

Employee-Asset-Owner: How Messi’s Inter Miami Deal is Changing the Game for the American Soccer Industry

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I. INTRODUCTION

In the summer of 2023, Lionel Messi agreed to a \$150 million, two-and-a-half-year deal with Inter Miami, a U.S. Major League Soccer (MLS) team. Messi took this deal despite offers to return to FC Barcelona, where he has played before, and to play for Al-Hilal, a Saudi team where he was offered compensation over \$500 million per season.¹ To compete with these bids and ultimately sign Messi, Inter Miami offered a first-of-its-kind deal structure. What made Messi’s Inter Miami deal unique was an option, exercisable upon the contract’s expiration, to purchase partial ownership of his own team: Inter Miami. Industry commentators stated the following when the deal was made: “the structure is unique with the team equity component, a compensation lever not available to players in other leagues. Messi is expected to exercise his ownership stake in the franchise after he is done playing with Inter Miami.”²

Prior to 2023, labor versus ownership tensions raised questions about why professional athletes in the United States were barred by their leagues from owning equity in the teams for which they played.³ Because of how professional sports leagues are structured, in accordance with U.S. antitrust law, the answers to these questions necessarily implicated a set of collective bargaining agreements. In general, the collective bargaining agreements governing American athletic leagues set floors and caps for player salaries, provide for guaranteed contract terms, dictate how trades can take place, define the terms of profit sharing, and set a host of other internal regulations.⁴ For example, the 2007–2011 Basic Agreement for Major League Baseball (MLB) required that players commit to “not, directly or indirectly, own stock or have any financial interest in the ownership or earnings of any Major

¹ Tom Sanderson, *Lionel Messi receives offers from two big European clubs: Reports*, FORBES (Jun. 6, 2023, 10:06 AM), <https://perma.cc/2RE2-JR5K>.

² Kurt Badenhausen, *Messi Career Earnings to Reach \$1.6B with Miami MLS Deal*, SPORTICO (Jul. 15, 2023, 11:01 PM CT), <https://perma.cc/3FNG-8BEL>.

³ See Darren Dahl, *Could Professional Athletes Own the Teams They Play for?*, FORBES (Nov. 28, 2017, 9:30 AM), <https://perma.cc/8WBA-W5PH>; see also, e.g., Major League Soccer, *MLS Announces CBA Changes*, US NATIONAL SOCCER PLAYERS (Mar. 23, 2010), <https://perma.cc/C32L-H7H3>.

⁴ *Id.*

League Club.”⁵ As recently as July 2023, the National Football League (NFL) issued a regulation prohibiting players and all other team employees from owning equity in the team by which they are employed, regardless of whether such arrangements were previously considered and despite what may exist in other sports leagues.⁶

These regulations governing Major League Baseball and the National Football League beg the questions, why is American soccer different than other sports, and what is it about those differences that warrant Major League Soccer allowing player-ownership when other leagues do not? Answering these questions will highlight some of the ways in which the soccer industry and its regulatory landscape may be shifting in America.

II. ANALYSIS

A. Messi’s Inter-Miami deal may signal a shift in Major League Soccer’s collective bargaining landscape, which would have implications for U.S. soccer writ large.

Many U.S. professional sports leagues exist in a sort of protected monopoly form because of how leagues are structured.⁷ The clubs that make up a sports league are competitors, but they also rely on intra-league cooperation to remain financially successful.⁸ This league cooperation exists in violation of traditional United States antitrust regulation.

“In the US, three of the four major professional sports leagues do not have any general exemption from federal antitrust laws. In a court challenge, all major leagues except baseball would be subject to the antitrust laws under the Rule of Reason analysis, but generally not under the much stricter per se rule. Because of this, leagues and clubs are able to counter an accusation of anticompetitive behavior with a justification based on the special circumstances inherent in maintaining a professional league.”⁹

⁵ MLB C.B.A. Sched. A §4(c) *Interest in Club* (2007).

⁶ Mike Florio, *NFL Bans Giving Equity Stakes to Players, Employees*, NBC SPORTS (Jul. 25, 2023, 10:16 PM), <https://perma.cc/74F3-HVDG>.

⁷ See, e.g., *Fraser v. Major League Soccer, L.L.C.*, 97 F. Supp. 2d 130 (D. Mass. 2000); *Flood v. Kuhn*, 407 U.S. 258 (1972); *Am. Needle, Inc. v. Nat’l Football League*, 560 U.S. 183 (2010).

