournament with an expanded 48-team field; new rules will eliminate ties in the group stage and send 32 teams to the knock-out stage, which should generate more excitement about each match; and the U.S. will still host about as many matches as it would have in 2022—60 of the 80 total (including the finale).¹²⁰

Watch/Backchannels/2015/0528/FIFA-scandal-Could-host-Qatar-forfeit-the-2022-World-Cup-video; James Reeve, *Could FIFA Really Take the World Cup from Russia or Qatar?*, BBC NEWS (June 8, 2015), <http://www.bbc.com/news/world-europe-33044898>.

116. Todd & Jewell, *Reclaiming*, *supra* note 48, at 247-49.

117. *Id.* at 281.

118. Blake and Calvert write about an agent of Bin Hammam who arranged for illicit payments who was also employed by the Qatar Bid Committee. BLAKE & CALVERT, *supra* note 12, at 72-73, 101-02, 122. FIFA’s internal investigator, Michael Garcia, concluded that the relationship between Qatari officials and Bin Hammam was “somewhat distant.” Garcia & Borbély, *supra* note 11, at 231. There is also a whistleblower who was employed by the Qatar bid committee who reported, and then recanted, allegations that Qatari officials paid three African ExCo officials. *See* BLAKE & CALVERT, *supra* note 12, at 119-20; Garcia & Borbély, *supra* note 11, at 249-72 (finding evidence supplied by the whistleblower not to be credible).

119. *What’s Ahead for the 2026 World Cup in North America?*, U.S. SOCCER (June 13, 2018), <https://www.ussoccer.com/stories/2018/06/whats-ahead-for-the-2026-world-cup-in-north-america> (“The United States along with Canada and Mexico were awarded the right to host the 2026 FIFA World Cup during the 68th FIFA Congress on June 13, 2018 in Moscow.”).

120. *2026 World Cup: Schedule*, 2026 WORLD CUP FOOTBALL, <https://www.2026worldcupnorthamerica.com/fifa-football-schedule-world-cup-soccer-2026/> (last visited Nov. 23, 2021).

That expanded 2026 tournament may not console MLS, however, because of the economic studies that illustrate the league stands to lose years of double-digit-percentage attendance growth—and the associated increased revenues and business value—that would have accompanied a 2022 World Cup USA. MLS might still therefore seek to recover lost profits and diminished business value from Bin Hammam. This Part provides an overview of our 2016 article in which we argued that MLS could win a lawsuit for tortious interference with prospective economic advantage, a judgment which is likely enforceable in Qatar.

A. Losing a 2022 World Cup USA: Economic Evidence of Lost Profits and Diminished Business Value for Major League Soccer

Before engaging in the time, expense, and risk of litigation, MLS would first need to consider its damages. Phrased differently, in the hypothetical but-for scenario of a 2022 World Cup USA, how much of an attendance increase could the league have expected, how much additional revenue (and more particularly, profits) would that increase have generated, and how would that additional revenue have affected the value of the league itself? This section explores these questions by summarizing our analysis from 2016, which applied the Drut and Szymanski study to existing data about MLS attendance and revenues.¹²¹

Note that, in 2016, the 2026 World Cup hosts had not yet been named and the USSF was even expressing a lack of interest in bidding to host the event,¹²² so there was no prospect in the foreseeable future of a World Cup-related boost in MLS attendance. Plus, as noted in the Introduction, we had to predict MLS expansion, revenues, and franchise values based on data and plans from 2016.

Drut and Szymanski reported an attendance bump for each of the five seasons following a nation hosting a World Cup or Euro Cup.¹²³

121. Todd & Jewell, *MLS*, *supra* note 15, Part III.

122. *See* Murray, *supra* note 101 (reporting that USSF President Sunil Gulati has suggested that the USSF may not be interested in bidding for the 2026 event, and, even if it does, it faces competition from North American rivals like Canada and Mexico).

123. Drut & Szymanski, *supra* note 14, at 2.

Because European and MLS seasons differ—European leagues play fall-to-spring (and thus follow the international tournament) while MLS plays spring-to-fall (so that the tournament splits the season)¹²⁴—our analysis began with the 2022 MLS season and ended with the 2026 season.¹²⁵ Publicly-available data showed MLS attendance from its inaugural season of 1996 to 2015, which that year averaged 21,574 per game.¹²⁶ We performed an Ordinary Least Squares (OLS) estimation to determine attendance for 2022 through 2026 without a 2022 World Cup.¹²⁷ For twenty-four MLS teams each playing seventeen home games as well as 17 total playoff games, the total attendance for the five seasons was predicted to be 45,332,540, which is just over nine million per season.¹²⁸

However, this estimation likely overstates attendance because it does not account for game-level effects such as team quality, the time of year matches are played, and logistical constraints like stadium capacity.¹²⁹ Therefore, we supplemented our data with game-level

124. Diana C. Taylor, *Aimed at the Goal?: The Sustainability of Major League Soccer's Structure*, 9 WILLAMETTE SPORTS L.J. 1, 9 (2011).

125. Todd & Jewell, *MLS*, *supra* note 15, at 37.

126. Todd & Jewell, *MLS*, *supra* note 15, at 36-37 (citing, *inter alia*, MLS ATTENDANCE, <http://mlsattendance.blogspot.com/> (last updated May 10, 2015); MLS Soccer Staff, *MLS Sets New Records, Seattle Hold Highest Average in League*, MAJOR LEAGUE SOCCER (Oct. 26, 2015, 1:18 PM), <http://www.mlssoccer.com/post/2015/10/26/mls-sets-new-attendance-records-seattle-hold-highest-average-league>).

127. *Id.* at 37-38. OLS is a type of multiple regression analysis that applies a formula to a “cloud of data points” to represent a trend in the form of a straight line. D.H. Kaye, *The Dynamics of Daubert: Methodology, Conclusions, and Fit in Statistical and Econometric Studies*, 87 VA. L. REV. 1933, 1993-94 (2001). When estimation is linear in nature, OLS has “several desirable properties” for econometric analysis. David L. Rubinfeld, *Reference Guide on Multiple Regression*, in FED. JUDICIAL CTR., REFERENCE MANUAL ON SCIENTIFIC EVIDENCE 303, 342 (3d ed., 2011) (finding that least squares estimation has “several desirable properties”).

128. Todd & Jewell, *MLS*, *supra* note 15, at 38.

129. *Id.* at 39-40. Game-level effects like team quality and time of year in which a match is played must be controlled for to accurately predict MLS attendance. R. Todd Jewell, *The Effect of Marquee Players on Sports Demand: The Case of US Major League Soccer*, 18 J. SPORTS ECON. 239, 242-44 (2017). Further, some teams like Houston, Kansas City, and Salt Lake City are constrained to lower-than-average growth because of stadium size. MLS ATTENDANCE, *supra* note 126 (listing

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attendance data for 2013 through 2015¹³⁰ and ran OLS on the attendance data from 2004 through 2015. Controlling for team, opponent, and month, we forecast a per-team average (including capping growth where appropriate based on stadium capacity) of 20,702, 20,862, 21,021, 21,181, and 21,340 for the 2022-2026 seasons.¹³¹ Total attendance without a 2022 World Cup was predicted to be 44,670,464, or about 8.9 million per season.¹³²

Drut and Szymanski found that teams whose cities would have hosted a World Cup match could see a larger bump (between 17% and 21%) than those whose cities would not have (between 8% and 20%).¹³³ In the U.S., eighteen cities were proposed as potential 2022 World Cup venues.¹³⁴ Of those, twelve are home to fourteen teams that were expected to be part of MLS as of 2022;¹³⁵ accordingly, ten teams play in cities that would not have hosted a World Cup match. We applied the minimum World Cup bumps of 17% to teams in host cities and 8% to teams in non-host cities so that the predicted increase in attendance for the five-year period was 4,468,740 fans.¹³⁶ While this estimate is over 25% less than the 6,006,562 fans that would be predicted without

attendance as a percentage of stadium capacity for the Houston Dynamo at 90.96%, Spring Kansas City at 108.13%, and Real Salt Lake at 99.44%).

130. See *Major League Soccer Statistics*, ESPNFC, https://www.espn.com/soccer/stats/_league/usa.1 (last visited Dec. 30, 2021) (reporting scores and statistics for each MLS game).

131. Todd & Jewell, *MLS*, *supra* note 15, at 40. See *USA*, THE STADIUM GUIDE, <http://www.stadiumguide.com/present/usa/> (last visited Dec. 30, 2021) (linking to reports with details for each MLS stadium, including seating capacity).

132. Todd & Jewell, *MLS*, *supra* note 15, at 40.

133. Drut & Szymanski, *supra* note 14, at 2.

134. See USA BID EVALUATION REPORT, *supra* note 64, at 11–13 (listing Atlanta, Baltimore, Boston, Dallas, Denver, Houston, Indianapolis, Kansas City, Los Angeles, Miami, Nashville, New York City, Philadelphia, Phoenix, San Diego, Seattle, Tampa, and Washington, DC).

135. See, e.g., *Clubs*, *supra* note 69 (listing clubs in Boston (New England), Dallas, Denver, Houston, Kansas City, Los Angeles (two teams), New York City (two teams), Philadelphia, Seattle, and Washington, DC); Jeff Carlisle, *Examining Candidates for the Next Round of MLS Expansion*, ESPNFC (May 7, 2015), <https://www.espn.com/soccer/major-league-soccer/19/blog/post/2438275/examining-the-candidates-for-the-next-round-of-mls-expansion> (listing expansion teams in Atlanta and Miami).

136. Todd & Jewell, *MLS*, *supra* note 15, at 40.

controlling for game-level effects, it is more reliable due to better attendance forecasts.¹³⁷

The next question is whether the loss of 4.5 million fans would result in economic damages. MLS does not report ticket revenue to the public,¹³⁸ but there are reasonable proxies. For example, *Forbes* reports the average MLS ticket price for each team on the secondary market as \$54.¹³⁹ Applying this price to the more conservative estimate of a 4,468,740-fan bump, and assuming 2% inflation, this would be a loss of \$294 million in gate revenue.¹⁴⁰ This figure does not factor in fans' total game-day spending. Based on a 2012 estimate, the average fan spends \$73 per game,¹⁴¹ bumping the lost revenue calculations to \$390 million.¹⁴² Without access to MLS financial records, it is impossible to determine how much of this lost revenue would be recoverable as lost profits. Consider, however, that 2014 estimates of MLS annual revenue ranged between \$233 million and \$461 million, and that *Forbes* estimated in 2014 that MLS was essentially breaking even.¹⁴³ Given the amount of lost revenue relative to total revenue, lost profits could be millions—if not tens of millions—of dollars per year, even with the more conservative numbers.¹⁴⁴

Even without lost profits, MLS could recover for diminished business values as measured by revenue multiples, a common way to value a firm.¹⁴⁵ This approach references revenues, gross or net of costs, and an industry multiple to estimate the value of a business, since the value of owning that business is essentially the present discounted value

137. *Id.* at 38-40.

138. Smith, *supra* note 20.

139. David Lange, *Average Secondary Ticket Price in the MLS in the United States from 2011 to 2020*, STATISTA (Nov. 26, 2020), <https://www.statista.com/statistics/1130327/secondary-market-ticket-price-mls/>.

140. Todd & Jewell, *MLS*, *supra* note 15, at 40.

141. Jewell, *supra* note 129, at 249.

142. Todd & Jewell, *MLS*, *supra* note 15, at 40.

143. Stefan Szymanski, *So What Is the MLS Business Model?*, SOCCERNOMICS (Apr. 23, 2015), <http://www.soccernomics-agency.com/?p=692> (pegging MLS's 2014 revenue at \$233 million); Smith, *supra* note 20 (estimating 2014 revenue at \$461 million and opining that MLS is breaking even).

144. Todd & Jewell, *MLS*, *supra* note 15, at 40-41.

145. See ASWATH DAMODARAN, *INVESTMENT VALUATION* 542-43 (3d ed. 2012) (discussing the advantage of using revenue multiples for firm valuation).

of all future income streams.¹⁴⁶ Accordingly, as revenues grow, the value of the business increases.¹⁴⁷ Applied to MLS, this approach requires determining the value of each team and the annual revenue that each team generates.

For example, a conservative approach would take the lowest team valuation and divide it by the highest revenue generated per team. In 2015, the Los Angeles Football Club paid \$110 million as an expansion fee to join the league (so this figure is a proxy for an individual team's value).¹⁴⁸ In 2014, *Forbes* estimated that teams averaged \$25.6 million in annual revenues.¹⁴⁹ Dividing \$110 million by \$25.6 million results in 4.3; in other words, an MLS team is worth 4.3 times its yearly gross revenues.¹⁵⁰ Because MLS differs from other professional sports leagues in that it owns all of the teams rather than franchise them, this 4.3 multiplier applies to the value of the entire league.¹⁵¹ Accordingly, any increase in revenue increases the value of MLS by 4.3, while a loss of potential revenue should be multiplied by 4.3 to determine the diminished value of the league. The most conservative estimate of revenue that would have been generated by a 2022 World Cup is \$294 million, \$60.8 million of which would have been realized in 2026.¹⁵² Applying the multiple of 4.3, MLS would have had a \$261 million increase in its business value in 2026.¹⁵³

Of note, that \$261 million diminution in MLS's business value is the most conservative estimate. For example, *Forbes* in 2014 valued MLS teams at \$157.2 million each, which based on \$25.6 million in annual revenue per team would produce a multiple of 6.1.¹⁵⁴ In that same year, Szymanski calculated that each team generates only \$12.9 million annually, which divided into the \$110 million franchise fee

146. *Id.* at 11.

147. Todd & Jewell, *MLS*, *supra* note 15, at 42.

148. *Id.* (citing Kevin Baxter, *Expansion L.A. Soccer Team Plans New Stadium on Sports Arena Site*, L.A. TIMES (May 17, 2015, 6:00 PM), <http://www.latimes.com/sports/soccer/la-sp-la-soccer-stadium-20150518-story.html>).

149. Smith, *supra* note 20.

150. Todd & Jewell, *MLS*, *supra* note 15, at 42.

151. *Id.* at 41-42.

152. *Id.* at 43.

153. *Id.*

154. *Id.* at 42.

would result in a revenue multiplier of 8.5.¹⁵⁵ These multiples could push the diminished business value to over a half-billion dollars (\$60.8 million x 8.5 is \$516,800,000) or even more, such as if MLS's lost revenues are higher, as they would be if based on \$73 of spending per fan. The next section discusses how MLS would need to win and enforce a judgment against Bin Hammam to recover those hundreds of millions of dollars.

