

**MAJOR LEAGUE SOCCER AND THE CORRUPTED 2022
FIFA WORLD CUP BIDDING: PROVING HARM AND
RECOVERING DAMAGES**

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INTRODUCTION

In May 2015, agencies of the U.S. Department of Justice (DOJ) unsealed an indictment against several top officials of soccer’s global governing body, the Fédération Internationale de Football Association (FIFA). The DOJ then unsealed a superseding indictment against additional FIFA officials in December 2015.¹ Though these indictments pertain

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1. *Nine FIFA Officials and Five Corporate Executives Indicted for Racketeering Conspiracy and Corruption*, DEP’T OF JUST. (May 27, 2015) [hereinafter *May DOJ Press Release*], <http://www.justice.gov/opa/pr/nine-fifa-officials-and-five-corporate-executives-indicted-racketeering-conspiracy-and>; *Sixteen Additional FIFA Officials Indicted for Racketeering Conspiracy and Corruption*, DEP’T OF JUST. (Dec. 3, 2015) [hereinafter *December DOJ Press Release*], <http://www.justice.gov/opa/pr/sixteen-additional-fifa-officials-indicted-racketeering-conspiracy-and-corruption>.

primarily to regional competitions in North and South America, federal agencies from the U.S. and Switzerland are also investigating corruption in the bidding process for the 2018 and 2022 FIFA World Cups. The Football Union of Russia and the Qatar Football Association (QFA) won the 2018 and 2022 bids, respectively.² That the process was corrupt is no secret: half of the 24 members of the FIFA Executive Committee (ExCo) from 2010, which had the exclusive voting privileges to award the 2018 and 2022 World Cups, were suspended or banned from FIFA or voluntarily resigned in the face of FIFA ethics investigations. Several more of these officials are now under U.S. indictment or have pled guilty.³ The most notable of these is Mohamed Bin Hammam, a Qatari billionaire and former ExCo member, whose “campaign to buy World Cup support” for his native country is detailed in the 472-page book *The Ugly Game*.⁴ Bin Hammam caught the

2. See, e.g., *FIFA Investigation: Attorney General Loretta Lynch Expects More Indictments*, NBC NEWS (Sept. 14, 2015, 11:21 AM), <http://www.nbcnews.com/storyline/fifa-corruption-scandal/fifa-investigation-attorney-general-loretta-lynch-expects-more-indictments-n426946> (predicting a new round of indictments and investigations of corruption in FIFA); Owen Gibson, *Swiss Investigating 53 Cases of Possible Money Laundering at FIFA*, GUARDIAN (April 4, 2016, 8:52 EDT), <http://www.theguardian.com/football/2015/jun/17/fifa-investigation-53-cases-money-laundering-swiss-attorney-general> (describing the Swiss investigation into manipulation of Swiss bank accounts for the 2018 and 2022 World Cup bids); Mark Hosenball, *FBI Probe Includes 2018, 2022 World Cup Host Awards: U.S. Official*, REUTERS (June 3, 2015, 2:38 PM), <http://www.reuters.com/article/us-soccer-fifa-fbi-idUSKBN00J26X20150603> (discussing the FBI’s investigation into FIFA’s 2018 and 2022 World Cup awards); Euan McKirdy, *Swiss FIFA Corruption Allegations Grow, Cast Hosting of World Cups Further into Doubt*, CNN (July 13, 2015, 1:41 PM), <http://edition.cnn.com/2015/07/13/football/swiss-fifa-probe-widens> (reporting that Swiss authorities are looking into FIFA’s award of the 2018 World Cup to Russia and the 2022 World Cup to Qatar).

3. See, e.g., *FIFA Executive Committee 2010: Where Are They Now?*, RTE SPORT <http://www.rte.ie/sport/soccer/2015/12/01/750480-fifas-executive-committee-where-are-they-now/> (last updated Dec. 1, 2015) (reporting on the indictments, investigations, suspensions, and bans of the 2010 ExCo members); David Conn, *Thailand FA President Worawi Makudi Gets 90-Day Football Suspension*, GUARDIAN (Oct. 12, 2015, 4:16 PM), <http://www.theguardian.com/football/2015/oct/12/fifa-worawi-makudi-thailand-suspended-90-days> (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”); *May DOJ Press Release*, *supra* note 1 (reporting that the U.S. indicted fourteen defendants and entered guilty pleas for six defendants who were involved in “the corruption of international soccer”); *December DOJ Press Release*, *supra* note 1 (adding an indictment against former ExCo member Ricardo Teixeira).

4. HEIDI BLAKE & JONATHAN CALVERT, *THE UGLY GAME: THE CORRUPTION OF FIFA AND THE QATARI PLOT TO BUY THE WORLD CUP 3* (2015). *The Sunday Times* Insight team took an active interest in the World Cup bidding process. Its secret recordings of FIFA officials soliciting bribes led to the suspension of two ExCo members before the vote. *Id.* at 222–24. The Insight team later provided evidence to the English Parliamentary Committee looking into English Football Association’s failed bid for the 2018 World Cup. *Id.* at 336–38. See also *Mohamed Bin Hammam Resigns from Football, Banned for Life*, FIFA.COM (Dec. 17, 2012), <http://www.fifa.com/governance/news/y=2012/m=12/news=mohamed-bin-hammam-resigns-from-football-banned-for-life-1973422.html> (reporting that Mohamed Bin Hammam resigned from his

attention of the DOJ, which lists him as “Co-Conspirator #8” in the superseding indictment.⁵

Despite doling out individual punishments and the prospect of governmental investigations exposing credible evidence, FIFA declined to nullify the World Cup awards or to call for a re-bid. Instead, FIFA proclaims that it “has no legal grounds to take away the hosting of the FIFA World Cup”⁶ Some commentators explored whether the United States Soccer Federation (USSF), which came in second to the QFA for the 2022 World Cup bidding, could mount its own challenge and force a World Cup USA.⁷ FIFA’s mandatory internal dispute mechanisms allow for actions at the Court of Arbitration for Sport and the application of Swiss law.⁸ Under the Swiss Federal Act on Unfair Competition, the USSF could enjoin the QFA from hosting the 2022 World Cup. An injunction would trigger the force majeure provision of FIFA’s statutes and allow FIFA to award the event to the USSF.⁹ Though possible, a 2022 World Cup USA remains unlikely for a number of reasons. First, the governmental investigations must uncover sufficient evidence of wrongdoing by the QFA or its bid committee by linking them to Bin Hammam, who is Qatari but had no official role in the Qatari bid. Second, if the USSF prevails, the arbitral panel need not grant an injunction, and, if the QFA is enjoined, FIFA may

positions within FIFA); HOUSE OF COMMONS, CULTURE, MEDIA AND SPORT COMM., 2018 WORLD CUP BID 21–22 (2011) (outlining the evidence of corruption and bribery reported by the *Sunday Times*).

5. Superseding Indictment at 34, *United States v. Hawit*, No. 15-252 (E.D.N.Y. Nov. 25, 2015) (“At various times relevant to the Indictment, Co-Conspirator #8 was a high-ranking official of FIFA and AFC, the regional confederation representing much of Asia.”).

6. Mark Morgenstein, *FIFA: No Grounds to Strip Russia or Qatar of World Cup*, CNN.COM, <http://edition.cnn.com/2015/06/08/football/fifa-scandal/> (last updated June 9, 2015).

7. 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, 543–44 (2012) (discussing how the U.S. has no avenue to challenge FIFA’s 2022 World Cup award to Qatar); 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, 177 (2014) (discussing whether the U.S. has a legal avenue to challenge FIFA’s award of the 2022 World Cup to Qatar).

8. Jeff Todd & R. Todd Jewell, *Reclaiming Economic Legacy: One Legal Strategy for a 2022 FIFA World Cup USA*, 44 CAPITAL U. L. REV. 245, 261–62 (2016). See also FIFA STATUTES arts. 66–68 (2015) (requiring persons, teams, and leagues within FIFA to submit to arbitration in the Court of Arbitration for Sport, which shall apply FIFA regulations as well as Swiss law).