⁸ See Leah Farzin, *On the Antitrust Exemption for Professional Sports in the United States and Europe*, 22 JEFFREY S. MOORAD SPORTS L.J. 75 (2015).

⁹ *Id.* at 76.

These “special circumstances” mean that player-employees within leagues like the MLB, NFL, MLS, and National Basketball Association (NBA) have often been constrained in their compensation negotiation options when considering teams, but in different ways. Because different sports have different “special circumstances” that alter the application of antitrust regulations, each American professional league operates slightly different in accordance with relevant statutory and case law. Major League Baseball operates under the greatest protection because it holds an explicit antitrust exemption.¹⁰ Relative to Major League Baseball, the National Basketball Association and National Football League are less protected from antitrust regulation.¹¹ This has led both leagues to maintain non-statutorily protected collective bargaining agreements that standardize contracting among teams and effectively homogenize negotiation options available to teams in their acquisition of player-assets.¹²

Major League Soccer is in a somewhat unique antitrust position. In addition to operating under collective bargaining agreements, the League has been able to avoid antitrust enforcement by making the argument that the League functions as a ‘single-entity’ where individual clubs are merely franchises of MLS, which is one business entity.¹³ However, the single entity protection is not clearly formalized, so the League must attentively take actions that symbolize the League as a singular entity instead of disparate teams.¹⁴ This argument has merit for the American soccer industry because, as mentioned below, the competitive landscape of soccer is an international one, with MLS holding a significant but certainly not monopolistic proportion of the industry’s global market share.¹⁵ When competing for player-assets and viewership, MLS competes not just against other U.S. sports leagues like the MLB, NFL, and NBA, but also a host of international soccer clubs and leagues with equal or greater market power.¹⁶ In that sense, the MLS is a single entity in

¹⁰ See Farzin, *supra* note 8.

¹¹ *Id.*

¹² *Id.*

¹³ *Id.*

¹⁴ *Id.*

¹⁵ The 2023 global soccer market is sized at USD 712.32 million. According to graphical depictions within a report from Mordor Intelligence, the North American market is “medium” while the Middle Eastern and Eurasian markets are “large.” *Football Market Size & Share Analysis – Growth Trends & Forecasts (2023 – 2028)*, MORDOR INTELLIGENCE (2023), <https://perma.cc/MQY4-AQEP>.

¹⁶ The idea that Major League Soccer is a single entity in competition against foreign soccer leagues is supported by the recent filing of a petition for a writ of certiorari by the U.S. Soccer Federation in a case against Relevant Sports LLC, who sued USSF on behalf of La Liga, the premiere soccer league in Spain. Relevant Sports alleges that USSF has violated Section 1 of the Sherman Antitrust Act by entering a conspiracy in restraint of trade with

competition against other business entities, so the application of antitrust law it seeks to advance is defensible.

B. The terms of the Messi deal meaningfully differ from those of other player-owner deals in American professional sports.

Messi's deal was possible because of an earlier change to Major League Soccer's collective bargaining agreement. In 2007, the LA Galaxy wanted to sign David Beckham at a salary that would exceed the salary caps in Major League Soccer's collective bargaining agreement.¹⁷ To make this possible, the League adopted the "designated player rule"—an exception that allows teams to acquire players "whose total compensation and acquisition costs exceed the Maximum Salary Budget Charge, with the club bearing financial responsibility for the amount of compensation above each player's Salary Budget Charge."¹⁸ This rule remains in effect, so Inter Miami would have been allowed to offer Lionel Messi any salary for which he negotiated.¹⁹ While this rule was a necessary foundation for the Messi negotiations, it did not explicitly provide Inter Miami with a way to offer equity as part of a player's compensation package.

Messi is not the first world class athlete to potentially own interest in a club within his own sports league, and he is not even the first soccer player. The most similar previous move also related to David Beckham's MLS deal. As part of his contract, Beckham received a \$25 million option to purchase team ownership rights in a future MLS expansion, negotiated by the same firm representing MLS in Messi's deal.²⁰ Beckham exercised his option in 2014 to establish his ownership interest in Inter Miami.²¹ Though Beckham had this option back in 2007, the acquisition took place two years after his time with MLS concluded and one year after he had retired from professional athletics entirely, making his ownership in Miami more like Derek

FIFA. These allegations stem from an Association-wide agreement that prevents foreign clubs and leagues from holding competitive matches in the US. *See* United States Soccer Fed'n, Inc. v. Relevent Sports, LLC, 2023 WL 5099057 (U.S.); *see also* Paul Nicholson, *US Soccer appeals to Supreme Court to overturn ruling that would allow LaLiga to play in the US*, INSIDE WORLD FOOTBALL (Aug. 11, 2023), <https://perma.cc/J6SP-WWXQ>.