B. Holding the Scheme's Mastermind Accountable: Suing Mohamad Bin Hammam in the U.S. for Tortious Interference and Enforcing the Judgment in Qatar

Litigation is never certain, and transnational litigation raises additional questions regarding jurisdiction, choice of law, and recognition and enforcement of money judgments.¹⁵⁶ MLS could nevertheless sue Bin Hammam in New York for tortious interference with prospective economic advantage and enforce the judgment against him in Qatar.¹⁵⁷

FIFA has its own rules and procedures concerning corruption, including a mandatory internal dispute process to enforce its rules.¹⁵⁸ One concern is that a U.S. court might dismiss the lawsuit and require the parties to pursue arbitration.¹⁵⁹ This is unlikely for several reasons. First, many FIFA rules about corruption apply to on-field play rather than to off-the-field administrative issues.¹⁶⁰ Second, FIFA rules do not

155. *Id.*

156. *Id.* at 50-51.

157. *See id.* at 50 ("MLS has a reasonable chance of asserting personal jurisdiction over Bin Hammam, proving every element of the tort, and enforcing the judgment against him.").

158. *See* FIFA STATUTES, *supra* note 5, arts. 51-52. The FIFA Statutes establish a Disciplinary Committee and an Ethics Committee. *Id.* These committees are governed by the FIFA Disciplinary Code and the FIFA Code of Ethics, respectively. FIFA DISCIPLINARY CODE arts. 1-2 (2019); FIFA CODE OF ETHICS arts. 1-4 (2020). The FIFA Statutes mandate internal resolution and then recourse to the Court of Arbitration for Sport in Switzerland. FIFA STATUTES, *supra* note 5, arts. 56, 57, § 2.

159. Todd & Jewell, *Reclaiming*, *supra* note 48, at 262.

160. For example, the Disciplinary Code prohibits manipulation of matches and competitions. FIFA DISCIPLINARY CODE, *supra* note 158, at art. 18, §1. In the context of that Code, the prohibition likely applies to competitive corruption that affects the outcome of a competition rather than organizational corruption, such as choosing a

allow for the type of remedy that MLS would seek, namely a money judgment for lost profits and diminished business value.¹⁶¹ Third, from a practical standpoint, FIFA has banned Bin Hammam for life and so he cannot be compelled to appear before FIFA dispute bodies.¹⁶²

Assuming MLS would bring suit in New York City because it is headquartered there,¹⁶³ the next question is whether a New York court could exercise jurisdiction over Bin Hammam. Even if Bin Hammam has never travelled to New York, a New York court would have personal jurisdiction over him under the effects test of *Calder v. Jones*.¹⁶⁴ Bin Hammam's plot targeted the U.S. because the QFA could win the bid only if it prevailed over the USSF, and MLS felt and will continue to feel the effects of this tortious conduct in the U.S., and more specifically, in New York.¹⁶⁵ As a voting ExCo member, Bin Hammam would have known that MLS participated in the bid process and that a

host city. See Andrew Spalding et al., *From the 2014 World Cup to the 2016 Olympics: Brazil's Role in the Global Anti-Corruption Movement*, 21 SW. J. INT'L L. 71, 77 (2014) (analyzing earlier edition of the Disciplinary Code).

161. For example, the Disciplinary Code sanctions for natural persons include warnings, reprimands, fines, the return of awards, the withdrawal of a title, suspensions, and bans. FIFA DISCIPLINARY CODE, *supra* note 158, art. 6, §§1-2. The Ethics Code likewise imposes warnings, fines, bands, social work, and the return of awards (which are likely awards like trophies). FIFA CODE OF ETHICS, *supra* note 158, art. 7, §1; see Todd & Jewell, *Reclaiming*, *supra* note 48, at 265. The FIFA Statutes allow for these same sanctions and say nothing about money judgments. FIFA STATUTES, *supra* note 5, art. 55.

162. See HANS JOACHIM ECKERT, STATEMENT OF THE CHAIRMAN OF THE ADJUDICATORY CHAMBER OF THE FIFA ETHICS COMMITTEE ON THE REPORT ON THE INQUIRY INTO THE 2018/2022 FIFA WORLD CUP BIDDING PROCESS PREPARED BY THE INVESTIGATORY CHAMBER OF THE FIFA ETHICS COMMITTEE 18 (2014), http://www.fifa.com/mm/document/affederation/footballgovernance/02/47/41/75/statementchairmanadjcheckert_neutral.pdf (describing how the Ethics Code in force at that time empowered the FIFA Ethics Committee to compel current FIFA officials to cooperate with the Garcia investigation but noting that the Committee could gain only voluntary cooperation from former FIFA ExCo members).

163. Todd & Jewell, *MLS*, *supra* note 15, at 50.

164. *Calder v. Jones*, 465 U.S. 783, 791 (1984) (holding that jurisdiction over petitioners in California was proper “because of their intentional conduct in Florida calculated to cause injury to respondent in California.”).

165. See *id.* at 788-90. See JACK H. FRIEDENTHAL ET AL., CIVIL PROCEDURE 141 (4th ed. 2005) (claiming that when an intentional tort is involved, the “defendant [is] on clear notice that by acting in a certain way[] he could be haled into a court outside of his home state[]”).

2022 World Cup USA would have a tremendous benefit for MLS. Accordingly, he should “reasonably anticipate being haled into court”¹⁶⁶ in New York, which is home to the U.S. bid committee and is where MLS resides.

However, a New York court will not necessarily apply New York law.¹⁶⁷ After all, the plaintiff MLS is from New York, which is also the place of injury and location of some tortious acts like wiring money. The defendant Bin Hammam is from Qatar, where he arranged for trips and payments and also hosted a junket where African officials were allegedly bribed. Furthermore, FIFA is headquartered in Switzerland, where the 2022 vote took place and where Bin Hammam met with Temarii to encourage him to appeal his suspension.¹⁶⁸ New York courts give “controlling effect to the law of the jurisdiction which, because of its relationship or contact with the occurrence or the parties, has the greatest concern with the specific issue raised in litigation.”¹⁶⁹ Because this action involves parties from different domiciles and tortious conduct in different countries, “the locus of the tort is the place of injury.”¹⁷⁰ That place is New York, where MLS will be deprived of World Cup-related revenues and profits and suffer a loss to its business

166. *Calder*, 465 U.S. at 790.

167. *Allstate Ins. v. Stolarz (In re Allstate)*, 613 N.E.2d 936, 937 (N.Y.1993) (writing that courts must engage in a conflict of law analysis when there is a conflict between U.S. and foreign law); see *Elmaliach v. Bank of China Ltd.*, 971 N.Y.S.2d 504, 516 (N.Y. App. Div. 2013), *remanded by* 24 N.Y.3d 1113 (N.Y. 2015) (noting parties’ disagreement over application of New York, Israeli, or Chinese law in tort lawsuit).

168. Todd & Jewell, *MLS*, *supra* note 15, at 52.

169. *Babcock v. Jackson*, 191 N.E.2d 279, 283 (N.Y.1963). If MLS were to sue in a federal court based on diversity jurisdiction, that court would apply the New York choice-of-law rules. See *Liberty Synergistics, Inc. v. Microflo Ltd.*, 718 F.3d 138, 151 (2d Cir. 2013) (citing *Klaxon Co. v. Stentor Electric Mfg. Co.*, 313 U.S. 487, 494–97 (1941)); see also 28 U.S.C. § 1332(a)(2) (2012) (providing for diversity jurisdiction in federal court when one of the parties is a non-resident alien).

170. *Schultz v. Boy Scouts of Am., Inc.*, 480 N.E.2d 679, 683 (N.Y. 1985) (holding that “when the defendant’s negligent conduct occurs in one jurisdiction and the plaintiff’s injuries are suffered in another, the place of the wrong is considered to be the place where the last event necessary to make the actor liable occurred”); see also *Devor v. Pfizer, Inc.*, 867 N.Y.S.2d 425, 428 (N.Y. App. Div. 2008) (recognizing that “[t]he locus of a tort is generally defined as the place of the injury” so that the laws of the state where plaintiffs lived, worked, and suffered injuries applied).

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values. Under New York common law, tortious interference with prospective economic relations requires the plaintiff to

allege that “(1) it had a business relationship with a third party; (2) the defendant knew of that relationship and intentionally interfered with it; (3) the defendant acted solely out of malice, or used dishonest, unfair, or improper means; and (4) the defendant’s interference caused injury to the relationship.”¹⁷¹

As to element one, though it was the USSF and not MLS who submitted a bid to FIFA for the right to host the 2022 World Cup, New York courts recognize that an entity in a close business relationship with a bidder (like a wholly owned subsidiary) can be a plaintiff.¹⁷² Element one is therefore satisfied because MLS is a professional league affiliated with the USSF and collaborates with the USSF on national team issues, and MLS was involved with the bid process.¹⁷³ The second element is also satisfied. As an ExCo member with a vote on the bids, Bin Hammam had access to FIFA regulations and the bidding materials. He also was aware of MLS’ role in the bid and the importance to MLS of hosting.¹⁷⁴ Bin Hammam’s acts of paying bribes and swapping votes also showed an intent to prevent the USSF from winning the bid.¹⁷⁵ The third element would be easily satisfied because bribery and other acts of corruption in business dealings are illegal under international, national and New York state law.¹⁷⁶

171. Kirch v. Liberty Media Corp., 449 F.3d 388, 400 (2d Cir. 2006) (quoting Carvel Corp. v. Noonan, 350 F.3d 6, 17 (2d Cir. 2003) (referring to the cause of action as the tort of “intentional interference with prospective economic relations”).

172. *Id.* at 401.

173. Todd & Jewell, *MLS*, *supra* note 15, at 53. See *Professional Leagues*, U.S. SOCCER, <http://www.ussoccer.com/about/affiliates/professional-soccer> (last visited Dec. 23, 2021) (listing Major League Soccer as a “professional soccer league[] affiliated with U.S. Soccer”); Murray, *supra* note 101 (writing that the host association and its affiliated leagues market World Cup preparations).

174. Todd & Jewell, *MLS*, *supra* note 15, at 54; see USA BID EVALUATION REPORT, *supra* note 64, at 29 (discussing the increased professionalism of MLS and how the U.S. is a “key market” for FIFA).

175. Todd & Jewell, *MLS*, *supra* note 15, at 54.

176. See, e.g., UN Convention Against Corruption art. 35, Dec. 9, 2003, S. TREATY DOC. NO. 109-6 (requiring parties to establish domestic laws that allow for individuals harmed by the corrupt acts of others in the private sector to pursue a legal remedy against the wrongdoer); ABA SECTION OF INT’L LAW, RECOMMENDATION 11,

The final element subdivides into two questions: were Bin Hammam's acts the but-for cause of preventing the USSF (and by extension, MLS) from consummating a "specific precontractual relation[]" that was more than just speculative, and did the loss of this relationship result in measurable damages? MLS has a solid argument that but for the acts of Bin Hammam, the USSF likely would have won the bid. Bin Hammam's voting pacts, bribes, and legal fees for Temarii brought nine votes to the QFA and denied the USSF another, which is more than the fourteen-to-eight final vote.¹⁷⁷ As discussed in the previous section, MLS also has evidence of its money damages. MLS was deprived of revenues that would have been generated by increased attendance related to the World Cup, and these revenues can support a showing of diminished business value and possibly of lost profits—both of which are recoverable in tortious interference lawsuits.¹⁷⁸ Such

18 (2005), http://www.americanbar.org/content/dam/aba/migrated/intlaw/policy/crimeextradition/conventioncorruption08_05.authcheckdam.pdf (last visited Oct. 17, 2016) (reporting that the United States fulfills its obligations under the UN Convention Against Corruption through causes of action based on common law tortious interference); N.Y. Penal Law § 180.00 (2016) (making commercial bribery a Class A misdemeanor).

177. Todd & Jewell, *MLS*, *supra* note 15, at 55-56.

178. Prevailing plaintiffs in a tort cause of action are entitled to consequential damages, which can include lost profits and diminution of business value. *See e.g.*, DAN B. DOBBS, *THE LAW OF TORTS* 1297 (2000) (writing that "the plaintiff can recover all proximately caused damages" in tortious interference cases); 16 LEE S. KREINDLER ET AL., *NEW YORK PRAC.*, N.Y. *LAW OF TORTS* § 21:107 (2016) ("In an action for business torts . . . the appropriate measure of damages is the amount of loss sustained by the plaintiff, including lost opportunities for profit, or stated differently, the amount which the plaintiff would have made except for the defendant's wrong."); *Robehr Films, Inc. v. Am. Airlines, Inc.*, No. 85 Civ. 1072 (RPP), 1989 WL 111079 *5 (S.D.N.Y. Sept. 19, 1989) (stating that, "[u]nder Texas law, damages for diminution in value of a business are . . . only recoverable in tort.") (internal citations omitted); *Grey Line Auto Parts, Inc. v. Snead (In re Snead)*, 1 B.R. 551, 556-57 (Bankr. E.D. Va. 1979) (quoting 25 C.J.S. *Damages* §167 (2012)) (writing that, in tortious interference case, "[w]here a regular and established business is injured, interrupted, or destroyed, the measure of damages is the diminution in value of the business by reason of the Wrongful Act, with interest"); *Texaco, Inc. v. Pennzoil Co.*, 729 S.W.2d 768, 860-61 (Tex. App. 1987) (allowing recovery of the cost savings plaintiff would have effected by having the assets of the company it sought to acquire). This last element of damages is also relevant to the question of whether New York's three-year statute of limitations bars the lawsuit. *See Kronos, Inc. v. AVX Corp.*, 612 N.E.2d 289, 291-92 (N.Y. 1993) (noting the three-year statute of limitations for

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economic evidence, usually presented as expert testimony based upon business records and recognized statistical techniques like regression analysis, is typical in complex commercial litigation, including in tortious interference lawsuits.¹⁷⁹

Because most of Bin Hammam’s assets are likely located in Qatar—that is, his country of residence as well as the location of his construction company, KEMCO, which he owns as a sole proprietor—the New York money judgment will need to be recognized and enforced in Qatar.¹⁸⁰ Qatar’s Civil and Commercial Procedure Law requires two steps: (1) a finding of reciprocity followed by (2) verification that the courts of Qatar do not have sole jurisdiction over the dispute, that the litigants received due process, that the judgment is *res judicata* in the issuing court, and that the judgment does not contravene the public policy of Qatar.¹⁸¹ The reciprocity finding should be a low hurdle

tortious interference lawsuits). A tort cause of action accrues only “when all elements of the tort can be truthfully alleged in a complaint.” *Id.* at 292. For MLS, this is 2022, when it would start losing attendance and related revenues. *See City Store Gates Mfg. Corp. v. Empire Rolling Steel Gates Corp.*, 979 N.Y.S.2d 606, 607-08 (N.Y. App. Div. 2014) (allowing tortious interference with prospective business opportunity claims to be brought more than three years after the acts constituting interference).