9. Todd & Jewell, *supra* note 8, at 262. See also BUNDESGESETZ GEGEN DEN UNLAUTEREN WETTBEWERB [SWISS FED. ACT ON UNFAIR COMPETITION] Dec. 19, 1986, SR 241, arts. 4a, 10 (Switz.) (permitting equitable relief for persons whose economic interests are harmed by acts of unfair competition); FIFA STATUTES art. 85 (“The Executive Committee shall have the final decision on any matters not provided for in these Statutes or in cases of force majeure.”).

not award the 2022 World Cup to the USSF.¹⁰ Because the USSF seems unwilling to bid on the 2026 World Cup,¹¹ it may have no desire to pursue transnational arbitration for a mere shot at the 2022 World Cup. Even if the USSF is eventually awarded the bid, the event will not generate sufficient revenue to offset the millions it would likely incur from the legal proceedings.¹²

Major League Soccer (MLS), the tier-one professional soccer league for the U.S., might risk a few million dollars to recover a World Cup USA, however. The litigation costs would be a fraction of the injury suffered from losing the 2022 World Cup. Economists studied how the tier-one professional league for the host nation sees an increase in attendance, the “World Cup bump.”¹³ Established economic analytic techniques can measure the difference in MLS revenue with and without a 2022 World Cup from existing data on attendance, ticket prices, and game-day merchandise sales. The most conservative calculation shows a loss of about \$294 million.¹⁴ While public data about MLS are insufficient to project how lost revenue translates into lost profits, that lost revenue does support a

10. Todd & Jewell, *supra* note 8, at 282. See also SUPREME COMM. FOR DELIVERY & LEGACY, STATEMENT FROM THE SUPREME COMMITTEE FOR DELIVERY & LEGACY (2014), <https://d2u1rmkncwog70.cloudfront.net/Vault/VaultOutput?ID=7828&ts=1472341479> (disclaiming any association between the Qatar Bid Committee and Mohamed Bin Hammam except for legitimate solicitation of his vote).

11. See Caitlin Murray, *Is the US Ready—Or Even Willing—to Host the 2026 World Cup?*, 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 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). *But see* Andrew Warshaw, *FIFA’s North American World Cup Landscape Comes into Focus*, INSIDE WORLD FOOTBALL (Oct. 17, 2016), <http://www.insideworldfootball.com/2016/10/17/fifas-north-american-world-cup-landscape-comes-focus/> (speculating that the USSF, possibly in conjunction with Canada and Mexico, is in the best position to bid for the 2026 event after FIFA rule changes barred associations from Europe and Asia from doing so).

12. See Todd & Jewell, *supra* note 8, at 283–89 (describing how host associations typically lose money, or at best break even, from the World Cup, while transnational arbitration in the CAS could cost several million dollars in legal fees and other expenses).

13. See, e.g., Bastien Drut & Stefan Szymanski, *The Private Benefit of Public Funding: The FIFA World Cup, UEFA European Championship and Attendance at Host Country League Football 2* (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>.

14. See *infra* Part III.A (discussing the statistical methods employed to estimate the economic damages from losing the 2022 World Cup).

diminution in MLS's business value of at least \$261 million and possibly as high as \$1 billion.¹⁵

Measuring economic harm means little without the ability to recover money damages. Assuming that the governmental investigations and other sources yield sufficient evidence, MLS could pursue a U.S. suit for tortious interference with prospective economic advantage against Bin Hammam. Because he directed his plot against MLS interests, Bin Hammam is subject to personal jurisdiction in New York, and a court is likely to find him liable for the tort based on the known facts about corruption in the bidding process. Moreover, Bin Hammam has the assets to satisfy a large judgment.¹⁶ All litigation comes with uncertainty, however. For instance, the USSF must prove that it was likely to win the World Cup despite competition from several bidders.¹⁷ Assuming MLS obtains a judgment, it must enforce that judgment in Qatar, whose laws and courts bring additional obstacles to recovering damages. A tortious interference judgment may conflict with Qatari policy in general and *shari'a* law in particular.¹⁸

This Article examines the challenges facing MLS in determining the damages caused by the USSF losing the 2022 World Cup and then recovering those damages from Mohamed Bin Hammam. Part II summarizes the factual background of MLS, its interest in the 2022 World Cup, and the bidding process. Part III measures the economic harm to MLS related to the "World Cup bump," namely lower revenue because of lost attendance and game-day sales, diminished team values, and loss of broadcasting fees. Part III also discusses the limitations of predicting and measuring those economic harms. Part IV establishes Bin Hammam as a potential defendant by detailing his allegedly corrupt acts in securing the World Cup for the QFA. Part V discusses the potential MLS legal action for tortious interference with prospective economic advantage against Bin Hammam, its strengths and weaknesses, and the challenges with enforcing the judgment in Qatar. The Article concludes in Part VI by considering

15. See *infra* Part III.B (explaining the effect on MLS team values of losing the World Cup bump).

16. See *infra* Part IV (discussing the alleged corrupt acts of Bin Hammam in steering the World Cup toward Qatar and away from the U.S.). See also *infra* Parts V(A) and V(B) (discussing MLS's legal authority to bring a claim against Bin Hammam).

17. See *infra* Parts V.A, V.B, and V.C (detailing the elements necessary to sustain a tortious interference action against Bin Hammam).

18. See *infra* Part V.D (arguing that a successful judgment would be enforceable under Qatar law with some restrictions).

additional plaintiffs and defendants and applying the Article's analysis outside of the economics and law of sports.

II. MAJOR LEAGUE SOCCER AND THE 2022 FIFA WORLD CUP

FIFA is a confederation of 209 national soccer associations governing soccer worldwide.¹⁹ Every four years, FIFA sponsors the World Cup, the premiere event in international soccer if not “the largest sporting event in the world.”²⁰ The national team of each FIFA member association—whether from a soccer power like Argentina or Germany or a tiny Oceania Football Confederation (OFC) nation like Tahiti or the Cook Islands—participates in regional qualifiers and thus has a chance to make the cut of 32 teams that play in the World Cup matches.²¹ The World Cup therefore draws global interest, not only with tens of thousands of spectators packing the stadium at each match but also with a television viewer reach of over three billion people.²² Even in a supposed non-soccer country like the U.S., the 2014 World Cup matches had an average viewership of over 4.5 million, while the game between the U.S. and Portuguese national teams drew almost 25 million viewers, a number higher than any game of the 2013 NBA finals.²³

The World Cup has immense importance not only to the U.S. men's team and its fans but also to MLS. In a sense, MLS was born from a World Cup: as part of winning the 1994 World Cup bid, the USSF agreed to form

19. See Fausto Martin de Sanctis, *Requirements for the 2014 FIFA World Cup in Brazil and Requirements of Governmental Bodies to Deter Financial Crimes in the Football Sector*, 21 SW. J. INT'L L. 27, 39 (2014) (explaining that FIFA is composed of several associations that must submit to FIFA's regulations). See also Youd, *supra* note 7, at 178 (describing the internal confederation of FIFA).

20. 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) (FIFA “could be described as the most powerful IF [International Federation], with the FIFA World Cup being the largest sporting event in the world.”).

21. See, e.g., *2018 FIFA World Cup Russia: Qualifiers*, FIFA.COM, <http://www.fifa.com/worldcup/preliminaries/index.html> (last visited Nov. 21, 2016); Warshaw, *supra* note 11 (writing that FIFA is discussing expanding the tournament to 40 or 48 teams).

22. *FIFA World Cup Group Stages Break New Ground in TV Viewing*, FIFA.COM (June 28, 2014), <http://www.fifa.com/worldcup/news/y=2014/m=6/news=fifa-world-cuptm-group-stages-break-new-ground-in-tv-viewing-2388418.html>.

23. *Id.* See also *World Cup Final Sets U.S. TV Record*, ESPNFC (Jul. 15, 2014), <http://www.espnfc.us/fifa-world-cup/story/1950567/world-cup-final-most-watched-soccer-game-in-us-history-more-than-26-million-viewers> (describing the exceeded expectations of television viewership 2014 World Cup final); 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).

a division-one professional soccer league.²⁴ Ten MLS teams first took the field in 1996;²⁵ the league now has 20 teams, including three in Canada, with expansion teams planned in four other cities by 2020.²⁶ New entrants to the league pay a hefty admission price: while the first expansion team, the Chicago Fire, paid an expansion fee of five \$5 million in 1998, the most recent, the Los Angeles Football Club (LAFC), reportedly paid \$110 million.²⁷ By the 2011 season, MLS average game attendance was 17,872, greater than that of the National Basketball Association (NBA) and the National Hockey League (NHL).²⁸ Although MLS has depended more upon fan attendance than the NBA and NHL—which each have their own television networks—MLS and the USSF recently entered into a broadcast contract with FOX and ESPN. That contract is reportedly valued in the \$90 million range annually for eight years, with about half of that money going to MLS.²⁹

24. Todd & Jewell, *supra* note 8, at 292–93 (citing BEAU DURE, LONG-RANGE GOALS: THE SUCCESS STORY OF MAJOR LEAGUE SOCCER 2 (2010)). *See also* Fraser v. Major League Soccer, 284 F.3d 47, 53 (1st Cir. 2002) (reciting how “the USSF promised to establish a viable Division I professional soccer league in the U.S.” as “consideration” for being awarded the right to host the 1993 World Cup by FIFA).