¹⁷ Paul Tenorio, *Inside the Lionel Messi to Inter Miami Deal – Seeing Off Saudis, Equity Offers, and Beckhams and Co.'s Secret Trip*, THE ATHLETIC (Jul. 15, 2023), <https://perma.cc/988E-5TFH>.

¹⁸ Major League Soccer, *2023 MLS Roster Rules and Regulations*, MLS (2023), <https://perma.cc/X7LZ-X5KB>.

¹⁹ Tenorio, *supra* note 17.

²⁰ Nick Firechau, *David Beckham Exercises MLS Expansion Option on Future Miami Franchise*, MLS (Feb. 5, 2014), <https://perma.cc/TT2X-YNSX>.

²¹ *Id.*

Jeter’s ownership of the Marlins or Michael Jordan’s ownership of the Hornet’s than Lionel Messi’s agreement.²² Beckham, Jeter, and Jordan, unlike Messi, all went on to own an interest in teams other than those for which they played. Even with the Beckham option as a road map, and despite MLS’s single-entity status, industry experts cite logistical complications as making it unlikely that the League would offer a similar franchise option to a future player. This likely contributed to Messi being offered interest in his own team rather than in a future league expansion club.²³

Thus, the Messi deal is an anomaly. In the sports industry, players are financial assets of the clubs for which they play.²⁴ Under the terms of his 2023 deal, Lionel Messi is both an asset of Inter Miami and Major League Soccer and a potential future owner of Inter Miami, a franchise club of Major League Soccer. As a player, Messi has different interests than he will have when he becomes a partial owner. Industry experts have long cited these competing interests as reasons team equity should not be on the table for athletes. At one point, the then Chairman of Morgan Lewis’ global sports initiative and former CEO of the Diamondbacks and the Padres, went as far as saying “while the idea that players and owners could establish some kind of broad-based equity ownership was ‘intriguing,’ it would also be a ‘non-starter[.]’”²⁵

High individual player salaries undercut team profitability, making it challenging to offer meaningful equity without asking players to sacrifice a portion of their high earnings—with no guarantee that any other star player will do the same.²⁶ Note here Messi’s relatively low \$150 million compensation to play in Miami. Because MLS is centralized, equity in the League writ large could be on the table, making profitability for any given owner less dependent on individual players’ salaries than it would be with equity in a single team.²⁷ However, this would be

²² *Id.*; see also Dahl, *supra* note 3.

²³ Kyle Bonn, *Lionel Messi Contract & Salary with Inter Miami: Star Picks MLS Over Barcelona, Saudi Arabia*, SPORTING NEWS (Jun. 20, 2023), <https://perma.cc/4EVH-2XPG>.

²⁴ For information on the assetization of professional athletes, see, e.g., Gracia Rubio Martin, et. al, *Valuation of football players in financial statements: the power of the crowd versus transfer fees*, EUR. FIN. MGT. ASSN. (2019); see also Pier-Luc Nappert and Maude Plante, *The assetization of baseball players: Instrumentalizing promise with signing bonuses and human capital contracts*, 105 ACCT. ORG. & SOC’Y (2023).

²⁵ Dahl, *supra* note 3.

²⁶ *Id.*

²⁷ See, e.g., *Fraser v. Major League Soccer, L.L.C.*, 97 F. Supp. 2d 130, 137 (D. Mass. 2000) (“On balance, the business organization of MLS is quite centralized. The league owns the teams themselves; disgruntled operators may not simply ‘take their ball and go home’ by withdrawing the teams they operate and forming or joining a rival league. MLS also owns all intellectual property related to the teams. It contracts for local-level services through its operators, who act on its behalf as agents. Operators risk losing their rights to operate their teams if they breach the governing Agreement. The Management Committee exercises

logistically complicated, like the Beckham option, making it an unlikely choice for the League.²⁸

Athletics is also volatile, with the average professional career lasting just until players' late 20s in sports like football and early-to-mid-thirties in sports like soccer.²⁹ Experts have long said that athletes' "short careers would make it impractical for any kind of formal ownership to exist on the players' side."³⁰ These longevity concerns are less pertinent to Messi, who is at the tail end of a decades long career, but are still relevant to the consideration of why future equity has not been a viable option for other soccer players. Another part of the concern surrounding athletes having an option for interest in their teams is even more simple: what happens when conflict arises among currently interested parties while a player with an option is playing for the team?³¹