179. John W. Hill et al., *Increasing Complexity and Partisanship in Business Damages Expert Testimony: The Need for a Modified Trial Regime in Quantification of Damages*, 11 U. PA. J. BUS. L. 297, 352 (2009) (“The use of multiple regression analysis, a particularly powerful statistical methodology, has now become reasonably common in business damages cases and has gained considerable acceptance by the courts.”); *see Inter Med. Supplies, Ltd. v. EBI Med. Sys., Inc.*, 181 F.3d 446, 461–63 (3d Cir. 1999) (allowing economic expert testimony in tortious interference lawsuit in a case applying New Jersey law).

180. Todd & Jewell, *MLS*, *supra* note 15, at 59. *See, e.g., About Us*, KEMCO GROUP, <http://www.kemco-qatar.com/AboutUs.html> (last visited Feb. 26, 2022) (“Since 1985 KEMCO became a Sole Proprietorship owned by Mr. Mohammed Bin Hammam Al Abdulla.”); *see id.* (demonstrating KEMCO’s capital); BLAKE AND CALVERT, *supra* note 12, at 6 (referring to Bin Hammam’s “Doha mansion”); *id.* at 11–15 (describing how Bin Hammam earned billions as construction in Doha boomed along with Qatar’s oil and gas revenues); Mitchell F. Crusto, *Extending the Veil to Solo Entrepreneurs: A Limited Liability Sole Proprietorship Act (LLSP)*, 2001 COLUM. BUS. L. REV. 381, 382–83, 387 (2001) (writing that the business assets of a sole proprietorship are the exclusive property of the sole proprietor rather than existing as a separate entity like a corporation or limited liability company).

181. LAW NO. 13 art. 379 (1990) (Qatar) (requiring that foreign judgments be executed “under the same conditions provided for in the law of the said foreign country for the execution of judgments and orders passed in the State”); *id.* at art. 380

because New York gives foreign judgments the same full faith and credit as another state's judgments,¹⁸² and because at least one court has stated that the policy behind New York recognition law is the "generous" enforcement of foreign money judgments.¹⁸³

Nor should the verification factors prevent recognition and enforcement of the judgment,¹⁸⁴ though two of them are worth noting. First, Qatar is not party to the Hague Service Convention,¹⁸⁵ so MLS would need to serve Bin Hammam through procedures recognized by Qatari law such as letters rogatory.¹⁸⁶ Second, Qatari law is a mixture of civil statutes and Islamic *shari'a*.¹⁸⁷ Because there is some doubt

(requiring the verification of several factors before a Qatari court executes a foreign judgment). All quotations of Qatari civil codes are to the English-language versions posted on the *Qatar Legal Portal (Al Meezan)*, which is maintained by the Qatar Ministry of Justice. *FAQ, QATAR LEGAL PORTAL (AL MEEZAN)*, <http://www.almeezan.qa/CustomPage.aspx?id=6&language=en> (last visited Jan. 1, 2022).

182. Todd & Jewell, *MLS*, *supra* note 15, at 60 (citing N.Y. C.P.L.R. §§ 5302–03 (MCKINNEY 2016)).

183. *Chevron Corp. v. Camacho Naranjo*, 667 F.3d 232, 239 (2d Cir. 2012) (quoting *Galliano, S.A. v. Stallion, Inc.*, 930 N.E.2d 756, 758 (N.Y. 2010)).

184. Todd & Jewell, *MLS*, *supra* note 15, at 60–65.

185. *See HCCH Members*, Hague Conference on Private International Law (HCCH), <https://www.hcch.net/en/states/hcch-members> (last visited Feb. 26, 2022) (for a list of the current HCCH members).

186. Convention on the Service Abroad of Judicial and Extrajudicial Documents in Civil or Commercial Matters, art. 5, Nov. 15, 1965 ("The Central Authority of the State addressed shall itself serve the document or shall arrange to have it served by an appropriate agency, either - *a*) by a method prescribed by its internal law for the service of documents in domestic actions upon persons who are within its territory, or *b*) by a particular method requested by the applicant, unless such a method is incompatible with the law of the State addressed."); *see also* FED. R. CIV. P. 4(f)(2)(B) (providing for service by letter rogatory "if there is no internationally agreed means" of service on an individual outside the United States); RALPH H. FOLSOM ET AL., *PRINCIPLES OF INTERNATIONAL BUSINESS TRANSACTIONS* 919–20 (West Acad. Pub., 3d. ed. 2013) (writing that service of process that is not recognized by a foreign country might make the resulting judgment unenforceable in that country).

187. Minas Khatchadourian, *Conducting an ICC Arbitration in Qatar: A Few Legal Safeguards*, 18 No. 1 IBA ARB. NEWS, Feb. 2013, at 32; *see* LAW NO. 22 art. 1(1) (2004) (Qatar) ("The statutory provisions shall apply, expressly or impliedly, to relevant issues dealt with by the provisions herein."); *id.* art. 1(2) ("Where there is no statutory provision, the Judge shall rule according to the relevant provision of the Islamic *Shariah*, if any.").

about whether tortious interference is recognized under *shari'a* law,¹⁸⁸ that raises the question of whether a tortious interference judgment is against Qatari public policy.

The answer is likely “no.”¹⁸⁹ After all, the Qatar Civil Code has a broad provision regarding tortious conduct,¹⁹⁰ and Qatari unfair competition law criminalizes bribery and other collusive practices.¹⁹¹ In addition, some experts opine that *shari'a* does recognize torts beyond those covering injury to persons or tangible property, such as *Ghasb*, the tort of usurpation that allows for the recovery of damages from persons who behave tortiously in a contract situation.¹⁹² While *shari'a* might limit the imposition of post-judgment interest and punitive damages,¹⁹³ MLS would likely be able to enforce a New York judgment against Bin Hammam for tortious interference.

188. Compare, e.g., MAHEER M. DABBAH, *COMPETITION LAW AND POLICY IN THE MIDDLE EAST* 23 (Cambridge U. Press 2007) (opining that *sharia* law must “respect and protect” the right of individuals “to engage in trade and as such to earn an income and make a profit”), with *Bridas Corp. v. Unocal Corp.*, 16 S.W.3d 893, 902-03 (Tex. App. 2000) (finding that *sharia* law does not recognize a cause of action for tortious interference).

189. We add the modifier “likely” because the determination of Islamic law involves the consultation of several sources (including the *Q'uran*) to derive rules for the resolution of a dispute. Peter W. Beauchamp, Note, *Misinterpreted Justice: Problems with the Use of Islamic Legal Experts in U.S. Courts*, 55 N.Y.L. SCH. L. REV. 1097, 1102 (2011). These interpretations add to the general corpus of the law but are not considered precedential in a common law sense, *id.* at 1102–03. See also *Saudi Basic Indus. Corp. v. Mobil Yanbu Petrochemical Co.*, 866 A.2d 1, 30–31 (Del. 2005) (recognizing that *shari'a* law does not have *stare decisis* and that the process of *ijtihad* allows judges to “identify a ‘spectrum of possibilities on any given question, rather than a single “correct” answer.”). Scholar-jurists can reach different conclusions that are all nonetheless right since—from an Islamic perspective—it would be blasphemy to presume to know God’s law with certainty. Beauchamp, *supra* at 1099, 1103.

190. LAW NO. 22 art. 199 (2004) (Qatar) (“Any person who commits an act that causes damage to another party shall be liable to indemnify such damage.”).

191. LAW NO. 19 art. 3(4) (2006) (Qatar).

192. Jay M. Zitter, Annotation, *Application, Recognition, or Consideration of Islamic Law by Courts in the United States*, 82 A.L.R.6th 1, 19 (2013); see *Saudi Basic Indus. Corp.*, 866 A.2d at 6–7, 7 n.3 (affirming trial court’s application of *ghasb* in support of \$416.8 million award related to SABIC’s overcharging its joint venture partners).

193. LAW NO. 22 art. 199 (2004) (Qatar); Khatchadourian, *supra* note 187, at 35.

III. THE (IN)ADMISSIBILITY OF ECONOMICS EXPERT TESTIMONY AND MLS'S LAWSUIT

In complex business litigation, the use of economic expert testimony based upon models using sophisticated statistical techniques like regression analysis has become “ubiquitous.”¹⁹⁴ Courts therefore regularly admit—and even “expect”—sophisticated statistical models.¹⁹⁵ Opponents have nevertheless had success in having the evidence excluded by challenging the assumptions that underly the model. Because MLS would seek to prove damages through economic expert testimony that relies on studies of attendance of European soccer leagues, a court might decline to admit such testimony if it finds the assumption that European and American soccer products and markets are too similar to be dubious. We therefore attempted to demonstrate that reliance on these studies was realistic by performing our own data-based study of MLS attendance related to another soccer mega-event: the 2016 Copa America.¹⁹⁶ This study did show a modest attendance increase in the seasons leading up to and including the tournament, but the results also raised new questions regarding how U.S. fans respond to a soccer mega-event.

194. Rebecca Haw Allensworth, *Law and the Art of Modeling: Are Models Facts?*, 103 GEO. L.J. 825, 835 (2015).

195. Kaye, *supra* note 127, at 1986 (“[T]hrough the efforts of economists and statisticians in a broad spectrum of cases, courts became exposed to—and came to expect—more sophisticated and potentially more useful statistical models.” (citations omitted)); Todd & Jewell, *Dubious*, *supra* note 27, at 281 (writing that “courts routinely admit into evidence expert testimony based on economic models”).

196. Todd & Jewell, *Copa America*, *supra* note 17, at 662.

A. MLS's Economic Evidence

Whether to show employment discrimination,¹⁹⁷ prove antitrust violations,¹⁹⁸ or measure business damages,¹⁹⁹ “[e]conomic models remain vital because a party can use them to make sense of a massive body of evidence.”²⁰⁰ Testimony based upon models using techniques like regression analysis can account for multiple variables, vast amounts of data, and past and future trends spread over years (if not decades).²⁰¹ By the 1980s, econometrics—which is the use of sophisticated models that apply statistics to analyze economic data—had emerged not only as the dominant branch of economics but also as a routine part of complex litigation.²⁰² The corollary to the widespread reliance on economic expert testimony is that opponents routinely fight to have this testimony excluded.²⁰³ Often, they do not challenge the scientific aspects of the model but rather its artistic elements.²⁰⁴ Of most

197. *E.g.*, Joni Hersch & Blair Druhan Bullock, *The Use and Misuse of Econometric Evidence in Employment Discrimination Cases*, 71 WASH. & LEE L. REV. 2365, 2373–76 (2014) (describing how economics experts can correlate factors like race or gender with adverse employment actions); Marc Chase McAllister, *Subgroup Analysis in Disparate Impact Age Discrimination Cases: Striking the Appropriate Balance Through Age Cutoffs*, 70 ALA. L. REV. 1073, 1080 (2019) (claiming that employment disparate impact claims, particularly for age discrimination, require evidence of statistical disparity between the plaintiff subgroup and comparators).

198. *E.g.*, Camden Hutchison, *Law and Economics Scholarship and Supreme Court Antitrust Jurisprudence, 1950-2010*, 21 LEWIS & CLARK L. REV. 145, 151 (2017) (“[A]ntitrust trials in district courts . . . regularly include the participation of economists as expert trial witnesses.”).

199. *E.g.*, Mark A. Allen, Robert E. Hall & Victoria A. Lazear, *Reference Guide on Estimation of Economic Damages*, in FED. JUDICIAL CTR., REFERENCE MANUAL ON SCIENTIFIC EVIDENCE 429–31 (3d ed. 2011) (describing the basics of calculating damages, including how regression analysis performed by experts is typical).

200. Christopher P. Guzelian & Jeff Todd, *The Legal Relevance of Economics*, 93 TEMPLE L. REV. 1, 11 (2020).

201. Todd & Jewell, *Dubious*, *supra* note 27, at 285-88.

202. Guzelian & Todd, *supra* note 200, at 10.

203. Hill et al., *supra* note 179, at 310–11 (writing that “district courts are taking their gatekeeper role seriously in the post-*Daubert* era,” including by considering opponents’ challenges to expert testimony regarding damages).

204. Compare David H. Kaye & David A. Freedman, *Reference Guide on Statistics*, in REFERENCE MANUAL ON SCIENTIFIC EVIDENCE 214 (3d ed. 2011) (writing that statistical techniques like regression analysis are well-accepted scientific

relevance to this article are those cases where courts exclude testimony because of the expert's failure to account for differences in product quality²⁰⁵ or in the markets in which a product or service is offered.²⁰⁶

1. The Exclusion of Economics Expert Testimony Because of Questionable or Unexplained Assumptions

“Courts have shown skepticism when economists opine that American and European consumers will respond to the same product in the same way.”²⁰⁷ In *Schonfeld v. Hilliard*, plaintiffs sued for fraud and breach of contract for the failure of their network that would use BBC programming.²⁰⁸ In affirming summary judgment for the defendant, the Circuit Court noted the “seemingly endless list of assumptions upon which [the] expert relied in determining lost profits” and the expert's failure to account for market risks.²⁰⁹ One assumption in particular was

methods that satisfy the federal evidentiary standards for admissibility), with Robert M. Lloyd, *Proving Lost Profits after Daubert: Five Questions Every Court Should Ask Before Admitting Expert Testimony*, 41 U. RICH. L. REV. 379, 399-400 (2007) (writing that “litigants have often been able to exclude expert testimony by arguing that the expert's opinion was based on unfounded assumptions”).

205. *E.g.*, *Freeland v. AT&T Corp.*, 238 F.R.D. 130, 148-49 (S.D.N.Y. 2006) (faulting expert in case alleging illegal tying for not accounting for changes in the quality of products, namely price differences related to the switch from analog to digital phones and the incorporation of cameras into phones); *In re Live Concert Antitrust Litigation*, 863 F. Supp. 2d 966, 978-79 (C.D. Cal. 2012) (finding that expert in antitrust case for concert ticket sales failed to account for two major variables, including changes in artist quality during the relevant time period).

206. *E.g.*, *Home Placement Serv., Inc. v. Providence Journal Co.*, 819 F.2d 1199, 1205 (1st Cir. 1987) (concluding that using offices in Nashville as a yardstick for damages at Providence franchise failed to account for differences between the markets); *American Booksellers Assoc. v. Barnes & Noble, Inc.*, 135 F. Supp. 2d 1031, 1042 (N.D. Cal. 2001) (writing that, even if expert testimony were admitted in antitrust case, online and mail-order defendants would have been entitled to summary judgment since the expert's model relied upon competition between “physical stores in the same geographic location”). *See id.* at 1041-42 (finding that the model was “entirely too speculative to support a jury verdict” because the “model contains entirely too many assumptions and simplifications that are not supported by real-world evidence”).