25. *See, e.g., History: Timeline*, USSOCCER.COM, <http://www.ussoccer.com/about/history/timeline> (last visited Nov. 21, 2016) (presenting a detailed timeline of MLS’s formation and seminal events).

26. *MLS Teams*, YAHOO! SPORTS, <http://sports.yahoo.com/soccer/mls/teams/> (last visited Nov. 21, 2016). *See also* Don Garber: *MLS Plans to Expand Beyond 24 Teams in Six Months*, FOX SPORTS (Apr. 24, 2015), <http://www.foxsports.com/soccer/story/don-garber-major-league-soccer-plans-to-expand-beyond-24-teams-in-six-months-042415> (listing expansion teams set to begin play in Atlanta, Los Angeles, Minneapolis, and Miami).

27. *See e.g., Christopher Savino, Franchise Fees in MLS Increasing at a Rate of 18% Since Inaugural Season*, BUSINESS OF SOCCER (Aug. 30, 2016, 6:00 PM), <http://www.businessofsoccer.com/2013/06/11/franchise-fees-in-mls-increasing-at-a-rate-of-18-since-inaugural-season/> (showing that Chicago Fire paid five million expansion fee); 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> (showing LAFC paid a \$110 million expansion fee).

28. Ben Maller, *Getting The Boot: NBA Loses Its Spot As Third-Best-Attended U.S. Pro Sports League*, POST GAME (Nov. 4, 2011), <http://www.thepostgame.com/blog/dish/201111/nba-no-longer-3rd-best-attended-us-sports-league>.

29. MLS’s TV broadcast contract with FOX, ESPN, and Univision is reported to be in the \$90 million range per year for eight years, and this amount will be shared with the USSF for the right to broadcast US Men’s National Soccer Team games over the same period. Chris Smith, *Major League Soccer Announces New TV Deals with ESPN, Fox, Univision*, FORBES (May 12, 2014, 1:59 PM) [hereinafter Smith, *MLS TV Deal*], <http://www.forbes.com/sites/chris-smith/2014/05/12/major-league-soccer-announces-new-tv-deals-with-espn-fox-univision/#2715e4857a0be85e0141a3ff>. If, as suggested by Stefan Szymanski, based on conversations with sources within MLS and reported on his blog, MLS’s share of broadcast revenue is about half of the contract, then teams can expect a little over \$2 million per year over the life of the contract. Stefan Szymanski, *So What Is the MLS Business Model?*, SOCCERNOMICS (Apr. 23, 2015), <http://www.soccernomics-agency.com/?p=692>.

While this growth is impressive, a second World Cup USA would elevate MLS to another level.³⁰ The national association may organize and host the event, and its men's team may play in the matches,³¹ but the nation's tier-one professional league also benefits from a World Cup. A nation hosts the event once a generation, if at all, because the World Cup's locale alternates from one continent to another every four years.³² In the years between winning the bid and staging the matches, the host association commits significant resources to generate interest before the World Cup and to create a soccer legacy that endures after the final match.³³ The host association and its affiliated leagues market World Cup preparations to build excitement for the event and to generate interest in the sport itself, which includes greater support for professional soccer.³⁴ Some legacy effects are largely non-pecuniary like goodwill and international image, which also translate to the professional league.³⁵ For example, some people may share the view of FIFA's head of reform, Francois Carrard, that soccer in the U.S. is "just an ethnic sport," "something for girls to play in school."³⁶ MLS Commissioner Don Garber called that view wrong and pointed to increased U.S. viewership of the World Cup and MLS average attendance as facts demonstrating that the U.S. is emerging as a soccer nation.³⁷

As discussed in more detail in Part III, the "World Cup bump" is perhaps the most direct legacy effect for professional soccer leagues in host countries. For tier-one clubs whose stadiums hosted World Cup games, attendance increased by 17% to 21% during each of the five seasons following the tournament.³⁸ For clubs in non-hosting cities within the same host country, attendance increased by 8% to 20% during the same period.³⁹

30. Murray, *supra* note 11.

31. See FÉDÉRATION INTERNATIONALE DE FOOTBALL ASS'N, REGULATIONS: 2018 FIFA WORLD CUP RUSSIA 14 JUNE—15 JULY 2018, at 7 (2015) (showing that Russia has these rights in the 2018 World Cup).

32. FIFA STATUTES art. 80(4).

33. Murray, *supra* note 11.

34. *Id.*

35. 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, 360 (2011).

36. Gabriele Marcotti, *FIFA, Here We Go Again: Reform Chief Carrard Talks Blatter Style Nonsense*, ESPN FC (Aug. 25, 2015), <http://www.espnfc.us/fifa-world-cup/4/blog/post/2580385/fifa-head-of-reform-francois-carrard-> (internal quotation marks omitted).

37. Aaron Cranford, *Don Garber Insists MLS Will Be One of World's Best Leagues in 10 Years or Less* (Sept. 9, 2015), <http://sbisoccer.com/2015/09/insists-worlds-leagues>.

38. Todd & Jewell, *supra* note 8, at 294 (citing Drut & Szymanski, *supra* note 13, at 2).

39. *Id.*

Accordingly, if Seattle were to host World Cup matches, attendance at Seattle Sounders games could increase from 44,247 to 53,096 per game.⁴⁰ The Sounders would at that attendance level draw larger crowds than the National Football League's (NFL) Vikings or Rams and would be comparable to the attendance figures of the Raiders.⁴¹ The team with the lowest average attendance, the Colorado Rapids at 15,657, could be pushed to its stadium capacity of 18,000 and thus command higher ticket prices, or move to a larger venue, or both.⁴²

An increase in attendance would translate to an increase in the value of MLS itself. Rising revenues from ticket and game-day sales provide leverage to negotiate higher licensing fees, which means increased team values.⁴³ This, in turn, would spur the addition of more teams. Lower-tier soccer teams in San Antonio and Louisville have recently shown an interest in joining MLS.⁴⁴ Heightened interest and increased revenues from a World Cup would allow MLS to charge these teams an expansion fee considerably higher than the \$110 million paid by the LAFC.

MLS's chance to benefit from the legacy of a World Cup came in 2009 when FIFA solicited bids for hosting rights to the 2018 and 2022 World Cups.⁴⁵ The USSF registered bids for both but withdrew from consideration

40. *MLS Sets New Attendance Records, Seattle Hold Highest Average in League*, MLS (Oct. 26, 2015) [hereinafter *MLS Record*], <http://www.mlssoccer.com/post/2015/10/26/mls-sets-new-attendance-records-seattle-hold-highest-average-league>.

41. *Compare id.* (reporting that the highest average MLS attendance in 2015 was 44,247), with *NFL Attendance—2015*, ESPN.COM, http://www.espn.com/nfl/attendance/_/year/2015 (last visited Nov. 21, 2016) (reporting the average per game attendance for all NFL team during the 2015 season).

42. *See, e.g., MLS Record, supra* note 40 (showing the Colorado Rapids attendance was at 15,657); *Dick's Sporting Goods Park*, STADIUM GUIDE, <http://www.stadiumguide.com/dickssportinggoodspark/> (last visited Nov. 21, 2016) (showing the Colorado Rapid's capacity is 18,000).

43. *See* Todd & Jewell, *supra* note 8, at 292–93 (highlighting the potential economic impact on MLS for a 2022 World Cup USA).