Given these concerns among industry experts, it may seem surprising that Messi was offered future equity as part of his deal to play soccer in Miami. However, ex ante, the Beckham deal served as an indicator that MLS may be more willing than other American sports leagues to promise player-ownership to an athlete who is not yet retired. Taken with the unique growth potential of soccer in the United States, discussed below in Section C, MLS and Inter Miami's deal with Messi signals a strategic shift in the menu of potential deal structuring options that can incentivize internationally renowned athletes to play in the United States instead of regions where soccer is more popular. The need to incentivize world renowned athletes to play in the American league is one way in which soccer differs from other sports; professional leagues like the NFL, MLB, and NBA are often the default for world class athletes in a way that MLS, historically, has not been.³²

supervisory authority over most of the league's activities. It may reject, without cause, any operator's individual attempt to assign the rights to operate a team.").

²⁸ See Dahl, *supra* note 3.

²⁹ Ezequiel Rey, et. al., *No Sport for Old Players. A Longitudinal Study of Aging Effects on Match Performance in Elite Soccer*, 25 J. SCI. & MED. IN SPORT 535 (2022); Produced by Digital Editors, *What is the Average Retirement Age of an NFL Player?*, SPORTS CASTING (Nov. 13, 2022), <https://perma.cc/24K7-958C>.

³⁰ Dahl, *supra* note 3.

³¹ See, e.g., Michael McCann, *Why Three Diamondbacks Minority Owners are Suing Team's Majority Owner*, SPORTS ILLUSTRATED (Apr. 7, 2020), <https://perma.cc/5D2H-E867>.

³² For a breakdown of other professional leagues, see Zachary D. Rymer, *How Good Is the Japanese Professional Baseball League?*, BLEACHER REPORT (Nov. 12, 2013), <https://perma.cc/K7Y3-YDVV>; see also, Fran Fraschilla, *Top 12 basketball leagues in the world outside the NBA*, ESPN (Jan. 17, 2017), <https://perma.cc/HGK2-QXPD>; see also, Cfbmemes, *Professional Football Leagues outside of the NFL*, FIFTH QUARTER (Dec. 8, 2022), <https://perma.cc/45GF-88HR>.

C. The Messi deal is both a cause and a signal of the current growth phase of North American professional soccer.

Within the last decade, the sports industry overall has accounted for at least 3% of all global economic activity, and evidence suggests that professional soccer makes an incontrovertible contribution to the U.S. economy.³³ The existence of a fanbase is especially important to the financial performance of a soccer club but does not necessarily translate to the valuation of a club's assets. Studies find that playing "[soccer] matches... without spectators and behind closed doors... resulted in negative economic consequences for clubs, while the market and player values of clubs remained unaffected."³⁴ In other words, playing without fans makes soccer clubs less profitable, even if these profit gaps do not directly translate into how current and future stakeholders value clubs. Thus, it makes sense that clubs would seek to grow their fanbases, including by signing deals with star players.

Another relevant phenomenon is the recent trend away from the single owner model that has traditionally dominated professional sports in America.³⁵ As the value of professional clubs continues to rise, few individuals have enough capital to purchase an entire team.³⁶ The rise in cost of teams has therefore opened new pathways to ownership or partial ownership.³⁷ Even in this changing landscape, allowing players to hold equity in the teams for which they play, like the Messi deal, is banned by many sports leagues.³⁸ But soccer is different than other popular American sports, because soccer is a global sport. It is ranked number one in all but the United States and 34 other countries.³⁹ Some of the most admired athletes of all time have been soccer players. For example, in 2017, three of the ten most famous athletes in the world were non-American soccer players—including Messi. On the list, this was the highest number of "most admired" athletes from one sport.⁴⁰ Of those 34 countries where soccer is not the most popular sport, soccer is the second

³³ Murat Aygün, et. al, *The relation between football clubs and economic growth: the case of developed countries*, 10 HUMAN. & SOC. SCI. COMM. 566 (2023).

³⁴ *Id.*

³⁵ See Bonn, *supra* note 23.

³⁶ See Anna Sykes, et. al, *Beyond the Pitch: the rise of private equity in Sports*, STREET & SMITH'S SPORTS BUS. J. (May 3, 2023), <https://perma.cc/NN2R-4SGR>.