207. Todd & Jewell, *Copa America*, *supra* note 17, at 646 (citing *Schonfeld v. Hilliard*, 218 F.3d 164, 173 (2d Cir. 2000)).

208. 218 F.3d at 168-70.

209. *Id.* at 172-74.

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that the new business entity would have nine-figure profits despite introducing “a *new product*, the ‘Americanized’ version [of BBC international news], into a *new market*, the United States.”²¹⁰

Similarly, in *Lithuanian Commerce Corp. v. Sara Lee Hosiery*,²¹¹ a Lithuanian distributor sued a U.S. manufacturer for allegedly defective pantyhose.²¹² The court ruled the distributor’s expert’s testimony inadmissible because of “dubious assumptions” that included the failure to distinguish between former and current clients of Sara Lee and the comparison of the plaintiff to two domestic distributors that were not subject to the same tax, tariff, and import restrictions.²¹³ Of note, the court faulted the expert for his reliance on a study of U.S. women’s purchasing patterns to make his prediction about the amount of purchases that Baltic women would have made.²¹⁴ Commentators have suggested that such reliance upon a single study is problematic because an error or statistical fluke can mislead the modeler.²¹⁵

2. *The Uncertain Admissibility of MLS’s Economic Evidence*

Despite the general acceptance of econometric evidence in complex litigation, opponents often challenge the assumptions underlying such evidence as unrealistic, and courts sometimes decline to admit this testimony. Because MLS’s tortious interference case would hinge primarily upon one previous study of attendance at European soccer matches, a key question is whether the following assumption is a realistic one: U.S. fans of MLS will respond to a World Cup the same way that European fans of the Premier League (England) or Bundesliga (Germany) do. The answer is not clear-cut.

On the “yes” side, some pundits have opined that MLS is the seventh-best league in the world, which ranks ahead of some prominent

210. *Id.* at 171, 173. (Emphasis in original).

211. 179 F.R.D. 450 (D.N.J. 1998).

212. *Id.* at 454.

213. *Id.* at 460.

214. *Id.* at 460-61.

215. Kevin A. Kordana & Terrance O’Reilly, *Daubert and Litigation-Driven Econometrics*, 87 VA. L. REV. 2019, 2026 (2001) (quoting *The New NBER: Has Scholarship Been Hurt?*, BUS. WK., Oct. 6, 1980, at 95 (quoting Feldstein)).

European leagues like Ligue 1,²¹⁶ so the quality of the MLS “product” is good. Likewise, the national markets for sports are also similar: the U.S., like England, France, and Germany, is a developed country with plenty of fans willing to spend money on sports.²¹⁷ Indeed, MLS attendance ranks sixth worldwide and is therefore comparable to European professional soccer attendance.²¹⁸ In one sense, the U.S. (and Canadian) market is better because there is one Tier One league for a combined population of over 365 million fans,²¹⁹ while the “big five” leagues of Europe each operate in markets ranging from 47 to 80 million.²²⁰ Plus, rather than promotion and relegation as in Europe, MLS is like other U.S. sports with playoffs that ultimately lead to a champion.²²¹ The World Cup is also structured this way, with round-robin group play followed by knockout games, so fans excited by a World Cup would find a similar competition structure in MLS.²²²

Factors suggesting that the answer is “no” are at least as strong. While the quality of MLS is good overall, its individual players are a

216. Prince-Wright, *supra* note 33.

217. The U.S. has the highest GDP in the world (and Canada is ninth), while the nations of the “Big Five” European leagues are all ranked fourteenth or higher. See Caleb Silver, *Ranking the Richest Countries in the World*, INVESTOPEdia (Dec. 22, 2021), <https://www.investopedia.com/insights/worlds-top-economies/> (ranking the U.S. (1), Germany (4), the UK (5), France (7), Italy (8), Canada (9), and Spain (14)). The Big Five European leagues and the NFL, Major League Baseball, National Basketball Association, and National Hockey League are all in the top ten for revenue generation. Garrett Parker, *10 Sports Leagues That Bring in the Most Money Worldwide*, MARKET INC. (last viewed Dec. 24, 2021), <https://moneyinc.com/sports-that-bring-in-the-most-money-worldwide/>.

218. Remo Decurtins, *Major League Soccer’s Exceptionalism in FIFA’s Transfer System: For How Much Longer?*, 27 MARQ. SPORTS L. REV. 331, 336 (2017) (writing that MLS ranks sixth globally in terms of attendance as of 2016).

219. *World Factbook: Country Comparisons—Population*, CENTRAL INTELLIGENCE AGENCY, <https://www.cia.gov/the-world-factbook/field/population/country-comparison> (last visited Dec. 24, 2021) (listing the U.S. population as 334,998,398 and Canadian population as 37,943,231).

220. *Id.* (listing the populations of Germany (79,903,481); France (68,084,217); the UK (67,081,000); Italy (62,390,364); and Spain (47,260,584)).

221. Taylor, *supra* note 124, at 6-7.

222. Todd & Jewell, *Copa America*, *supra* note 17, at 651.

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mix of up-and-comers and aging stars.²²³ With payrolls that are three to ten times larger than those of MLS,²²⁴ teams in the top European leagues feature the world's top players in their prime (indeed, the rosters of World Cup national teams are typically loaded with players from the "big five" European leagues).²²⁵ Those European leagues therefore have the allure of individual stars to attract fans.²²⁶ Another difference is the age of the respective products: the top European leagues each have a legacy stretching back over a century, while the quarter-century-old MLS still relies on expansion to generate fan interest.²²⁷ Turning to the respective markets, soccer is far and away the top team sport in European countries (and the world),²²⁸ so the Tier One leagues have little competition for fan interest. By contrast, the MLS season is largely concurrent with that of Major League Baseball and overlaps with those of the National Hockey League (NHL) and the National Basketball Association (NBA) (and to a lesser extent, the

223. Mark W. Lenihan, Comment, *Major League Soccer Scores an Own Goal: A Successful Joint Venture Attains Market Power in an International Sport*, 62 DEPAUL L. REV. 881, 908-09 (2013).

224. The average player salary in MLS is \$410,730. SPORTING INTELLIGENCE, GLOBAL SPORTS SALARIES SURVEY 90 (2019), <https://www.globalsportssalaries.com/>. The average player salaries in the big five leagues range from \$1,298,449 for Ligue 1 to \$3,966,580 for the English Premier League. *Id.* at 54, 66, 70, 74, 78.

225. Todd & Jewell, *Copa America*, *supra* note 17, at 655-56 (citing *Which Leagues and Clubs Have the Most Players at the 2014 World Cup?*, GOAL.COM (June 5, 2014), <http://www.goal.com/en/news/1717/editorial/2014/06/05/4861228/which-league-and-clubs-have-the-most-players-at-the-2014>) (describing how only 22 MLS players were on 2014 World Cup rosters while the big five leagues each had several dozen: EPL (105), Serie A (81), Bundesliga (73), La Liga (62), and Ligue 1 (47)).

226. See Jewell, *supra* note 129, at 241 (finding a correlation between superstars and soccer attendance).

227. Todd & Jewell, *Copa America*, *supra* note 17, at 658-59.

228. See Szymanski & Drut, *supra* note 24, at 726 ("Soccer is generally the dominant sport in the host nation of the European Championship and often for the World Cup (Japan, South Korea, and the United States being recent exceptions)."); Tyler A. Coppage, Comment, *Taking the Training Wheels Off MLS: Why the Single Entity Antitrust Exemption Should No Longer Apply*, 25 MARQ. SPORTS L. REV. 545, 545 (2015) ("Soccer is the most popular sport in the world . . .").

NFL)—all of which are the top leagues worldwide for their respective sports.²²⁹

One final consideration is that, at the time of our 2016 article, the Drut and Szymanski study upon which we relied had not (yet) been published in a peer-reviewed journal, which is a factor in admissibility.²³⁰ Additionally, models based upon a single study are not necessarily flawed, but their results are viewed with suspicion.²³¹ While another study also showed a World Cup bump, that was limited only to the two seasons following the tournament rather than five.²³² Further, those authors emphasized the fact that the host nation France had won that World Cup, so hosting alone may not account for an attendance increase.²³³ The authors even cautioned against “generalizing this conclusion to other countries . . . because the event study conducted in this article deals with an exceptionally positive sporting event.”²³⁴

In the proposed tortious interference lawsuit, MLS must rely on an economics expert for evidence that the USSF losing the 2022 World Cup hosting rights caused harm to MLS. That expert’s testimony would be based on a model of a World Cup-related bump in attendance that was found in a previous study of European soccer. If the judge finds that it is not reasonable to rely on that study to predict American fan responses, then the judge will decline to admit the only evidence that

229. Todd & Jewell, *Copa America*, *supra* note 17, at 654-55; *see* Taylor, *supra* note, at 124 (calling the NFL, NBA, MLB, and NHL “the top destinations for athletes in their sports” where “American fans are accustomed to . . . top athletes assembled in one place”).

230. *Daubert v. Merrell Dow Pharm.*, 509 U.S. 579, 593 (1993); *but see id.* (recognizing that “in some instances well-grounded but innovative theories will not have been published”).

231. Todd & Jewell, *Copa America*, *supra* note 17, at 661; *see, e.g.*, *Lithuanian Commerce Corp. v. Sara Lee Hosiery*, 179 F.R.D. 450, 460-61 (D.N.J. 1998) (faulting expert who relied upon study of U.S. purchasers in case involving sales lost in Lithuania); *Kordana & O’Reilly*, *supra* note 216, at 2026 (writing that a model’s reliance on a single study increases the chances of being misled by an error or statistical fluke).

232. Falter et al., *supra* note 14, at 24.

233. *See id.* at 21–22 (testing the “impact of a World Cup *victory* on the demand for soccer in this country” and opining that the World Cup effect may be the result of three commingled factors: “a hosting effect, a victory effect, and an infrastructure effect.”) (emphasis added).

234. *Id.* at 37.

proves Bin Hammam’s tortious interference caused harm and that shows the amount of money damages. If this testimony is excluded, then MLS cannot prevail.²³⁵

B. (Dis)Confirming the MLS Attendance Bump with Data

One way that an economic modeler’s assumption is realistic is if it is plausible and therefore credible.²³⁶ As discussed in the previous subpart, there are several questions about the plausibility of comparing MLS with European leagues. Another way that an assumption is realistic, however, is if it is confirmed by evidence.²³⁷ In an article that followed our 2016 article, we therefore considered whether we could find evidence to support application of the Drut and Szymanski study to MLS. Recall that the Drut and Szymanski study considered the impact on professional soccer attendance not only of a nation hosting a World Cup but also of hosting a European Championship.²³⁸ In 2016, the U.S. hosted a similar tournament, the Copa America Centenario, which featured top national teams from North and South America and

235. Guzelian & Todd, *supra* note 200, at 16 (claiming that when an economics “expert provides the only proof of a key element of a plaintiff’s case,” then the defendant who prevails in a *Daubert* motion “often wins summary judgment since the plaintiff can no longer meet its burden.”).

236. *Id.* at 28 (citing Uskali Mäki, *Aspects of Realism about Economics*, 13 THEORIA 301, 304-05 (1998) [hereinafter Mäki, *Aspects*]); see Uskali Mäki, *Reorienting the Assumptions Issue*, in NEW DEVELOPMENTS IN ECONOMIC METHODOLOGY 236, 243 (Roger Backhouse ed., 1994) [hereinafter Mäki, *Reorienting*] (“A representation is realistic in one sense if it is plausible, and unrealistic if it is implausible. Plausibility is a matter of being believed by people.”); Robert Sugden, *Credible Worlds: The Status of Theoretical Models in Economics*, 7 J. ECON. METHODOLOGY 1, 25 (2000) (calling a model effective if “it describes a state of affairs that is *credible*, given what we know (or think we know) about the general laws governing events in the real world”).

237. Mäki, *Reorienting*, *supra* note 236, at 243 (“A representation may be regarded as realistic if it is testable and well confirmed by evidence in empirical tests.”). Phrased in the negative, if an assumption is controverted or disconfirmed by the record evidence, then it is unrealistic so that courts should decline to admit that testimony. Todd & Jewell, *Dubious*, *supra* note 27, at 313-14 (citing *Concord Boat Corp. v. Brunswick Corp.*, 207 F.3d 1039, 1046-47, 1056 (8th Cir. 2000)).

238. Drut & Szymanski, *supra* note 14, at 1-5.

the Caribbean.²³⁹ Since we already had data on MLS attendance (and student research assistants to help us gather additional data), we therefore set about determining whether there was a correlation between MLS attendance and the Copa America, which would thus bolster MLS's economic evidence for a potential tortious interference lawsuit.²⁴⁰

Our approach to the study was first to look at what MLS attendance would have been without a Copa America.²⁴¹ The data set included attendance information for every regular-season game starting in 2007 (the start of the "designated player era" of MLS when average player salaries increased dramatically) and ending with the conclusion of the 2016 season (we conducted our study in 2017).²⁴² The approach employed fixed-effect estimation to estimate club-specific effects, such as other sports entertainment and the potential fan base, and to control for differences in attendance related to factors like the visiting team, team quality, and the star-power of players.²⁴³ The results were adjusted to account for other factors that influence attendance demand like the month and day that a match was played because early- and late-season games and games played on weekends have higher attendance.²⁴⁴ The result of the OLS regression was that, from 2007 to 2016, MLS

239. Todd & Jewell, *Copa America*, *supra* note 17, at 663 (citing Stejskal, *supra* note 17) ("The Copa America is the CONMEBOL equivalent of the Euro Cup and typically features the national teams of its ten South American Members as well as . . . invited teams" from other confederations).

240. *Id.* at 662.

241. *Id.* at 665-66.

242. *Id.* at 665. See Dennis Coates, Bernd Frick, & R. Todd Jewell, *Superstar Salaries and Soccer Success: The Impact of Designated Players in Major League Soccer*, 17 J. SPORTS ECON. 716, 720 (2016) (writing that "MLS established the DP rule in 2007"); Jewell, *supra* note 129, at 242 ("MLS's DP rule is essentially an exemption to the salary cap. The rule allows teams to sign players of higher quality than would be possible under a hard cap, effectively expanding the pool of potential players and increasing the quality of the league overall."); *id.* at 240-41, 249 (reporting that a handful of marquee players had salaries in excess of the 2007 MLS team salary cap of \$2.1 million).

243. Todd & Jewell, *Copa America*, *supra* note 17, at 666-68. See PETER KENNEDY, A GUIDE TO ECONOMETRICS 293 (6th ed. 2008) (providing mathematical details on estimating fixed-effects models).