44. *See e.g.,* Ben Nicholson, *Spurs Investor Group Opts for USL Franchise as Stepping Stone to MLS*, INSIDE WORLD FOOTBALL (Dec. 28, 2015), http://www.insideworldfootball.com/world-football/football-americas/18578-spurs-investor-group-opts-for-usl-franchise-as-stepping-stone-to-mls?utm_content=buffer2b750&utm_medium=social&utm_source=twitter.com&utm_campaign=buffer (reporting that the group that owns the NBA's San Antonio Spurs recently agreed with the City of San Antonio and Bexar County to operate a tier-three United Soccer League team with the goal to expand to the MLS within 13 years); Ben Nicholson, *Louisville Stadium Study Signals Desire to Slug Their Way to an MLS Franchise*, INSIDE WORLD FOOTBALL (Jan. 15, 2016), http://www.insideworldfootball.com/world-football/football-americas/18670-louisville-stadium-study-signals-desire-to-slug-their-way-to-an-mls-franchise?utm_content=buffer97886&utm_medium=social&utm_source=twitter.com&utm_campaign=buffer (reporting that the USL Louisville FC is also taking steps to expand).

45. Letter from Jérôme Valcke, Secretary General, FIFA, to Member Associations of FIFA Eligible to Bid for the 2018 and/or 2022 FIFA World Cup (Jan. 15, 2009),

for 2018 to focus on 2022.⁴⁶ MLS was perhaps the single largest supporter of the USSF bid.⁴⁷ The USSF established a USA Bid Committee, and MLS provided space in its league office in New York City for the Committee headquarters while Commissioner Garber served as a board member of the Committee.⁴⁸ Along with the league owners and Soccer United Marketing, MLS made a \$2 million donation to the Committee, which represented about 20% of the Committee's total expenditures.⁴⁹ In a sense, MLS merely reinvested the \$2 million in itself. Commissioner 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."⁵⁰ FIFA's evaluation of the USSF bid noted that "potential is high" for marketing soccer in the U.S. in part because MLS "has increased in professionalism over the last decade . . ."⁵¹

After the associations submitted bid books and received hosting evaluations from FIFA representatives in almost every logistical and financial aspect, the USSF was one of only five associations left prior to the final vote in December 2010.⁵² The host selection rules empowered the ExCo to choose the winning bid.⁵³ The FIFA President, Vice Presidents, and persons appointed by the confederations comprised the 24-member ExCo.⁵⁴ Twenty-two of those ExCo members voted through a series of

<http://www.fifa.com/mm/document/affederation/administration/99/74/80/20182022invitationtobidcirculare.pdf>. See also FIFA EVALUATION GROUP, 2022 FIFA WORLD CUP BID EVALUATION REPORT: USA 2 (2010) [hereinafter USA BID EVALUATION REPORT], <http://www.fifa.com/mm/document/tournament/competition/01/33/74/55/b8usae.pdf>.

46. *USA Bid Committee to Focus on 2022 FIFA World Cup*, USSOCCER.COM (Oct. 15, 2010), <http://www.ussoccer.com/stories/2014/03/17/13/52/usa-bid-committee-to-focus-on-2022-fifa-world-cup> (announcing USA Bid Committee's decision to withdraw its 2018 FIFA World Cup bid to "focus on the 2022 campaign").

47. See *USA Bid Receives \$2 Million Dollar Donation from MLS Club Owners and Soccer United Marketing*, U.S. SOCCER (Nov. 19, 2010), <http://www.ussoccer.com/stories/2014/03/17/11/23/usa-bid-receives-two-million-dollar-donation-from-mls-club-owners-and-sum> (quoting the MLS Commissioner, Don Garber: "For more than a decade and a half, Major League Soccer has been deeply committed to building soccer in the United States . . .") [hereinafter *USA Bid Donations*].

48. *Id.*

49. *Id.* See Murray, *supra* note 11 (writing that the USA Bid Committee spent approximately \$10 million).

50. *USA Bid Donations*, *supra* note 47.

51. USA BID EVALUATION REPORT, *supra* note 45, at 29.

52. Todd & Jewell, *supra* note 8, at 252–55. See also USA BID EVALUATION REPORT, *supra* note 45, at 3 (outlining the key dates for the 2018 and 2012 FIFA World Cup bidding process).

53. Morris, *supra* note 7, at 543–44.

54. Guillermo Jorge, *Fixing FIFA: The Experience of the Independent Governance Committee*, 21 SW. J. INT'L L. 165, 167 (2014). The Vice Presidents are also the heads of six regional

secret ballots, and one association was eliminated each round until one achieved a majority.⁵⁵ After eliminating the Australian, Japanese, and Korean bids, the USSF and QFA were the two finalists.⁵⁶

Compared to the USSF bid, the QFA bid had significant logistical problems: Qatar would have to build several new stadiums in a relatively short period of time, and blistering 120-degree summers would pose a health risk to players and fans—unless the World Cup were moved to the winter and thus conflict with the seasons of many tier-one professional leagues from which the national team players are drawn.⁵⁷ The QFA had no lack of desire, however. The Emirate of Qatar made a push to become a presence in international sports and international soccer, in particular. The QFA hosted the Asian Cup; the Qatari government owns the wealthiest club in France, Paris Saint-Germain of Ligue 1; and Qatar Airways sponsors one of the most popular professional teams in the world, Barcelona FC of La Liga.⁵⁸ Nor did the QFA lack the resources. In addition to securing the government backing required for constructing eight new stadiums with advanced cooling technology,⁵⁹ the Qatar Bid Committee outspent the USA Bid Committee by an estimated \$30 million.⁶⁰ The Emirate also conceded to every governmental condition that FIFA desired, including altering its laws to offer concessions to FIFA for customs, taxation, and licensing

confederations. *See also* FIFA STATUTES art. 30(1); *Id.* 30(4) (providing that the confederation for Europe, the Union of European Football Associations (“UEFA”), has three vice presidents).

55. 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>.

56. Morris, *supra* note 7, 548–49. *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* 17 (Nov. 13, 2014) [hereinafter *Eckert Summary*], http://www.fifa.com/mm/document/affederation/footballgovernance/02/47/41/75/statementchairmanadjc heckert_neutral.pdf, for a fairly concise summary of the FIFA rules in effect in 2009–2010 as well as the bidding process.

57. FÉDÉRATION INTERNATIONALE DE FOOTBALL ASSOCIATION, 2022 FIFA WORLD CUP BID EVALUATION REPORT: QATAR *passim* (2010) [hereinafter *Qatar Bid Evaluation Report*], <http://www.fifa.com/mm/document/tournament/competition/01/33/74/56/b9qate.pdf>.

58. Simeon Kerr, *Qatar Lashes Out at “Racist” World Cup Criticism*, FIN. TIMES (June 15, 2015, 4:53 PM), <http://www.ft.com/cms/s/0/1752d956-1277-11e5-bcc2-00144feabdc0.html#axzz3pKJxogu1>.

59. *See, e.g., id.* (writing that the Qatari government has launched a \$100 billion infrastructure investment plan related to the World Cup); Peter Kovessy, *Qatar Presents World Cup Master Plan to FIFA Executives*, DOHA NEWS (Feb. 25, 2015), <http://dohanews.co/qatar-presents-world-cup-master-plan-fifa-executives/> (writing that the QFA originally proposed twelve stadiums but that current plans call for only eight).

60. Murray, *supra* note 11 (estimating that the QFA spent \$42 million on its bid activities).

rights—something that the U.S. government declines to do for international sporting events.⁶¹

The QFA won the final round of bidding with 14 votes to the USSF's eight.⁶² Pursuant to its Hosting Agreement with FIFA, the QFA established a Local Organising Committee (LOC) that conducted all event planning, promotion and marketing, as well as operations and related tournament duties.⁶³ From 2009 to 2014, the LOC remained dormant; all World Cup duties fell to the Supreme Committee—later renamed the Supreme Committee on Development and Legacy (SCDL)—a body created by Emiri decree.⁶⁴ The LOC now oversees preparations for hosting the World Cup while the SCDL oversees long-term, World Cup infrastructure projects such as new stadium construction.⁶⁵ Rather than collaborating with the USSF to plan and market a 2022 World Cup USA, MLS has only watched as the LOC, the SCDL, and FIFA “work closely together in delivering on . . . all the requirements to host a historic World Cup in the Middle East for the very first time.”⁶⁶

III. PROVING ECONOMIC INTERESTS

Several U.S. entities could sustain economic damage from losing the 2022 World Cup. For instance, the USSF will never see the potential growth of soccer culture in the U.S. that would likely result from hosting the World Cup.⁶⁷ While lost soccer culture to the USSF is difficult to appraise, MLS will suffer economic damage that is more quantifiable and directly hits several different revenue streams. Foremost, MLS will lose the increase in attendance associated with the “World Cup bump.” Given the

61. Compare USA BID EVALUATION REPORT, *supra* note 45, at 31–32 (concluding that the necessary government support was not provided at the time of the bid submission), with QATAR BID EVALUATION REPORT, *supra* note 57, at 28–29 (concluding that the Qatari government supplied the crucial concessions to comply with FIFA's requests). See also Gandert & Epstein, *supra* note 20, at 32–33 (speculating that FIFA displeasure with the U.S. declining to bend its laws to accommodate FIFA's structure could affect FIFA's decisions about awarding the World Cup to the U.S.).