³⁷ *Id.*

³⁸ See Florio, *supra* note 6.

³⁹ Joe Kidwell, *226 countries can't be wrong*, BLEACHER REPORT (Nov. 14, 2018), <https://perma.cc/27QV-8ZU3>.

⁴⁰ Ben Alamar, *World Fame 100*, ESPN (May 30, 2017), <https://perma.cc/C5R7-BPPL>.

most popular sport for 21 of the countries.⁴¹ In the United States, soccer is the fourth most popular sport, behind American football, basketball, and baseball, in that order.⁴² Despite international love for the sport, the relative unpopularity of soccer in the United States leaves a salient gap in MLS's ability to profit from strong fanbases. Capitalizing on global popularity by acquiring international talent is one way that MLS can fill that gap.

Since the Messi deal occurred over the summer, Inter Miami games both away and at home have been selling out, tickets in the first few rows go for thousands of dollars on resale, and soccer fans who previously chose international matches over U.S. ones are tuning in to watch MLS.⁴³ With Messi as the face of the League, average game attendance league-wide was up 5% over last year and Inter Miami attendance was up 36%.⁴⁴ This boost in attendance seems to hold even when Messi does not actually play in the game. For example, Chicago Fire's October 2023 game against Inter Miami boasted nearly double the club's previous attendance record, with 62,124 fans attending the match despite Messi not even traveling to Chicago with his team.⁴⁵ These trends suggest that signing Lionel Messi in particular, and international soccer stars in general, may be an effective strategy through which Major League Soccer can capitalize on the global soccer industry and increase both its popularity and profitability, both domestically and abroad.

III. CONCLUSION

Lionel Messi's groundbreaking deal with Inter Miami in the summer of 2023 signals a significant shift in the landscape of American professional sports and, more specifically, Major League Soccer. While this deal is unique in several respects, the specific inclusion of a player-ownership option should be taken as an indication of the direction Major League Soccer will follow in its strategic growth within the soccer and sports industries. Navigating this period of strategic growth requires negotiators for athlete-assets, clubs, and the League to remain attentive to the terms of collective bargaining agreements and antitrust regulations while also thinking creatively.

⁴¹ Kidwell, *supra* note 39.

⁴² *Sports*, GALLUP, <https://perma.cc/4VC6-GW6H>.

⁴³ Anne M. Peterson, *Messi Mania has grabbed hold in Major League Soccer, but will it be a long-lasting boost?*, THE ASSOCIATED PRESS (Sept. 26, 2023, 1:34 PM CT), <https://perma.cc/UZA7-KCG2>.

⁴⁴ *Id.*

⁴⁵ Doug Greenberg, *Inter Miami Game Provides Short, Long-Term Gains for Chicago Fire*, FRONT OFFICE SPORTS (Oct. 5, 2023, 9:21 AM ET), <https://perma.cc/NJQ7-F5S7>.

Despite this complicated regulatory landscape and industry concerns, MLS has shown a willingness to allow players to hold equity in their teams, a notable deviation from other American sports leagues. This shift is emblematic of soccer's unique status as a global sport, especially in contrast to its relatively lower popularity in the United States. By making the Messi deal, MLS has effectively incentivized an internationally renowned athlete to play in the U.S., capitalizing on the sport's global appeal and the growth potential of soccer in the country.

It remains to be seen whether and how the Messi deal can be used as a foundation for future deals, but these developments come at a pivotal moment—before a spotlight turns on soccer in the United States. The 2026 FIFA men's World Cup is scheduled to be played in North America, with games in eleven U.S. cities, including Miami.⁴⁶ In addition to hosting the men's world cup, the United States is set to host the Copa America in 2024 and the Club World Cup in 2025, and it may also host the women's World Cup in 2027.⁴⁷ As the world's eyes turn toward American soccer, keen observers will remain attentive to the different ways Major League Soccer seeks to expand its domestic popularity and international regard through evolving collective bargaining agreements, creative player negotiations, and new ownership structures.

⁴⁶ *FIFA World Cup 26™*, FIFA (2023) <https://perma.cc/5KS8-57RT>.

⁴⁷ Lawrence Ostlere, *How Lionel Messi and Inter Miami broke America: From armed guards to Kardashians in the crowd*, INDEPENDENT (Sept. 20, 2023, 14:44 BST), <https://perma.cc/R8KM-GVY6>.