244. Todd & Jewell, *Copa America*, *supra* note 17, at 667-68. See Jewell, *supra* note 129, at 242-44 (discussing how factors like time of week and the month in which a match is played as affecting MLS attendance).

attendance increased each year by 270 fans per game (a 1.4% annual increase).²⁴⁵

We then analyzed attendance at games played after the announcement of the Copa America (May 2, 2016) through the conclusion of the 2016 MLS season (note that the tournament started June 3, 2016, so there were 731 games pre-Copa and 201 games post-Copa).²⁴⁶ Of the 932 total games played during this period, each had on average 917 more fans than other games during the sample.²⁴⁷ In an economic sense, this result is significant: 917 fans per game is a 4.8% increase and, thus, almost three times as large as attendance growth without the tournament.²⁴⁸ Further, the total number of additional fans during the Copa America period was 854,644, which—at \$73 of spending per fan—generated over \$63 million in revenue for MLS.²⁴⁹ This is a substantial increase compared to MLS’s total revenue in 2014 of \$461 million, and it was only part of total revenue based on Drut and Szymanski’s finding of a five-year post-tournament bump.²⁵⁰

Though the findings were significant, they may have raised more questions than they answered regarding MLS’s potential tortious interference lawsuit. For example, the bump of 4.8% was far lower than the 8-21% increases found by Drut and Szymanski,²⁵¹ which would mean far lower money damages. In addition, our study showed that some of this increase occurred prior to the Copa America, while Drut

245. Todd & Jewell, *Copa America*, *supra* note 17, at 668.

246. *Id.* at 664-65.

247. *Id.* at 668-69.

248. *Id.* at 669. Economic significance refers to the absolute magnitude of the implied causal relationship, in this case, the size of the impact of the Copa America on overall attendance. *See id.* (citing Steven T. Ziliak & Dierdre N. McCloskey, *Size Matters: The Standard Error of Regressions in the American Economic Review*, 33 J. SOCIO-ECONS. 527, 528 (2004) (discussing the difference between statistical significance and economic significance and concluding that “fit is *not the same thing* as scientific importance; a merely statistical significance cannot substitute for the judgment of a scientist and her community about the largeness or smallness of a coefficient”)).

249. *Id.*

250. *Id.* at 669-70. *See Smith*, *supra* note 20 (reporting MLS total 2014 revenue as \$461 million); Drut & Szymanski, *supra* note 14, at 2 (observing a five-year bump in professional league attendance following a soccer mega event).

251. Drut & Szymanski, *supra* note 14, at 2; *see id.* at 11 (observing that Tier One teams saw growth “around 3,900-4,400 per game after five years”).

and Szymanski found that the attendance bumps occurred in the five seasons following the tournament.²⁵² This could have meant that there was a modest pre-tournament bump with a larger post-tournament bump to follow—or that the bump was limited only to pre-Copa America matches and that there would be little if any attendance growth afterward. Consequently, we labeled our finding of a Copa America bump as “preliminary” because additional study that included data from later seasons would “better show the extent to which MLS attendance compares to the European leagues.”²⁵³

The need for additional study was heightened when Szymanski and Drut published their revised article in a peer-reviewed journal.²⁵⁴ For example, they differentiated the results by country and found that “the experience of host nations varies significantly”: some leagues had a steep jump at the start of the event or an upward trend over multiple seasons, but a third of the leagues had only a short-term spike around the event (including Serie A, which then decreased by over 5% following Italy’s hosting the World Cup in 1990) or none at all.²⁵⁵ Our finding of a 4.8% MLS Copa America bump might therefore be the dramatic start of a continuing increase in attendance—or only a temporary spike. Another important result was that South Korea had an 11% increase while Japan had a staggering 55.8% increase.²⁵⁶ Since these are both non-European nations where soccer is not the most popular sport,²⁵⁷ MLS might likewise see a dramatic increase following the Copa America. Conversely, because those nations had extremely low professional league attendance to start with (about 5,500 per

252. *Id.* at 20.

253. Todd & Jewell, *Copa America*, *supra* note 17, at 671-72.

254. Szymanski & Drut, *supra* note 24.

255. *Id.* at 730-32. In addition to Serie A, the leagues of Portugal (2004), South Africa (2010), and Poland/Ukraine (2012) had a spike around the tournament but no increase or even a decrease thereafter. *Id.* at 730. The English Premier League had no jump, trend, or spike around the 1996 World Cup. *Id.*; *see id.* at 728-29 (providing tables that list individual nation’s results).

256. *Id.* at 729.

257. *See id.* at 726 (calling Japan, South Korea, and the United States “recent exceptions” to the claim that “[s]occer is generally the dominant sport in the host nations”); *id.* at 737 (writing that Japan and South Korea “do not have a long history of success in soccer”).

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game),²⁵⁸ and because Japan's league was still in its infancy (having formed only nine years before the 2002 World Cup),²⁵⁹ those results may not be indicative of what MLS attendance could be.

Given the possibility that our Copa America study may have presaged explosive growth or was merely a temporary spike, we turned our attention to gathering and analyzing data for MLS in the seasons following the Copa America. Further, considering Szymanski and Drut's findings of results that differed by country, we decided to include a comparator league as a point of contrast that might shed additional light on MLS attendance. We chose France's Ligue 1 for several reasons: it is the only league whose attendance following a soccer mega-event has been studied in more than one article;²⁶⁰ it is comparable in quality to MLS;²⁶¹ its attendance data is publicly available (unlike that of the Japanese and Korean leagues, which were provided to Szymanski and Drut by other researchers);²⁶² its fans responded differently to two different tournaments (a steep jump following the 1998 World Cup versus a continuing trend following the 1984 Euro Cup);²⁶³ and it happened to host the European Championship the same summer that the U.S. hosted the Copa America.²⁶⁴ Our study is described in the next Part.

258. *Id.* at 729.

259. *K League*, KOREA FOOTBALL ASSOCIATION, <https://perma.cc/7PBC-8865> (stating that the predecessor to the professional K League, the Super League, was launched in 1983); *Ninety Years of the JFA*, JAPAN FOOTBALL ASSOCIATION, http://www.jfa.jp/eng/about_jfa/history/ [<https://perma.cc/DP2G-HNHE>] ("The J. League, the nation's first professional league, kicked off its first matches in 1993.").

260. Falter et al, *supra* note 14; Szymanski & Drut, *supra* note 24.

261. Prince-Wright, *supra* note 33.

262. MLS data is available on ESPN's website and on Transfermarkt. *Major League Soccer Scores*, ESPNFC, https://www.espn.com/soccer/scoreboard/_/league/usa.1 (last visited Dec. 26, 2021); TRANSFERMARKT, <https://transfermarkt.us> (last visited Dec. 26, 2021). Szymanski and Drut obtained the Japanese data from Professor Takeo Hirata and the Korean data from Jai-Ku Sun and Bungju Kang. Szymanski & Drut, *supra* note 24, at 742 n. 3.

263. Szymanski & Drut, *supra* note 24, at 732.

264. Todd & Jewell, *Copa America*, *supra* note 17, at 662-63.

IV. COMPARING THE U.S. AND FRANCE: FAN ATTENDANCE OF TIER
ONE SOCCER RELATED TO EACH NATION HOSTING AN
INTERNATIONAL SOCCER TOURNAMENT

Since fielding ten teams in its 1996 debut, MLS in the U.S. and Canada has grown to twenty-seven squads as of the 2021 season.²⁶⁵ From 2006 to 2016, MLS attendance increased by over 40%.²⁶⁶ In fact, in 2011, the average MLS per-game attendance surpassed that of the National Hockey League and the National Basketball Association.²⁶⁷ As MLS continues to grow in popularity, it is natural to compare the league to other professional soccer (or football, outside of English-speaking North America) leagues. For instance, consider reigning FIFA World Cup champion France,²⁶⁸ whose Ligue 1 is among the most financially successful leagues in the world: Ligue 1 reportedly generated revenue of \$1.8 billion in the 2017/18 season.²⁶⁹ MLS generates much less revenue than Ligue 1—*Forbes* reports that MLS revenue was approximately \$800 million in 2018²⁷⁰—and the average annual salary per player is over three times higher in Ligue 1 than in MLS.²⁷¹

265. *Id.* at 628-29; *Clubs*, *supra* note 69.

266. Jeff Carlisle, *MLS Sets Average Attendance Record in 2016 as Seattle Sounders Lead All Clubs*, ESPNFC (Oct. 24, 2016), <http://www.espnfc.us/major-league-soccer/story/2980505/mls-sets-average-attendance-record-in-2016-as-seattle-sounders-lead-all-clubs>; *see* Coppage, *supra* note 228, at 563 (characterizing the MLS levels of growth as “stunning”).

267. Jed Hughes, *NHL and NBA Get the Boot: MLS is Third Most Attended Sports League in America*, BLEACHER REPORT (Aug. 8, 2012), bleacherreport.com/articles/1290390-nba-and-nhl-get-the-boot-mls-is-the-3rd-most-attended-sports-league-in-america.

268. *See* 2018 FIFA World Cup Russia™, FIFA, <https://www.fifa.com/tournaments/mens/worldcup/2018russia>, (last visited Dec. 29, 2021) (listing France as the champion of the 2018 FIFA World Cup that was hosted in Russia).

269. *European Soccer’s “Big Five” Leagues Bring in Record €15.6bn*, SOCCEREX.COM (May 30, 2019), www.soccerex.com/insight/articles/2019/european-soccer-s-big-five-leagues-bring-in-record-156bn-in-201718.

270. Smith, *supra* note 20.

271. SPORTING INTELLIGENCE, *supra* note 224, at 90 (reporting MLS average salary as \$410,730); *id.* at 78 (reporting Ligue 1 average salary as \$1,298,449).

While the financials are very different for MLS and Ligue 1, the leagues are comparable in other measures. Some pundits rank the quality of MLS slightly ahead of Ligue 1,²⁷² and per-game attendance in the two leagues is similar, with top teams averaging close to 50,000 attendees while the teams toward the bottom draw around 10,000.²⁷³ These numbers reveal little about how the markets for men's soccer compare, however, because the differences in the leagues mean that fans from France might attend games for different reasons than do North Americans. For example, Ligue 1 was founded a century before MLS,²⁷⁴ so its best-attended home games are for established clubs like Olympique de Marseille and Paris St. Germain, while in MLS expansion teams like Atlanta United and Seattle Sounders often lead in home attendance.²⁷⁵ Another interesting commonality between MLS

272. Prince-Wright, *supra* note 33.

273. *Compare USA » Major League Soccer 2019 » Attendance » Home Matches*, World Football, <https://www.worldfootball.net/attendance/usa-major-league-soccer-2019/1/> (last visited Dec. 29, 2021) (listing attendance that ranged from over 52,000 to just over 12,000 for the MLS 2019 season), *with France » Ligue 1 2019/2020 » Attendance » Home Matches*, World Football, <https://www.worldfootball.net/attendance/fra-ligue-1-2019-2020/1/> (last visited Dec. 29, 2021) (listing attendance that ranged from over 52,000 to just under 7,000 for the Ligue 1 2019-2020 season). We chose the seasons just before the pandemic because mandated capacity restrictions limited attendance in 2020 and 2021. See Sam Carp, *MLS Confirms US\$1bn Revenue Hit Due to Covid 19*, Sports Pro Media (Dec. 10, 2020), <https://www.sportspromedia.com/news/mls-2020-revenue-one-billion-dollars-covid-19-don-garber/> (reporting that the 2020 MLS season was suspended from mid-March until July, and that when matches resumed in August, many were without fans or subject to attendance restrictions); Connor Fleming, *How All 27 MLS Clubs Are Preparing to Welcome Back Fans for Home Openers*, The 18 (Apr. 12, 2021), <https://the18.com/soccer-news/2021-mls-fans-in-stands-stadium-capacity-around-league> (reporting how MLS opened the 2021 season with capacity restrictions ranging from 10 to 50 percent).

274. Jean-Jacques Gouquet & Didier Primault, *The French Exception*, 7 J. SPORTS ECONS. 47, 48 (2006) (“Football developed in France, from its birthplace in England, at the end of the 19th century. The sport first became established in ports, as elsewhere in Europe, especially with the creation of Havre Athlétique Club in 1872. Paris was conquered 10 years later, with the creation of Racing and of Stade Français. Competitions were first managed by Union Française des Sports Athlétiques (the French Union of Athletic Sports), which was created in 1889, although this authority did not really implement a development strategy for the sport.”).

275. *Compare USA » Major League Soccer 2019 » Attendance » Home Matches*, *supra* note 274 (ranking Atlanta United FC and the Seattle Sounders as first and second in MLS attendance), *with France » Ligue 1 2019/2020 » Attendance »*

and Ligue 1 is that both leagues span international borders. MLS is based in the U.S. with three clubs in Canada, and Ligue 1 is based in France with one club in Monaco.²⁷⁶

As discussed above, in the summer of 2016, the U.S. and France each hosted a men's regional tournament, the Copa America Centenario and the European Championship, respectively. Using these contemporaneous tournaments, we evaluate the responsiveness of game-day attendance in MLS and Ligue 1. Our results indicate that Ligue 1 and MLS fans were similarly responsive to their country hosting an international tournament on average over the sample period. However, the effect of the European Championship persisted after the tournament ended in France, while in the U.S. no statistically significant effect on attendance is found for games after the Copa America.

Our base data set covers all games from sixteen seasons in MLS and Ligue 1. The seasons do not sync up exactly since Ligue 1 plays a fall-to-spring schedule—as do most European leagues—and MLS plays a spring-to-fall schedule.²⁷⁷ The data cover the 2004 through the 2019 seasons in MLS (4,532 games) and the 2003/04 through the 2018/19 seasons in Ligue 1 (6,080 games). The data set excludes twenty Ligue 1 games that were played “behind closed doors” with no fans attending, so the data set includes 6,060 total games.²⁷⁸ The number of teams varied over this period in MLS; in 2004, MLS had ten teams, and rapid league expansion led to a total of twenty-four teams by the 2019 season.²⁷⁹ Ligue 1 had twenty teams over the entire period, although the composition of teams changed each year due to relegation and

Home Matches, *supra* note 274 (listing Olympique Marseilles and Paris St. Germain as first and second in Ligue 1 attendance).

276. *See Clubs*, *supra* note 69 (listing MLS teams in Montreal, Toronto, and Vancouver); *France >> Ligue 1 2021/22 >> Teams*, WORLD FOOTBALL, <https://www.worldfootball.net/players/fra-ligue-1-2021-2022/> (last visited Dec. 29, 2021) (listing AS Monaco as a Ligue 1 team).

277. *See Taylor*, *supra* note 124, at 9.

278. Attendance data are collected online at the ESPN and the Transfermarkt websites. *Major League Soccer Scores*, *supra* note 262; TRANSFERMARKT, *supra* note 262.