62. *Eckert Summary*, *supra* note 56, at 17.

63. FAQ, SUPREME COMMITTEE FOR DELIVERY AND LEGACY, <http://www.sc.qa/en/media/faq> (last visited Nov. 13, 2016). See also *Eckert Summary*, *supra* note 56, at 8 (reporting that all bidding national associations established an LOC by December 11, 2009, to run World Cup operations if the bid succeeded).

64. SUPREME COMMITTEE FOR DELIVERY AND LEGACY, *supra* note 63.

65. *Id.*

66. *First Qatar 2022 Local Organising Committee Meeting Held in Doha*, FIFA.COM (Feb. 25, 2015), <http://www.fifa.com/worldcup/qatar2022/news/y=2015/m=2/news=first-qatar-2022-local-organising-committee-meeting-held-in-doha-2532186.html>.

67. Todd & Jewell, *supra* note 8, at 283, 296.

importance of game-day revenue to MLS, forfeiting the “World Cup bump” negatively impacts revenues. Losing the “World Cup bump” will also reduce the growth of MLS team values. In addition, hosting a World Cup is a tremendous platform for exposing MLS to a broader range of sports fans. A lost 2022 World Cup means losing national exposure that could otherwise lead to greater television revenues for the league. This Part provides a brief overview and explanation of the potential economic advantage of winning the 2022 World Cup bid for MLS with a focus on the economic losses associated with losing the “World Cup bump.”

A. The “World Cup bump” in Attendance and Lost Revenue

As discussed above, the highest level of professional soccer in the U.S. and Canada is MLS, which began play in 1996 with ten teams.⁶⁸ As of the 2015 season, MLS expanded to 20 teams, with plans to expand to 24 by 2020 and perhaps more after that.⁶⁹ A target of 30 teams seems like a reasonable long-term goal given that the most successful sports leagues in North America have at least that many. The NFL has 32 teams, while Major League Baseball, the NBA, and the NHL each have 30.⁷⁰ The positioning of MLS in the structure of the USSF is similar to that of soccer leagues in major European countries.⁷¹ Specifically, MLS is a wholly separate entity from the USSF. Although MLS and the USSF collaborate on club-related and national team issues, MLS is sanctioned by FIFA through the USSF.⁷² MLS differs from most other professional sports leagues by having a unique single-entity structure instead of franchising the rights to separately owned teams to join the league.⁷³ Investors play a role in developing a team

68. *See supra* Part II (discussing the formation and rise in popularity of MLS).

69. *Don Garber: MLS Plans to Expand Beyond 24 Teams in Six Months*, *supra* note 26.

70. *NFL Teams*, YAHOO! SPORTS, <http://sports.yahoo.com/nfl/teams/> (last visited Nov. 21, 2016); *MLB Teams*, YAHOO! SPORTS, <http://sports.yahoo.com/mlb/teams/> (last visited Nov. 21, 2016); *NBA Teams*, YAHOO! SPORTS, <http://sports.yahoo.com/nba/teams/> (last visited Nov. 21, 2016); *NHL Teams*, YAHOO! SPORTS, <http://sports.yahoo.com/nhl/teams/> (last visited Nov. 21, 2016).

71. UNION OF EUROPEAN FOOTBALL ASS'NS, VISION EUROPE 12/34 (2005); *About U.S. Soccer – Affiliates*, U.S. SOCCER (Oct. 17, 2016, 7:05 PM), <http://www.ussoccer.com/about/about-us-soccer/organizational-structure>.

72. *See, e.g., Professional Council*, USSOCCER.COM <http://www.ussoccer.com/about/affiliates/professional-soccer> (last visited Nov. 21, 2016) (listing MLS as a member of the USSF Professional Council); *Associations: USA: U.S. Soccer Federation*, FIFA.COM, <http://www.fifa.com/associations/association=usa/> (last visited Nov. 21, 2016) (listing MLS as the National League for the USSF).

73. Elizabeth Cotignola, *Major League Loophole: A Look at MLS's Shaky Single-Entity Status*, SOCCERWIRE.COM (Jan. 30, 2015), <http://www.soccerwire.com/news/pro/mls/major-league-loophole-a-look-at-mlss-shaky-single-entity-status/>.

and paying the expansion fee, but rather than owning the team, they invest directly in MLS, become part of its board of governors, and procure separate contracts to manage the teams.⁷⁴ Accordingly, MLS has an ownership stake in all of its teams—indeed, all players are contracted to MLS rather than their teams—so the league itself has a claim to all sources of revenue generation.⁷⁵

By the 2015 season, average MLS game attendance was 21,574, which was a growth of 24% from the inaugural season in 1996.⁷⁶ The growth in average attendance is more significant for MLS than for other major North American sports leagues. MLS's revenues are mainly derived from game-day sources like tickets, merchandise, concessions, and parking.⁷⁷ Given the importance of game-day revenue for MLS clubs, maximizing attendance is paramount. Based on economic research, host countries see an increase in attendance, especially for clubs in cities lucky enough to host World Cup games.⁷⁸ For clubs hosting World Cup games, the bump translated to an increased attendance between 17% and 21% during each of the five seasons following the tournament; clubs in the host country that did not see games at their stadiums still increased attendance by 8% to 20% during that same period.⁷⁹ These results, coupled with information on MLS attendance and revenue, reveal the prospective revenues MLS stood to gain from the “World Cup bump.” Specifically, the difference in attendance with and without the “World Cup bump” is one way to quantify the effect of hosting the 2022 World Cup. Furthermore, estimates of MLS revenue and revenue

74. *Id.* See also *Fraser v. Major League Soccer*, 284 F.3d 47, 53–54 (1st Cir. 2002); *About Major League Soccer*, MLS PRESSBOX, <http://pressbox.mlssoccer.com/content/about-major-league-soccer> (last visited Nov. 21, 2016) (“Major League Soccer is structured as a single, limited liability company (single-entity). In the single-entity business structure, club operators own a financial stake in the League, not just their individual team.”).

75. See *Fraser*, 284 F.3d at 53 (describing how MLS has the responsibility for identifying, hiring, and placing players in the league). Though media and fans might colloquially reference MLS “team owners” and “franchises,” these terms are not legally accurate. Chris Smith, *Major League Soccer's Billionaire Owners*, FORBES (Nov. 20, 2013, 1:00 PM) [hereinafter Smith, *MLS's Billionaire Owners*], <http://www.forbes.com/sites/chris-smith/2013/11/20/major-league-soccers-billionaire-owners/#2715e4857a0b6037525445f1>.

76. MLS Soccer Staff, *MLS Sets New Records, Seattle Hold Highest Average in League*, MLS (Oct. 26, 2015, 1:18 PM), <http://www.mlssoccer.com/post/2015/10/26/mls-sets-new-attendance-records-seattle-hold-highest-average-league>. See also *MLS History 1996 Season Recap*, MLS, <http://www.mlssoccer.com/history/season/1996> (last visited Nov. 21, 2016) (estimating average MLS game attendance to be 17,406 people per game).

77. Chris Smith, *Major League Soccer's Most Valuable Teams*, FORBES (Nov. 20, 2013, 1:00 PM), <http://www.forbes.com/sites/chris-smith/2013/11/20/major-league-soccers-most-valuable-teams> (estimating that 90% of revenue for MLS in 2012 came from game- and stadium-related sources).

78. Todd & Jewell, *supra* note 8, at 294 (citing Drut & Szymanski, *supra* note 13, at 2).

79. *Id.*

per fan show an estimated monetary value of the lost attendance, i.e., the economic harm associated with a lost “World Cup bump.”

Eighteen cities were chosen as potential 2022 World Cup USA venues.⁸⁰ Of these 18 potential host cities, 12 are either home to MLS teams as of the 2015 season or are slated for expansion by 2022.⁸¹ By 2022, MLS plans to have 14 teams in these 12 host cities: two teams in New York City and Los Angeles and one in each remaining city.⁸² For the purpose of creating estimates, assume that each of the potential host cities would host a 2022 World Cup game were it to occur in the U.S.; assume that the minimum “World Cup bump” mentioned previously is the actual outcome (17% for host cities, 8% for non-host cities); and assume that MLS’s expansion plans come to fruition. Further, since MLS’s regular season begins before the normal summer kickoff of World Cup 2022, assume that 2022 is the first year of the “World Cup bump.” Thus, a prediction is necessary for MLS attendance with and without the “World Cup bump” for 14 host-city teams and ten non-host-city teams for the years 2022, 2023, 2024, 2025, and 2026.

Currently, data are publicly available on the average game attendance in MLS for all years of its existence—1996 to present.⁸³ Using the most basic methodology, these data form a linear forecast of MLS attendance from 2022 to 2026. An Ordinary Least Squares (OLS) estimation, applied to MLS per-team average gate attendance data through the 2015 season, produces a linear forecast line. OLS is a form of multiple regression analysis, which applies a formula to a “cloud of data points” to show a straight line that best represents a trend, in this instance increasing

80. USA BID EVALUATION REPORT, *supra* note 45, 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, D.C.).

81. *Clubs*, MLS, <http://www.mlssoccer.com/clubs> (last visited Nov. 21, 2016); *see also* Evan Ream, *Commissioner Garber: Next Round of MLS expansion “Likely Happening in 2020”*, MLS (Apr. 14, 2016, 7:59 PM), <http://www.mlssoccer.com/post/2016/04/14/commissioner-garber-next-round-mls-expansion-likely-happening-2020> (discussing Commissioner Garber’s comments on the recent addition of a MLS team in Atlanta and MLS’s possible expansion to San Diego by 2020).

82. *See, e.g.*, MLS Soccer Staff, *supra* note 76 (listing clubs in Boston (New England), Dallas, Colorado, Houston, Kansas City, Los Angeles, New York City, Philadelphia, Seattle, and Washington, D.C.); Jeff Carlisle, *Examining Candidates for the Next Round of MLS Expansion*, ESPNFC (May 7, 2015), <http://www.espnfc.com/major-league-soccer/19/blog/post/2438275/examining-the-candidates-for-the-next-round-of-mls-expansion> (listing expansion teams in Atlanta and Miami).

83. MLS ATTENDANCE, <http://mlsattendance.blogspot.com/> (last updated May 10, 2015); Major League Soccer Attendance, OMICS INT’L, http://research.omicsgroup.org/index.php/Major_League_Soccer_attendance (last visited Nov. 21, 2016).

attendance.⁸⁴ OLS is the basic tool of statistical analysis for economists because of its “large number of desirable properties” when the estimation is linear in nature.⁸⁵ The OLS forecast equation is: *Average Attendance* = $(265.79 \times \text{Year}) - 516,626$.⁸⁶ For the years 2022 to 2026, *Average Attendance* is forecasted to be 20,801, 21,067, 21,333, 21,599, and 21,865.⁸⁷ For 24 MLS teams, each playing 17 regular-season home games, plus a total of 17 post-season games, the total attendance for these five seasons is predicted to be 45,332,540 or just over nine million per season.

In order to estimate the impact of a possible 2022 World Cup USA, the previously estimated “World Cup bump” can be employed using an average bump weighted by host and non-host teams $((0.17 \times 14 + 0.08 \times 10) / 24) = 0.1325$.⁸⁸ Based on the weighted average bump of 13.25% each year, the total increase in attendance associated with hosting a 2022 World Cup is 6,006,562 fans over the five-year period in question. Each of these fans is expected to generate revenue for MLS. MLS does not report ticket revenue to the public,⁸⁹ so direct measures of the dollar value of the World Cup attendance bump are not possible. *Forbes* magazine reports information on average MLS ticket prices for each team on the secondary market.⁹⁰ As a reasonable proxy for average MLS ticket prices, consider that the median of these per-team averages is \$54. Assuming an inflation rate of 2% per year for ticket prices through 2026,⁹¹ approximately six million more fans

84. D.H. Kaye, *The Dynamics of Daubert: Methodology, Conclusions, and Fit in Statistical and Econometric Studies*, 87 V.A. L. REV. 1933, 1993–94 (2001).

85. PETER KENNEDY, A GUIDE TO ECONOMETRICS 43 (6th ed. 2008) (discussing criteria for the “choice for the ‘optimal’ estimator . . .”). See also 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”).

86. See *id.* (discussing the formulation of the OLS method).

87. These numbers are derived by applying the OLS equation for the years 2022 to 2026.

88. See Jesse Lawrence, *Toronto FC Tops MLS with Most Expensive Secondary Market Tickets*, FORBES (May 9, 2014, 6:16 PM), <http://www.forbes.com/sites/jesselawrence/2014/05/09/toronto-fc-tops-mls-with-most-expensive-secondary-market-tickets/#19422c901758> (also determining the average “bump” for home games).

89. See Chris Smith, *Major League Soccer’s Most Valuable Teams 2015*, FORBES (Aug. 19, 2015, 12:32 PM) [hereinafter Smith, *Most Valuable MLS Teams*], <http://www.forbes.com/sites/chris-smith/2015/08/19/major-league-soccer-s-most-valuable-teams-2015-2/#2715e4857a0b78003b643ba4> (showing that individual teams may report revenue, but not the MLS itself).

90. Lawrence, *supra* note 88.

91. See, e.g., Binyamin Applebaum, *Issue for Fed: Is a 2% Inflation Rate High Enough?*, N.Y. TIMES (Apr. 28, 2015), http://www.nytimes.com/2015/04/29/business/economy/2-inflation-rate-target-is-questioned-as-fed-policy-panel-prepares-to-meet.html?_r=0 (“The cardinal rule of central banking, in the United States and in most other industrial nations, is that annual inflation should run around 2 percent.”).

through the gate would lead to an increase in gate revenue of nearly \$396 million based simply on ticket sales. If as is predicted by economic theory, the price of tickets increases as demand for MLS games increases,⁹² then this value understates the true economic damage to MLS. Furthermore, fans generally purchase more than just a game ticket when attending a soccer match. MLS revenue per fan per game was approximately \$73 in 2012.⁹³ At this level of spending, the economic loss to MLS would jump up to over \$524 million, accounting for inflation.

The preceding forecast may not be reliable because it ignores the differences among MLS teams. Arguably, much of the recent growth in average attendance rates is due to the high rates of attendances for expansion teams like Seattle and Orlando.⁹⁴ In addition, some MLS teams (e.g., Houston, Kansas City, and Salt Lake City) are constrained to lower-than-average-growth by stadium size.⁹⁵ Forecasting attendance for each game can control for differences among teams. Accurately predicting MLS attendance into the distant future hinges on accurately controlling the determinants of demand for soccer, some of which vary at the game level. Once game attendance is forecasted, total predicted attendances can be added to create yearly predictions. Another advantage of per-game forecasting is that the expected “World Cup bump” can be directly applied to individual teams without resorting to the use of a weighted average. Specifically, those teams located in host cities are assigned a bump of 17% to their individual forecast, while other teams are assigned a bump of only 8%.

A recent economic study uses detailed game-level data for all MLS games from 2007 to 2012.⁹⁶ That study illustrates the importance of controlling for game-level effects such as team quality and time of year in

92. See, e.g., Patrick Feehan, *Attendance at Sports Events*, in HANDBOOK ON THE ECONOMICS OF SPORT 90, 90 (Wladimir Andreff & Stefan Szymanski eds. 2006) (discussing the theoretical basis for most economic studies of attendance demand in sports as “the standard theory of demand”); MICHAEL PARKIN, MICROECONOMICS 68 (12th ed. 2016) (“The increase in demand creates a shortage at the original price, and to eliminate the shortage the price must rise.”).

93. R. Todd Jewell, *The Effect of Marquee Players on Sports Demand: The Case of US Major League Soccer*, J. SPORTS ECON., Feb. 2015, at 11 (basing dollar amount on 2012 revenue figures and not reflecting inflation).

94. Patrick Rishe, *How Major League Soccer’s Attendance Data Slightly Oversells League’s Overall Growth*, FORBES (Oct. 27, 2015), <http://www.forbes.com/sites/prishe/2015/10/27/how-major-league-soccers-attendance-data-slightly-oversells-leagues-2015-successes/#2715e4857a0b27bcb3831279>.

95. See, e.g., MLS ATTENDANCE, *supra* note 83 (listing the attendance as a percentage of stadium capacity for the Houston Dynamo at 90.96%, Sporting Kansas City at 108.13%, and Real Salt Lake at 99.44%).