279. *See USA >> Major League Soccer 2019 >> Teams*, WORLD FOOTBALL, <https://www.worldfootball.net/players/usa-major-league-soccer-2019/> (last visited Dec. 29, 2021).

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promotion.²⁸⁰ Average Ligue 1 attendance over this period was 21,071, and MLS average attendance was 18,427.

A. An Economic Model of Demand for Match-Day Attendance in MLS and Ligue 1

A general model for match-day attendance demand in MLS and Ligue 1 can be stated in terms of the market potential of the teams involved and the quality of the sporting contest as given in equation (1).²⁸¹

$$(1) \quad Attendance_{ijkt} = \Delta(Q_{ijkt}, M_{ijt})$$

The home team is indexed i , j indexes away team, k indexes match number in any given season, and t indexes the season in which the match is played. M_{ijt} is home team i 's market potential when playing away team j in season t , and Q_{ijkt} is contest quality of match k in year t pitting home team i against away team j . Δ is a function that maps contest quality and market potential to match-day attendance demand.

Contest quality includes measures of both the absolute quality and the relative quality of the home and away teams. In league competitions, three points are given for a win, and one point is given for a tie.²⁸² $HomePoints_{it}$ is home team i 's points-per-game in year t , and $AwayPoints_{jt}$ is a similar measure for away team j .²⁸³ Relative team

280. Stefan Szymanski, *The Promotion and Relegation System*, in HANDBOOK ON THE ECONOMICS OF SPORT 685, 685 (W. Andreff & S. Szymanski eds., 2006) (writing that “in the top professional leagues of England, France, Germany, and Spain, the current rules require the three teams with the lowest points scored to be relegated, to be replaced by the three best teams from the recognised second-tier league division”).

281. See Jeffery Borland & Robert MacDonald, *Demand for Sport*, 19 OXFORD REV. ECON. POL'Y 478, 480-82 (2003) (discussing theory of attendance demand in sports).

282. See 2021 MLS Competition Guidelines, MAJOR LEAGUE SOCCER, <https://www.mlssoccer.com/about/competition-guidelines> (last visited Dec. 29, 2021).

283. League points data were collected from the ESPN website. *Major League Soccer Scores*, *supra* note 262.

quality can be measured using betting market data.²⁸⁴ This effect is measured with $MatchCertainty_{ijkt}$, computed as the ratio of win probabilities of the home team i and the away team j in game k in season t based on data provided by betting houses. Betting-odds data are gathered online from the Football-Data website.²⁸⁵

Market potential is often indicated by variables such as population, income, or catchment area.²⁸⁶ Since reliable panel series of population and income are not available for the sample period for both leagues, this study uses fixed effects for home and away teams.²⁸⁷ If consumer demand is influenced by habit persistence,²⁸⁸ past attendance should be an indicator of current attendance. $Attendance_{it-1}$ is the average attendance for all of team i 's home matches in year $t-1$. Attendance demand should be greater when teams play others that are located closer geographically, either due to being traditional rivals or to the ease with which away fans can attend.²⁸⁹ Distance in kilometers ($Distance_{ij}$) from the stadiums of home team i and away team j as of the 2019 season is used to proxy locality.²⁹⁰ Given the time-related measures—such as day, month, match, and year of a given match—equation (1) is modified to include the impact of time, independent of contest quality, and market potential.²⁹¹

In equation (2), T_{kt} is a vector that includes indicators of the month and year of match k in season t as well as a variable indicating that the match was played on a weekday (i.e., Monday through Friday). A

284. David Forrest & Robert Simmons, *Outcome Uncertainty and Attendance Demand in Sport: The Case of English Soccer*, 51 J. ROYAL STATISTICAL SOC'Y: SERIES D 229, 232-35 (2002) (discussing the use of betting data to proxy match uncertainty).

285. See *Historical Football Results and Betting Odds Data*, FOOTBALL-DATA.CO.UK, <https://www.football-data.co.uk/data.php> (last visited Feb. 28, 2022).

286. Wladimir Andreff & Nicolas Scelles, *Walter C. Neale 50 Years After: Beyond Competitive Balance, the League Standing Effect Tested with French Football Data*, 16 J. SPORTS ECON. 819, 827 (2015) (discussing model specification).

287. KENNEDY, *supra* note 243, at 293.

288. Borland & Macdonald, *supra* note 281, at 481 (discussing habit and consumer preferences for sport).

289. This effect occurs in both MLS and Ligue 1. Andreff & Scelles, *supra* note 286, at 828-31; Jewell, *supra* note 129, at 244-47.

290. Geographic distance was measured as linear distance using Google Maps. GOOGLE MAPS, <https://maps.google.com> (last visited Dec. 29, 2021).

291. See *supra* note 129.

yearly time-trend is included to control for attendance growth season-to-season that is uncorrelated with other variables.

$$(2) \text{ Attendance}_{ijkt} = \Delta(Q_{ijkt}, M_{ijt}, T_{kt})$$

Assuming a simple linear form for Δ , the next section presents estimates of equation (2) employing Ordinary Least Squares. As discussed above, from 2004 to 2019, there were 4,532 games in MLS and 6,060 games in Ligue 1. Equation (2) includes lagged yearly attendance, which eliminates the first year of observations for all home teams. The resulting estimation samples comprise 4,121 MLS games and 5,580 Ligue 1 games. Table One lists summary statistics for the estimation samples, with means, standard deviations, minimum values, and maximum values listed first for MLS, followed by the same values for Ligue 1.

Table One: Estimation Sample Summary Statistics

	MLS <i>n</i> = 4,121				Ligue 1 <i>n</i> = 5,580			
	<i>Mean</i>	<i>std. dev.</i>	<i>min.</i>	<i>max.</i>	<i>mean</i>	<i>dev.</i>	<i>min.</i>	<i>max.</i>
<i>Attendance</i>	18,901	8,233	3,702	92,650	21,131	11,979	723	79,000
<i>HomePoints</i>	1.3869	0.2920	0.4706	2.1176	1.3558	0.3701	0.4737	2.5263
<i>AwayPoints</i>	1.3703	0.3020	0.4706	2.1176	1.3560	0.3703	0.4737	2.5263
<i>MatchCertainty</i>	2.2270	1.3045	0.1574	11.983	2.4952	2.7799	0.0381	47.260
<i>Attendance_{t-1}</i>	18,131	6,760	8,167	51,731	20,597	10,890	4,269	52,465
<i>Distance</i>	1,763	1,116	0	4,301	493.88	235.77	18.09	1,260
<i>Weekday</i>	0.2046	0.4034	0	1	0.1394	0.3464	0	1
<i>Month</i>	6.5715	2.1507	3	10	6.4979	3.7463	1	12
<i>Year</i>	2013.1	4.1332	2005	2019	2012.0	4.3196	2005	2019

B. The Attendance Effect of an International Tournament on MLS and Ligue 1

FIFA's 211 national associations are grouped into six regional confederations: The Confederation of North, Central America, and Caribbean Association Football ("CONCACAF"); Confederación Sudamericana de Fútbol ("CONMEBOL"); Union des Associations Européennes de Football ("UEFA"); Confédération Africaine de Football; Asian Football Confederation; and Oceania Football

Confederation.²⁹² These confederations have major tournaments that share the same basic structure as the FIFA World Cup: the tournaments are hosted by a nation (or multiple, geographically-close nations) with venues in multiple cities, the matches span several weeks, and national teams play in a group-to-knockout format until one team wins the tournament by prevailing in a final match.²⁹³

The Copa America is held on an irregular basis and typically features the men's national teams of CONMEBOL's South American members as well as invited teams from non-CONMEBOL nations.²⁹⁴ Because 2016 marked the centennial of the Copa America, CONMEBOL, along with CONCACAF, planned a special one-off tournament, the Copa America Centenario, to be held in the U.S.²⁹⁵ The field of sixteen teams included the ten CONMEBOL men's national teams and the U.S. men's national team as host, plus the men's national teams of CONCACAF members Costa Rica, Haiti, Jamaica, Mexico, and Panama.²⁹⁶ The announcement that the Copa America Centenario would be played in the U.S. occurred on May 1, 2014,²⁹⁷ and the tournament ran from June 3 through June 26, 2016, in ten different U.S. cities.²⁹⁸ The U.S. squad performed well, making it out of the group

292. *About Us: Associations*, FIFA, <https://www.fifa.com/about-fifa/associations> (last visited Dec. 29, 2021).

293. Todd & Jewell, *Copa America*, *supra* note 17, at 662-64.

294. Dylan Butler, *Copa America Moved to Next Summer due to COVID-19*, MAJOR LEAGUE SOCCER (Mar. 17, 2020 11:05 AM EST), www.mlssoccer.com/post/2020/03/17/copa-america-moved-next-summer-due-covid-19 (explaining that the tournament since 2000 was held in 2001, 2004, 2007, 2011, 2015, 2016, and 2019 and that the tournament was to be held in 2020 but was postponed until 2021 due to the Covid-19 pandemic).

295. Stejskal, *supra* note 17.

296. *Id.*

297. Andrew Das, *U.S. Will Host Expanded Copa América in 2016*, N.Y. TIMES (May 1, 2014), www.nytimes.com/2014/05/02/sports/soccer/us-will-host-expanded-copa-america-in-2016.html?_r=0.

298. *10 Venues, Including Three MLS Stadiums, Announced for 2016 Copa America Centenario*, MAJOR LEAGUE SOCCER (Nov. 19, 2015 3:23 PM), www.mlssoccer.com/news/10-venues-announced-2016-copa-america-centenario (listing ten venues: three stadiums that house MLS teams (CenturyLink Field in Seattle, Camping World Stadium in Orlando, and Gillette Stadium in Foxborough); six that are the homes of National Football League (NFL) or major college teams while the MLS squads in that city have a different stadium (Levi's Stadium in Santa Clara, the Rose Bowl in Pasadena, Soldier Field in Chicago, Lincoln Financial Field

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stage and finishing fourth in a 1-0 loss to Colombia in the third-place game.²⁹⁹ The Chilean team prevailed as tournament champions by beating Argentina on penalty kicks.³⁰⁰ The total attendance for the thirty-two games was nearly 1.5 million, with an average of over 46,000 fans per match.³⁰¹

On May 28, 2010, UEFA announced that the French Football Federation would host the 2016 European Championship (hereafter, Euro 2016), and ten different cities in France hosted matches.³⁰² The tournament featured twenty-four European national teams that had advanced from fifty-three teams participating in nine group qualifiers.³⁰³ Euro 2016 spanned about a month, starting on June 10, with teams first playing in groups of four before advancing to a knockout format.³⁰⁴ The Portuguese national team defeated the host French squad 1-0 in an extra-time final on July 10.³⁰⁵ Total tournament attendance was 2,427,303, with an average of over 47,000 spectators

in Philadelphia, MetLife Stadium in East Rutherford, and NRG Stadium in Houston); and an NFL stadium in a city without an MLS team (University of Phoenix Stadium in Glendale)).

299. Tom Dart, *USA End Copa América with Colombia Loss but Show Fight and Flair in Defeat*, THE GUARDIAN (June 25, 2016), <https://www.theguardian.com/football/2016/jun/25/usa-beaten-colombia-copa-america-centenario>.

300. Aaron Timms, *Chile Win Copa América Once Again as Argentina Title Drought Continues*, THE GUARDIAN (June 26, 2016), <https://www.theguardian.com/football/2016/jun/26/chile-win-copa-america-argentina-match-report-penalty-shoot-out>.

301. Sergei Klebnikov, *Successful Copa America 2016 Smashes Records*, FORBES (June 26, 2016, 4:47 p.m. EDT), <http://www.forbes.com/sites/sergeiklebnikov/2016/06/26/successful-copa-america-2016-smashes-records/#4330b5f3734b>.

302. *UEFA EURO 2016 Competition Format*, UEFA, <http://www.uefa.com/uefaeuro/about-euro/format/index.html> [https://perma.cc/XMP2-323P] (last visited Mar. 1, 2022); *UEFA Euro 2016 France: Groups*, UEFA, www.uefa.com/uefaeuro/history/seasons/2016/standings/ (last visited Mar. 1, 2022) (listing the sites of all matches played in Euro 2016: Bordeaux, Lens, Lille, Lyon, Marseille, Toulouse, Saint-Etienne, Nice, Paris and Saint-Denis).

303. *UEFA EURO 2016 Competition Format*, *supra* note 302.

304. *Id.*

305. Todd & Jewell, *Copa America*, *supra* note 17, at 663.

per game,³⁰⁶ similar to the average for the U.S.-hosted Copa America in 2016.

Turning to the impact of the Copa America, equation (2) is estimated for MLS using Ordinary Least Squares including measures for games played after the 2014 announcement—May 1 as discussed above—and using dummy variables for games post-announcement (*GamesTotal*) reported in column 1 of Table Two, and for games after the announcement but before the Copa America (*GamesBefore*) and after (*GamesAfter*) in column 2. Equation (2) is also estimated for Ligue 1, including a dummy variable for all games after the start of 2014 (*GamesTotal*) in column 3 of Table Two and using dummy variables for games between 2014 and Euro 2016 (*GamesBefore*) and games after Euro 2016 (*GamesAfter*) in column 4. The reported values represent the average increase in fans per game during the period in question.

Table Two: OLS Estimation Results for Effect of International Tournament

	MLS <i>n</i> = 4,121		Ligue 1 <i>n</i> = 5,680	
	<i>column 1</i>	<i>column 2</i>	<i>column 3</i>	<i>column 4</i>
<i>GamesTotal</i>	918	—	1,074	—
<i>GamesBefore</i>	—	1,056	—	1,076
<i>GamesAfter</i>	—	143	—	1,573

For MLS, the impact of the Copa America on attendance is 918 more fans per game over the sample period, an increase of 4.9% given average MLS attendance. The effect of the Copa America appears to be concentrated within games after the May 2014 announcement but before the tournament, with those games having 1,056 more fans per game, an increase of 5.6% given average attendance. The slight increase in attendance following the tournament of 143 fans per game is not statistically significant, suggesting that the Copa America added no extra fans to MLS games after the end of the tournament. One could speculate that soccer fans with less engagement to MLS teams, such as U.S.-based fans with connections to CONMENBOL nations, may have

306. Chris Burke, *UEFA Euro 2016 by the Numbers*, UEFA (Jul. 11, 2016), <http://www.uefa.com/uefaeuro/news/newsid=2390063.html>.

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been driven to attend MLS games in preparation for the Copa America. Another possibility is that U.S. fans of other sports may have given MLS a try based on the excitement of an international tournament. In any case, these marginal MLS fans appear to have lost interest in the league after the Copa America finished.