96. Jewell, *supra* note 93, at 3.

accurately predicting MLS attendance.⁹⁷ These data can be supplemented with available game-level attendance data for 2013, 2014, and 2015 from the ESPN website.⁹⁸ OLS is run controlling for home team, opponent, and month of the year on MLS per-game attendance for all regular-season games over the seasons 2004 to 2015. The linear forecast equation includes controls for team, opponent, and month employing a dummy-variable approach. Estimates of per-game attendance for each MLS team are produced, capping growth at stadium size where appropriate.⁹⁹ For the four future expansion teams, per-game attendance is set at the overall league average. Using the per-game methodology, average attendance for MLS is forecasted to be 20,702; 20,862; 21,021; 21,181; and 21,340 for the years 2022 to 2026. The total attendance for these five seasons is predicted to be 44,670,464, or 8.9 million per year.

Using the per-game estimates, we now apply the “World Cup bump” directly to the host and non-host cities, as well as control for restricted growth due to stadium size. The “World Cup bump” in attendance using the per-game method is predicted to be 4,468,740 fans—over 25% less than the estimated bump using the league-average method—with economic damage estimated at between \$294 million and \$390 million using the \$54 ticket price and \$73 per-fan spending, respectively. Thus, the per-game methodology results in smaller estimates of economic damage, but these estimates are more reliable due to better attendance forecasts. These in turn are the result of a greater ability to separate the overall time trend in attendance from other confounding factors that influence demand for soccer attendance.¹⁰⁰

These smaller amounts are nonetheless significant, especially in light of MLS’s annual revenue. MLS does not publish financial data. Unsurprisingly, there is some disagreement about how much revenue the league generates each year. A prominent sports economist pegs 2014 MLS revenue at \$233 million.¹⁰¹ However, *Forbes* magazine suggests that MLS

97. *Id.* at 4–6.

98. *Major League Soccer Statistics*, ESPNFC, <http://www.espnfc.us/major-league-soccer/19/statistics/performance?season=2013> (last visited Nov. 21, 2016) (reporting scores and statistics for each MLS game).

99. *USA, THE STADIUM GUIDE*, <http://www.stadiumguide.com/present/usa/> (last visited Nov. 21, 2016) (linking to reports with details for each MLS stadium, including seating capacity).

100. Rob Simmons, *The Demand for Spectator Sport*, in *HANDBOOK ON THE ECONOMICS OF SPORT* 77, 79 (Wladimir Andreff & Stefan Szymanski eds. 2006) (listing the determinants of demand for spectator sports).

101. Szymanski, *supra* note 29. Szymanski’s estimate has created some controversy. See Triplett, Blog post to *The Szymanski Rebuttal*, *BIG SOCCER* (May 4, 2015),

revenue was over \$461 million in 2014.¹⁰² Assuming that these numbers reflect a realistic range, the economic harm to MLS of losing the “World Cup bump” clearly constitutes a considerable sum when compared to current yearly revenues.

Whether this gap between revenue estimates means significant lost profits is an open question. Estimates by *Forbes* magazine show MLS essentially breaking even in 2014,¹⁰³ and MLS Commissioner Garber claims that MLS is not showing profits.¹⁰⁴ However, increasing attendance and revenues have led some to speculate that MLS is moving in the direction of profitability.¹⁰⁵ Only the next six years of operation leading to the 2022 World Cup, along with MLS access to its own financial documents, can provide clarity on profitability. As the next subsection demonstrates, the lost revenues nevertheless have importance beyond profits because they allow for a determination of lost team values, which are far more significant than profits.

B. The “World Cup bump” and Team Values

Another possible effect from hosting a World Cup in the U.S. would be an increase in MLS team values. For other professional sports leagues, much of the potential return from owning a franchise is the price at which the owner could sell the team, including the team’s assets and liabilities.¹⁰⁶ MLS does not franchise but instead owns a percentage of all teams; accordingly, the teams themselves are MLS assets, so their value to the business is more properly measured by future income-generating potential.¹⁰⁷ Although limited information exists on actual team values, data

<http://forums.bigsoccer.com/threads/the-szymanski-rebuttal.2019698/> (rebutting Szymanski’s methodology and sources using publicly available data).

102. Smith, *Most Valuable MLS Teams*, *supra* note 89.

103. *Id.*

104. Grant Wahl, *15 Years of The Don: Under Garber, MLS Has Stayed Afloat, Has Taken Strides*, *SI.COM* (Dec. 3, 2014), <http://www.si.com/soccer/planet-futbol/2014/12/03/don-garber-mls-commissioner-major-league-soccer> (claiming that \$100 million in annual enterprise losses are not being offset by other profitable ventures by MLS).

105. Noah Davis, *Major League Soccer’s Money Problems*, *NEW YORKER* (May 2, 2014), <http://www.newyorker.com/news/sporting-scene/major-league-soccers-money-problems> (“M.L.S. still isn’t profitable, but it’s headed in the right direction.”).

106. See *Fishman v. Estate of Wirtz*, 807 F.2d 520, 550–55 (7th Cir. 1987) (affirming assessment of damages related to tortious conduct that prevented plaintiff from purchasing the Chicago Bulls by determining what a willing buyer would pay for the team, including assets and liabilities).

107. See David S. Jenkins, *The Benefits of Hybrid Valuation Models*, 76 *CPA JOURNAL* 48, 48 (2006) (explaining that the value of a business asset can be “derived from either future income-generating potential or liquidation value”).

are available that allow for an educated guess at the current and future values of MLS teams and an estimate of the impact of the “World Cup bump” on team values. For example, we know the value of recent expansion fees MLS received: in 2015, LAFC reportedly paid \$110 million for a second team in Los Angeles.¹⁰⁸ An additional source of information on MLS team values is *Forbes* magazine, which reports that the average MLS team value increased from \$38.4 million in 2008 to \$157.2 million in 2014, a three-fold increase that roughly translates to a compounded annual growth rate of 26.5%.¹⁰⁹

As stated above, *Forbes* estimates 2014 revenues for MLS teams to be \$461 million, or \$25.6 million for each of the 18 MLS teams that existed that year. Although *Forbes*’s methodology is not public information, researchers have shown that the value of sports franchises is closely correlated with revenue. A common way to value a business is by way of a revenue-multiple approach.¹¹⁰ Specifically, one may value a business by reference to revenues, gross or net of costs, and an industry multiple to estimate the value, since the value of owning a business is essentially the present discounted value of all future income streams.¹¹¹ Consequently, as revenues grow, the value of MLS teams will increase. Being conservative, we take the 2014 revenue estimate of *Forbes*, \$25.6 million per team, and the most recent expansion fee as the estimate of average MLS team value \$110 million, and get a revenue multiple of 4.3. This result implies that the value of MLS teams on average is 4.3 times yearly gross revenues. Less conservative revenue multiples would assume the *Forbes* valuation of \$157.2 million per MLS team and \$25.6 million per team in revenue, resulting in a multiple of 6.1, or the latest franchise fee of \$110 million and Szymanski’s \$12.9 million per team revenue estimate, resulting in a multiple of 8.5.¹¹² This Article chooses the most conservative multiple to avoid hyperbolic estimates of economic harm, but the results discussed in this section should be considered as minimums.

108. Baxter, *supra* note 27.

109. Compare Smith, *Most Valuable MLS Teams*, *supra* note 89 (estimating MLS teams to be worth \$157 million on average), with Peter J. Schwartz & Kurt Badenhausen, *Major League Soccer’s Most Valuable Teams*, FORBES (Sept. 9, 2008 6:00 PM), http://www.forbes.com/2008/09/09/mls-soccer-beckham-biz-sports-cz_kb_0909mlsvalues.html (estimating each team to be worth \$37 million on average).

110. See, e.g., ASWATH DAMORDARAN, INVESTMENT VALUATION 543 (2d ed. 2002) (discussing the advantage of using revenue multiples for firm valuation).

111. *Id.* at 11.

112. Szymanski, *supra* note 29. See also Smith, *Most Valuable MLS Teams*, *supra* note 89 (writing in *Forbes* that the average MLS team is valued at \$157 million).