Attendance in Ligue 1 was similarly responsive to Euro 2016. The estimates show an average increase of 1,074 fans per game over the sample period, or a 5.1% increase per game based on average Ligue 1 attendance. However, unlike MLS, the values for before and after Euro 2016 indicate that the effect of increasing attendance was sustained after the tournament in Ligue 1, at least up to the 2018/19 season. For games after 2013/14 and before Euro 2016, the estimated effect is almost the same as for the entire post-2014 period. After Euro 2016, the attendance effect gets much larger, 1,573 fans per game or 7.4% on average. For Ligue 1, the magnitude of the effect before the tournament suggests the existence of a large pool of marginal fans, while the substantial effect after the tournament may result from the French team's success. Although France lost in the final, the fact that the team made it to the final game appears to have engaged many marginal fans.

As a final test of the effect of the Copa America and Euro 2016, this study analyzes clubs that participated in MLS or Ligue 1 in all sample-period seasons, namely the nine MLS teams (those legacy teams that have been part of MLS since the inaugural season) and the eight Ligue 1 clubs (those teams that were not relegated) that consistently competed in their league over the entire sample period.³⁰⁷

307. The nine consistent MLS teams are its surviving inaugural members (original names): Chicago Fire, Colorado Rapids, Columbus Crew, DC United, FC Dallas (Dallas Burn), Sporting Kansas City (Kansas City Wizards), Los Angeles Galaxy, New England Revolution, and New York Red Bulls (New York/New Jersey Metro Stars). See *Conference Standings*, MAJOR LEAGUE SOCCER, <https://www.mlssoccer.com/standings> (last visited Dec. 29, 2021) (gathering competing team data based on season-ending tables). San Jose Clash competed in the 2004 season, but the franchise moved to Houston in 2006. See Phil West, *How the Houston Dynamo Got Their Name*, MLSSOCCER.COM (Jul. 8, 2015, 6:30 PM), <https://www.mlssoccer.com/news/how-houston-dynamo-got-their-name>. The eight consistent Ligue 1 teams that were not relegated over the sample period are FC Girondins de Bordeaux, Lille OSC, Olympique Lyonnais, Olympique de Marseille, OGC Nice, Paris Saint-Germain, Stade Rennais FC, and Toulouse FC. See *Tables*, LIGUE1.COM, <https://ligue1.com/ranking> (last visited Dec. 29, 2021) (gathering competing team data based on season-ending tables).

The models of Table Two are re-estimated including the home attendance for these teams. For the subsample of consistent MLS teams, the attendance effect of the Copa America was smaller than for other teams (an increase of 560 fans per game for consistent teams vs. 1,654 for all other teams); for both consistent teams and others, most of the effect was seen in post-announcement games played before the Copa. For Ligue 1, the effect for consistent clubs was much larger than for other clubs over the sample period (an increase of 2,949 fans per game for consistent clubs vs. a slight decrease of 371 fans for others). For the consistent clubs, the large positive effect is sustained pre- and post-Euro 2016, and the small negative effect is sustained for other clubs.

These last findings are particularly intriguing because the consistent teams of MLS are similar to the consistent teams of Ligue 1 in that both are long-standing fixtures in their respective leagues. One might have therefore expected that U.S. and French fans of long-standing teams would have responded to the excitement of an international tournament in a similar way, yet our data shows that they responded in opposite ways. One possible explanation is the competition for sports fans in the respective countries: because soccer is far and away the most popular sport in France, it may have a larger pool of marginal fans compared to the U.S., where MLS is but one of five major professional sports leagues. Another explanation relates to the open versus closed models of the leagues and their growth (or lack thereof). Ligue 1 maintains a steady number of teams, and new entrants occur only through the process of promotion and relegation, so the novelty of the European Championship may have generated interest in the teams that always survive relegation. MLS does not relegate teams but instead has grown steadily via expansion, so the Copa America may not have resonated in a league where change is constant.

V. IMPLICATIONS OF THE COMPARATIVE STUDY

The results of our study have specific implications for our hypothetical lawsuit against Bin Hammam and general implications for economic and legal scholarship. Because the Copa America led only to a spike rather than sustained increase in MLS attendance, the lawsuit against Bin Hammam is likely not viable since losing World Cup hosting rights would not result in a diminution of MLS's business value. This remains true even if the pandemic had not severely restricted

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attendance in 2020 and 2021. More generally, our study suggests the need for more comparative economic studies of soccer, informs the antitrust questions about MLS's single-entity structure and the closed league rules of USSF, and raises questions about the threshold for admitting economics expert testimony into evidence.

*A. Specific Implication: The Economic Evidence Does Not Support
MLS's Tortious Interference Lawsuit*

Many of the claims in our prior articles were already conditional. For example, we called attention to legal uncertainties like the expense and time of litigation, the requirement to prove all elements of tortious interference, questions about the enforceability of a tortious interference judgment in Qatar, and the admissibility of economic expert testimony.³⁰⁸ We also recognized some uncertainties related to our econometric modeling, such as the lack of public information on MLS revenues and profitability.³⁰⁹ Indeed, it was the combination of concerns about admissibility and data that prompted our current comparative study. The most important implication for MLS's potential lawsuit is not admissibility, however, but a more fundamental question of the viability of that lawsuit—namely, whether MLS can show significant, or even any, damages. If a 2022 World Cup USA were to have had a similar impact on MLS attendance as the 2016 Copa America, the answer is most likely “no” because a temporary attendance spike would have led to relatively modest revenues (even if the pandemic had not restricted attendance) and would not have increased MLS's business value.

The average results of the effect of the Copa America on MLS attendance presented in this study are nearly identical to those presented in our previous study. We had previously found that the Copa America bump was 917 fans per game up to the end of the 2016 season.³¹⁰ Here, we find a bump of 918 fans using a longer time period. However, our earlier estimates did not differentiate between the games played pre- and post-tournament.³¹¹ Our current results add information that

308. Todd & Jewell, *MLS*, *supra* note 15, Part V; Todd & Jewell, *Copa America*, *supra* note 17, at 653-61.

309. Todd & Jewell, *MLS*, *supra* note 15, at 40-41.

310. Todd & Jewell, *Copa America*, *supra* note 17, at 668-69.

311. *Id.*

suggests that the short-term effect of the Copa America on attendance is slightly greater than previously estimated, whereas the longer-term effects were not observed.³¹² Our previous estimates of the revenue associated with the Copa America bump likewise appear to be overstated. We estimated that the tournament added 854,644 fans across three seasons and, assuming each fan spent \$73 per game, revenue of \$63 million.³¹³ The results presented here suggest that the effect was only significant for games after the U.S. was named tournament host and before the first match of the Copa America, with a slight increase of 1,056 fans per game during that period.³¹⁴ We therefore find that the Copa America spike in MLS attendance was 771,936 (1,056 fans times 731 games), which implies an increase in revenue of just over \$56 million based on the average revenue values used in previous computations.³¹⁵

The current values associated with the Copa America still indicate a potential loss in terms of MLS attendance revenue from the U.S. not hosting the 2022 World Cup. However, our previous estimates of that loss were too large due to assumptions that are not supported by current OLS results: 1) we assumed much larger per game effects; and 2) we assumed that the increase would be most pronounced after the tournament.³¹⁶ Based on the observed response of fans to the Copa America, we would now expect a relatively small increase in attendance, and that increase would be limited to games leading up the tournament. Assuming a two-year window (as in the case of the Copa America) of the 2020 and 2021 seasons (901 regular-season games), and assuming no canceled games or stadium capacity restrictions, we hypothesize an attendance spike in that window of about 950,000 fans. At \$73 of spending per fan, that would result in an additional \$72 million in total revenue.

312. See *supra* Part IV(B).

313. Todd & Jewell, *Copa America*, *supra* note 17, at 669.

314. See *supra* Part IV(B).

315. See Todd and Jewell, *MLS*, *supra* note 15, at 39; Todd & Jewell, *Copa America*, *supra* note 17, at 669.

316. Todd and Jewell, *MLS*, *supra* note 15, Part III(A); see Todd & Jewell, *Copa America*, *supra* note 17, at 670 (assuming that “MLS would have seen a World Cup bump comparable to that of the European Leagues,” namely, for five years after the tournament).

While that lost revenue might seem large enough to warrant a lawsuit, there is a good chance that none of it is profit. After all, part of the increased attendance is because of more rapid expansion than was expected in 2017, and while expansion means greater league-wide attendance, it also means increased costs.³¹⁷ Put differently, even with expansion, the league itself continues to operate at an annual loss estimated to be \$100 million,³¹⁸ so an additional \$72 million in revenue would not change that.³¹⁹ These conclusions are based on what MLS attendance would have been without pandemic restrictions. Much of the 2020 season was played without fans, and many matches in both 2020 and 2021 were subject to capacity restrictions that varied by state and changed over time.³²⁰

Finally, our previous estimates completely break down in terms of longer-term increase in franchise valuations for MLS clubs. Again, our previous analysis was based on forecasted revenues that were both too large and too enduring.³²¹ Based on Copa America estimates, the effect of an international tournament on MLS attendance is fleeting. Without a *sustained* increase in revenues—driven by a *sustained* increase in per game attendance—there cannot be an increase in business valuation since there is no expected long-term growth in revenue related to the World Cup.³²² Diminution in business value was by far the largest part

317. See Everett Rosenfeld, *Inside MLS Expansion: Q&A with Sports Economist John Vrooman*, CNBC (Updated Aug. 8, 2014, 5:56 PM EDT), <https://www.cnbc.com/2014/08/08/inside-the-mls-expansion-a-talk-with-sports-economist-john-vrooman.html>.

318. Smith, *supra* note 20 (“Put simply, Major League Soccer’s surging expansion fees and sales prices are not being driven by financial performance. In fact, although revenues are broadly on the rise, the league and most of its teams continue to operate at a significant loss.”).

319. The lost revenues are even lower—about \$51 million—if we assume a more conservative \$54 spent per fan based on average MLS ticket price on the secondary market. See Lange, *supra* note 139.

320. Carp, *supra* note 273; Fleming, *supra* note 273. See Carp, *supra* note 273 (reporting that Commissioner Garber stated, “Revenue for the league and its clubs is down almost \$1bn compared to last year [2019]. But we also incurred expenses we were not intending to occur, including charter planes for the teams and creating the whole bubble around MLS is Back.”).

321. Todd & Jewell, *MLS*, *supra* note 15, Part V(B).

322. *Id.* at 42-43 (explaining revenue multiples and applying those to the final year of the expected World Cup bump for MLS).

of MLS damages in the hypothetical lawsuit against Bin Hammam—\$261 million by the most conservative estimate³²³—so without those, MLS cannot prove sufficient (if any) damages. As discussed below, our hypotheses will be testable after 2026, the year when the U.S. will co-host the World Cup.

B. General Implications for Economics, Antitrust, and Evidence

In addition to altering the conclusions from prior articles, our current research has relevance for other areas of economic and legal study, particularly studies related to the symposium theme of crossing borders. For example, while there are numerous studies of the macroeconomic impacts of sporting mega-events,³²⁴ few economists have explored their private benefits, such as the impact on leagues of hosting a tournament and building or renovating stadiums for it.³²⁵ Our results show that those benefits might vary depending on the league and the market, thus suggesting the need for additional comparative studies. This might include more emphasis on tournaments hosted by non-traditional soccer powers, like those for several recent World Cups (South Africa in 2010, Russia in 2018, Qatar in 2022)³²⁶ and—if accepted—the joint bids for the 2030 World Cup proposed by Bulgaria, Greece, Romania, and Serbia and by Morocco, Algeria, and Tunisia.³²⁷ This should also include the 2026 World Cup, which allows for the intriguing comparison between Mexico, a nation with a large soccer fanbase,³²⁸ and its co-hosts the U.S. and Canada.

Understanding the MLS market also has antitrust implications. MLS was born from the 1994 World Cup when the USSF agreed to

323. *Id.* at 43.

324. See Maennig & Du Plessis, *supra* note 4, at 579-81 (examining the effect of new stadium construction in the Bundesliga).

325. Szymanski & Drut, *supra* note 24, at 725-26.

326. *World Cup History*, FOX SPORTS, <https://www.foxsports.com/soccer/fifa-world-cup/history> (last visited Jan. 1, 2022).

327. Ryan Kelly, *World Cup 2030: Which Countries Are Bidding to Host the Tournament?*, GOAL (Mar. 3, 2021), <https://www.goal.com/en-gb/news/world-cup-2030-which-countries-bidding-host-tournament/cjf37div77mq1axfim3rybsw1>.

328. *Most Popular Sport by Country 2021*, WORLD POPULATION REVIEW, <https://worldpopulationreview.com/country-rankings/most-popular-sport-by-country> (last visited Jan. 1, 2022).

create a Tier One league in the U.S.³²⁹ The structure of MLS is a response to the failure of a previous attempt at professional soccer in the U.S. In the 1970s and 1980s, the North American Soccer League (NASL) tried to follow the European model by signing high-priced talent.³³⁰ The league folded because of poor management and a lack of sufficient revenue.³³¹ The single entity structure was a way for MLS to avoid the fate of NASL by controlling costs: MLS (rather than individual teams) contracted with all players and imposed strict salary caps.³³² The Designated Player rule has since modified those strict caps, now allowing individual teams a limited number of roster slots that are paid global rates, and only a fraction of the amount counts against the team's cap.³³³

MLS has already faced two antitrust lawsuits. The first was filed shortly after the creation of the league by players challenging the salary restrictions.³³⁴ Although the First Circuit questioned whether MLS was a true single entity,³³⁵ it nevertheless affirmed summary judgment and a jury verdict in favor of MLS.³³⁶ Of note, in rejecting the *per se* rule in its analysis of the Sherman Act claim, the court wrote, "Without the restrictions, MLS might not exist or, if it did, might have larger initial losses and a shorter life. This would hardly enhance competition."³³⁷

The second lawsuit was brought by a revamped NASL against the USSF, MLS, and the United Soccer League (USL) claiming a restraint

329. BEAU DURE, LONG-RANGE GOALS: THE SUCCESS STORY OF MAJOR LEAGUE SOCCER 2 (2010).

330. Coppage, *supra* note 228, at 548-49; Decurtins, *supra* note 218, at 332-33.

331. Coppage, *supra* note 228, at 548-49; Decurtins, *supra* note 218, at 332-33.

332. Coppage, *supra* note 228, at 548, 558; Tim Bezbatchesko, Comment, *MLS Antitrust and Designated Player Rule*, 76 U. CINCINNATI L. REV. 611, 623-24 (2008).

333. Bezbatchesko, *supra* note 332, at 633, 639; Lenihan, *supra* note 223, at 895, 898-900.

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

335. *Id.* at 59 ("In all events, we conclude that the single entity problem need not be answered definitively in this case. The case for expanding *Copperweld* is debatable and, more so, the case for applying the single entity label to MLS."). See Luke Archer, *First Draft Pick or Benched Indefinitely? The Future of the Single-Entity Doctrine in Sports Antitrust*, 30 MARQ. SPORTS L. REV. 169 *passim* (2018), for a general discussion of the single-entity doctrine in sports law.

336. *Fraser*, 284 F.3d at 52, 71.

337. *Id.* at 59.

of trade.³³⁸ That suit challenges USSF rules that resulted in the designations of MLS as the only Tier One league, USL as the only tier-two league, and NASL as the only tier-three league in the United States.³³⁹ In affirming the denial of a preliminary injunction, the Second Circuit analyzed the district court's application of the rule of reason.³⁴⁰ The court found no error in conclusions about the USSF rules requiring a minimum league size, time zones, market zones, and financial viability because those have procompetitive effects such as maintaining league stability and quality as well as fan interest, thereby making MLS "less likely to collapse."³⁴¹ Of note, the court wrote "in the context of a soccer industry historically prone to collapse, the free-rider and stability justifications do not rationalize anticompetitive effects—they evince procompetitive ones."³⁴² Though NASL is essentially defunct,³⁴³ the lawsuit still seems to be active.³⁴⁴

Commentators have addressed the antitrust issues with MLS, arguing that its exemption is no longer justified in light of the Designated Player rule³⁴⁵ or that it can only be maintained if MLS

338. *N. Am. Soccer League, LLC v. U.S. Soccer Fed., LLC*, 883 F.3d 32, 34-36 (2d Cir. 2018).

339. *Id.*

340. *Id.* at 41-45.

341. *Id.* at 43.

342. *Id.* at 44.

343. The NASL has not held matches since 2017, and its website has not been updated since 2018. NASL, nasl.com (last updated Jun. 1, 2018, 9:30 AM); see Miki Turner, *NASL Seeks Summary Judgments Against U.S. Soccer, MLS in Antitrust Lawsuit*, SOCCERESQ (Sept. 22, 2020), <https://socceresq.com/2020/09/22/nasl-seeks-summary-judgment-against-us-soccer-mls-in-antitrust-lawsuit/> ("The problem is that NASL as an entity is essentially dead, and whether it can be resurrected is in doubt, at best.").

344. See *Power Players: Winston & Strawn*, SPORTS BUS. J. (Oct. 25, 2021), <https://www.sportsbusinessjournal.com/Journal/Issues/2021/10/25/Power-Players/WS.aspx> (calling the NASL antitrust lawsuit against USSF and MLS "ongoing").

345. *E.g.*, 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. REV. 413, 431 (2008); Coppage, *supra* note 229, at 546. See Matthew J. Jakobsze, Comment, *Kicking "Single-Entity" to the Sidelines: Reevaluating the Competitive Reality of Major League Soccer After American Needle and the 2010 Collective Bargaining Agreement*, 31 N. ILL. U. L. REV. 131, 136-37 (2010) (arguing that multiple changes to MLS structure intended to

adopts a system of promotion and relegation with lower-tier leagues.³⁴⁶ Since antitrust law concerns markets, our study can add to the antitrust discussion because we examined the market responses to soccer mega-events. U.S. fans responded differently to a mega-event than French fans did, likely because MLS continues to offer a novel product (via expansion) while the well-established Ligue 1 has a larger reserve of marginal fans who can be energized by a mega-event. Put differently, U.S. fans attend home matches of those teams new to MLS, while French fans—when prompted—attend matches of teams that consistently avoid relegation. While an explication of antitrust implications is beyond the scope of this article, our findings suggest that the closed-league structure of U.S. professional soccer is warranted and, more generally, that MLS has not reached the stability of Ligue 1.

A final general implication involves the admissibility of economics expert testimony. Some scholars advocate a low admissibility threshold for expert testimony based on econometric analyses.³⁴⁷ This is in part because of theory. Comments to the Federal Rules of Evidence direct courts to the standards of the particular field in considering admissibility.³⁴⁸ Economics methodologists have posited various ways

enhance the quality of the league expose it to greater antitrust scrutiny). *But see* Leah Farzin, *On the Antitrust Exemption for Professional Sports in the United States and Europe*, 22 JEFFREY S. MOORAD SPORTS L.J. 75, 89 (2015) (writing that “MLS has managed to avoid [adverse antitrust] consequences by structuring itself as quite a novel arrangement for US professional sports thus far.”).

346. *E.g.*, Thomas Conerty, *Promotion and Relegation as a Solution to Major League Soccer’s Anticompetitive Closed Structure*, 27 SPORTS L.J. 39, 43 (2020); Brendan H. Ewing, Comment, *MLS Promotion! Can MLS’s Single Entity Status Protect It from “Pro/Rel”?*, 25 JEFFREY S. MOORAD SPORTS L.J. 359, 360 (2018).

347. *See e.g.*, Jeff Todd, *An Interdisciplinary Perspective on Economic Models in Complex Litigation*, 46 HOFSTRA L. REV. 971 (2018) [hereinafter Todd, *Interdisciplinary*]; Jeff Todd, *Realistic Assumptions in Economic Models*, 47 HOFSTRA L. REV. 231 (2018) [hereinafter Todd, *Realistic*]; *See* Guzelian & Todd, *supra* note 200, at 7-8 (advocating a low admissibility threshold for economics testimony, whether econometric or based on heterodox theories like Austrian school or fractal economics).

348. FED. R. EVID. 702 advisory committee’s note to 2000 amendment (“[W]hether the testimony concerns economic principles, accounting standards, property valuation or other non-scientific subjects, it should be evaluated by reference to the ‘knowledge and experience’ of that particular field.” (alteration in original) (quoting Am. Coll. Of Trial Lawyers, *Standards and Procedures for Determining the Admissibility of Expert Evidence After Daubert*, 157 F.R.D. 571, 579 (1994))).

that an economic model and the assumptions of the modeler in constructing it (such as reliance on prior models) are realistic, including whether they are plausible or credible in light of what the audience knows about the real world and the purpose for that model.³⁴⁹ Because expert testimony is but one evidentiary piece of the larger story of a case,³⁵⁰ and because the jury is the relevant audience for that story,³⁵¹ courts should typically admit the testimony for the jury to assess whether the model (and the modeler's explanation of it) is credible.³⁵²

Although our 2016 and 2018 articles were based on the unpublished Drut & Szymanski study, we had solid arguments for why it was plausible for the U.S.-based MLS to have a long-term bump in

349. *E.g.*, Milton Friedman, *The Methodology of Positive Economics*, in *ESSAYS IN POSITIVE ECONOMICS* 3, 23-28 (1953); Mäki, *Aspects*, *supra* note 236, at 314; Mäki, *Reorienting*, *supra* note 236, at 242; Thomas Mayer, *Friedman's Methodology of Positive Economics: A Soft Reading*, 31 *ECON. INQUIRY* 213, 217 (1993); Yew-Kwang Ng, *Are Unrealistic Assumptions/Simplifications Acceptable? Some Methodological Issues in Economics*, 21 *PAC. ECON. REV.* 180, 198 (2016); Sugden, *supra* note 236, at 25.

350. Todd, *Realistic*, *supra* note 347, at 242; *see* Jennifer L. Mnookin, *Atomism, Holism, and the Judicial Assessment of Evidence*, 60 *UCLA L. REV.* 1524, 1577 (2013) (“[T]here is no reason why storytelling about scientific and expert evidence ought not to be able to be woven together out of multiple threads, just like other kinds of stories within the trial process.”); Neil Vidmar & Shari Seidman Diamond, *Juries and Expert Evidence*, 66 *BROOK. L. REV.* 1121, 1138 (2001) (claiming that jurors integrate the various parts of trial evidence, including expert witness testimony, into stories).

351. Todd, *Interdisciplinary*, *supra* note 347, at 1022 (writing that “[e]conomic authority recognizes the fluidity of models as tropes and the importance of telling a story for a particular audience with the model,” and that “[i]n litigation, that audience is the jury”). Jurors are fact-finders with power to determine how much weight to give to evidence, including the assessment of witness credibility. David L. Faigman, Christopher Slobogin & John Monahan, *Gatekeeping Science: Using the Structure of Scientific Research to Distinguish Between Admissibility and Weight in Expert Testimony*, 110 *NW. U. L. REV.* 859, 861, 884 (2016). *See* Anthony J. Casey & Julia Simon-Kerr, *A Simple Theory of Complex Valuation*, 113 *MICH. L. REV.* 1175, 1187 (2015) (the fact-finder must make “credibility judgments about everything from the expert’s demeanor to her methodology, her choice of variables, and the way in which she combines those variables.”).

352. Todd, *Interdisciplinary*, *supra* note 347, at 1022-23; *see* Todd, *Realistic*, *supra* note 347, at 240 (“when common sense and everyday experience allow for an assessment of the plausibility of prior models, the court should admit it for the jury to evaluate.”).

attendance comparable to European leagues,³⁵³ so theory suggests admitting it for the jury to assess credibility. However, our current data now show only a temporary attendance spike, so one possible takeaway is that merely plausible arguments should not be admissible. A more nuanced takeaway is that the “realisticness” of a model can be assessed in multiple ways, including whether it is confirmed or disconfirmed by data. Indeed, if the evidence controverts an assumption (including an “applicability” assumption that a prior model applies to the current case), then judges should require the modeler to modify the assumption if possible and decline to admit it if not possible.³⁵⁴ Our current study suggests that modelers should seek to test their assumptions with data whenever possible, which will allow plaintiffs to check the viability of their lawsuit and give defendants a way to mount a challenge to admissibility or at the least provide controverting evidence of causation or damages.

But what if there is no data that can confirm the “realisticness” of an assumption, such as if there had been no 2016 Copa America USA (which was a special one-off tournament)? One could argue that economics models could mislead juries and subject defendants to large damages awards that are not warranted.³⁵⁵ This argument overlooks other safeguards, notably the roles of judges and opponents. For example, even if the judge admits questionable expert testimony, it may never reach a jury if the judge rules it is insufficient.³⁵⁶ Also, opponents

353. See Todd & Jewell, *Copa America*, *supra* note 17, at 651-53, 659-60.

354. Todd, *Realistic*, *supra* note 347, at 292. See Frank A. Hindriks, *Tractability Assumptions and the Musgrave-Maki Typology*, 13 J. ECON. METHODOLOGY 401, 407-08 (2006) (calling the applicability assumption a second-order assumption that requires explanation for why a particular theory does or does not apply to the object of study); Uskali Mäki, *Kinds of Assumptions and Their Truth: Shaking an Untwisted F-Twist*, 53 KYKLOS 317, 331 (2000) (writing that applicability assumptions “involv[e] meta-level commentaries about the applicability of a theory” to new domains).

355. See Lloyd, *supra* note 204, at 380-81, 421 (arguing that courts have admitted too much “misleading testimony” so that juries were “bamboozled” by economics experts).

356. Aaron D. Twerski & Lior Sapir, *Sufficiency of the Evidence Does Not Meet Daubert Standards: A Critique of the Green-Sanders Proposal*, 23 WIDENER L.J. 641, 648 (2014) (“The *Daubert* trilogy was intended to set a formidable standard for admissibility *before* one entered the thicket of evaluating whether it was sufficient to serve as grounds for recovery.”) (emphasis added).

have the opportunity to challenge expert testimony via, for instance, their own expert.³⁵⁷ With the hypothetical tortious interference lawsuit, the defendant could rely on the article by Falter et al, which had cautioned against its application outside of France and had found that the French national team victory contributed to the fan increase.³⁵⁸ In addition, Szymanski and Drut published a revised study in 2020, so MLS's expert in the hypothetical lawsuit would have had to account for their revised findings, which means having to argue why the U.S. would not be among the one-third of nations with only an attendance spike rather than a lasting bump.³⁵⁹

Finally, our current study is not necessarily the final word on an MLS World Cup bump. After all, the Copa America is *a* soccer mega-event, but it is not *the* soccer mega-event—the World Cup. Szymanski and Drut found that, when the data were pooled, “the impact of the World Cup *specifically* on post-event attendance [was] strongly significant.”³⁶⁰ While leagues whose nations hosted the European Championships had an attendance increase of 8,379 in the event year and 9,980 in the seasons following, leagues whose nations hosted a World Cup had average seasonal attendance that was 63,691 higher in all seasons, including a total post-World Cup effect of 29,377.³⁶¹ This should not be surprising since the two largest increases both followed a World Cup: France in 1998 and Japan in 2002³⁶²—the latter of which was not influenced by the host team's on-field success since Japan was

357. *Daubert v. Merrell Dow Pharm., Inc.*, 509 U.S. 579, 596 (1993) (recognizing that cross-examination and opposing experts can help root out dubious testimony); Kaye, *supra* note 127, at 1968-69 (arguing that opponents can prevent jurors from being “overwhelmed” by one side's equations by introducing their own expert to challenge “the adequacy, limits, or untested assumptions of most mathematical and statistical models.”).

358. Falter et al., *supra* note 14, at 22, 37.

359. Szymanski & Drut, *supra* note 24, at 732; see Todd, *Interdisciplinary*, *supra* note 347, at 1025 (“If the opponent challenges a particular underlying study . . . and the expert has no narrative that responds directly to the challenge, then the judge should exclude the expert testimony.”).

360. Szymanski & Drut, *supra* note 24, at 724 (emphasis added).

361. *Id.* at 734 (providing table that lists results, including differentiating by European Championship and World Cup).

362. *Id.* at 729 (showing the post-World Cup increase for France as 58.1 percent and for Japan as 55.8 percent).

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eliminated in the group stage.³⁶³ It is therefore plausible that U.S. fans would have responded more to a 2022 World Cup than they did to the 2016 Copa America.

CONCLUSION

The opportunity afforded by this symposium to revisit our prior articles could be viewed as a disappointment: a Copa America attendance spike rather than a longer-lasting bump means that the MLS tortious interference lawsuit is probably not viable. We prefer to see the positive, however, namely how continued, data-driven economic study can inform our understanding of law practice, including transnational litigation.

We cannot help but be excited about the chance to test the hypothesis that U.S. fans will respond more to a World Cup than to a regional tournament when the U.S. co-hosts the 2026 World Cup. In light of the results of our current study, we expect (at the very least) MLS attendance to spike during the lead-up to the tournament, with the possibility of a greater increase since there is more time to market the World Cup compared to the two-year window for the 2016 Copa America. In light of the revised Szymanski and Drut article, there is also the possibility of a significant—if not dramatic and permanent—post-World Cup bump. The findings will be significant from a sports economics perspective because they would reveal the maturity of MLS relative to European leagues. They will also be significant from a legal perspective because comparison to—or contrast with—international leagues can inform antitrust questions about MLS.

363. *Id.* at 737.