The influence of the “World Cup bump” on team values is directly related to this revenue multiple. Consider the smallest estimate of the “World Cup bump” in revenues discussed above, where the effect of having a 2022 World Cup USA would increase overall revenues from 2022 through 2026 for MLS by \$294 million. Under this scenario, the estimated “World Cup bump” for MLS in 2026 is \$60.8 million. Based on a revenue multiple of 4.3, the “World Cup bump” would increase 2026 MLS team values by a total of \$261 million ($\$60.8 \text{ million} \times 4.3$). Clearly, larger World Cup revenue bumps would lead to larger changes in team values as would larger revenue multiples. For instance, the largest revenue-bump estimate (\$524 million over five years), suggests an increase in MLS revenue in 2026 of \$117.8 million and an increase in 2026 team values of \$719 million using a 6.1 revenue multiple ($\$117.8 \text{ million} \times 6.1$). And using the largest multiple of 8.5, the “World Cup bump” in MLS club values would be in the ten-figure range ($\$117.8 \text{ million} \times 8.5 = \1 billion). But, even at conservatively estimated “World Cup bumps” and relatively small revenue multiples, the change in team values associated with the “World Cup bump” would still be substantial for MLS’s overall business value.

C. The “World Cup bump” in Television Exposure

As a per-game attendance enterprise, MLS is not that much different from other major North American sports such as the NHL.¹¹³ A major difference between MLS and these sports leagues is how much revenue each generates from television viewership.¹¹⁴ The four major North American professional sports leagues (NFL, MLB, NBA, NHL) generate a substantial portion of total revenue from TV, while MLS is largely dependent on game-day revenues.¹¹⁵ For instance, the national contract for the NHL with NBC Sports Group adds up to \$200 million per year (\$6.7 million per team per year), and the NFL, MLB, and NBA generate

113. See Elliot Turner, *MLS vs the Major Leagues: Can Soccer Compete when it Comes to Big Business*, GUARDIAN (Mar. 12, 2014), <https://www.theguardian.com/football/2014/mar/12/mls-soccer-nfl-nba-mlb-nhl-epl-business> (comparing growth trends from the start of major U.S. sports leagues to demonstrate that MLS is on pace based on how long it has existed).

114. See, e.g., *id.* (stating MLS signed a television deal for \$70 million a year, which is a “ninth of the NHL’s combined TV revenue”).

115. See Szymanski, *supra* note 29 (calculating broadcast revenue totals).

substantially more than the NHL.¹¹⁶ By contrast, MLS's television deal amounts to less than \$2 million per team per year.¹¹⁷

Up to this point in the analysis, we have concentrated on the impact that hosting a World Cup might have on MLS revenues associated with game-day attendance. MLS is keenly aware of its dependence on game-day revenues for short-term survival. MLS is just as aware, however, that it must have increased television revenue to compete long-term in the crowded commercial landscape that is professional sports in North America.¹¹⁸ For MLS, the holy grail of revenues would therefore be a television contract closer to that of other North American sports leagues. Reaching the television earning power of the NHL would necessitate at least a three-fold increase in the yearly, per-team value of MLS's television contracts. Given that MLS's current television contracts are more than triple the previous contract with NBC Sports Group,¹¹⁹ a further tripling of the television deal by 2022 is not out of the question, especially if the 2022 World Cup were held in the U.S. rather than in the Middle East.

It is difficult to estimate the impact that hosting a World Cup would have on television exposure and revenue in MLS, but one should not underestimate the importance of television revenue to MLS's bottom line. Several pieces of anecdotal evidence suggest that interest in soccer as a television viewing experience is growing.¹²⁰ Consider the following: television viewership is improving for MLS games, with a ratings increase

116. Bob Condor, *NHL, NBC Sign Record-Setting 10-Year TV Deal*, NHL NEWS (Apr. 19, 2011), <http://www.nhl.com/ice/news.htm?id=560238>. Consider the most popular North American professional league, the NFL, which generates tremendous revenues from its national television contracts. In 2016, each NFL team is projected to earn a *minimum* of \$181 million. Daniel Kaplan, *TV Money up 20 Percent for NFL Clubs*, SPORTS BUS. J. (July 21, 2014), <http://www.sportsbusinessdaily.com/Journal/Issues/2014/07/21/Finance/NFL-revenue.aspx>.

117. See, e.g., Smith, *MLS TV Deal*, *supra* note 29 (describing MLS's new TV deal with ESPN, NBC, and Univision will result in \$90 million per year in revenue for MLS); Szymanski, *supra* note 29 (finding that MLS only received \$13 million from broadcasts of MLS games).

118. See John Ourand & Christopher Botta, *MLS's Big Play*, SPORTS BUS. J. (May 12, 2014), <http://www.sportsbusinessdaily.com/Journal/Issues/2014/05/12/Media/MLS-TV.aspx> (reporting the most recent television "deal as pivotal" to MLS's future and part of "the growth of a soccer nation").

119. Smith, *Most Valuable MLS Teams*, *supra* note 89.

120. See, e.g., Cork Gaines, *Soccer Popularity Is on the Rise in the US, But English Football Is Benefiting More than MLS*, BUS. INSIDER (Jul. 2, 2014), <http://www.businessinsider.com/soccer-popularity-english-football-mls-2014-7> (demonstrating increased viewership of soccer in the U.S. using data that indicates higher levels of interest in English teams); Brian Steinberg, *As World Cup Popularity Grows, so Does U.S. Interest in Soccer*, VARIETY (June 11, 2014 11:01 AM), <http://variety.com/2014/tv/news/as-world-cup-popularity-grows-so-does-u-s-interest-in-soccer-1201218306/> (showing an increase in U.S. soccer viewership during the last two World Cups).

of 38% from 2014 to 2015;¹²¹ U.S. television ratings for the 2014 World Cup were 50% higher than those for World Cup 2010;¹²² and the USA-Portugal match of World Cup 2014 “was the most-watched event ever on ESPN that did not involve American football.”¹²³ MLS’s challenge is to sustain growth in demand for televised MLS games and to translate demand for televised World Cup games into demand for televised MLS soccer. Although it is unknown how much a 2022 World Cup USA would help MLS to generate television revenues, MLS would be well-positioned to demand more money from broadcasting companies if a local World Cup was on the horizon.

D. Conclusion

MLS derives much of its current revenues from game-day sources. Economic research indicates that professional soccer leagues experience a bump in attendance associated with hosting the World Cup. Based on these prior results, this section applies statistics to estimate the value of the “World Cup bump” to MLS. Based on various assumptions, the estimates of the “World Cup bump” on attendance revenue range from \$294 million to \$524 million. Even the highest estimate produced here may underestimate the value of the “World Cup bump,” however, since ticket prices are likely to rise with increases in demand for game-day attendance at MLS games. In addition to directly affecting game-day revenue, the World Cup attendance bump will also impact the value of MLS teams, which are the league’s primary assets. A conservative estimate of the potential loss in total team values is \$261 million, but that number could easily reach the \$1 billion mark under less conservative assumptions. Although sufficient data do not currently exist to measure the potential lost television revenues, they may represent the most important loss to MLS as the league continues to grow and attempts to compete in the market for professional sports. Even without a measure of lost television revenue, the economic harm to MLS associated with the lost bid for World Cup 2022 is expected to be substantial when compared to the current revenue-generating potential of the league.

121. Christopher Harris, *MLS TV Numbers Increase on Fox Sports and ESPN for 2015 Regular Season*, WORLD SOCCER TALK (Oct. 27, 2015), <http://worldsoccertalk.com/2015/10/27/fox-sports-and-espn-both-see-gains-in-mls-tv-viewership-compared-to-last-season/>.

122. *World Cup 2014: Record U.S. TV Ratings Sure Sign of Soccer’s Rapid Growth Here*, CBSNEWS.COM (June 24, 2014, 4:44 AM), <http://www.cbsnews.com/news/world-cup-2014-record-u-s-tv-ratings-sure-sign-of-soccers-rapid-growth-here/>.

123. *Id.*

IV. THE ALLEGED CORRUPTION OF MOHAMED BIN HAMMAM

The staggering difference in revenues and team values with and without a 2022 World Cup USA means little without the prospect of MLS recovering at least some of the losses. When the QFA won the World Cup after a bidding campaign that was light on logistics but flush with cash, critics concluded that the ExCo votes had been bought unlawfully.¹²⁴ Most of the 24 members of the ExCo from 2010 have been suspended or banned by FIFA, have resigned voluntarily in the face of FIFA ethics investigations, have been caught by investigative journalists for accepting or securing bribes, and/or have been indicted or are being investigated by law enforcement authorities.¹²⁵ Many of these disgraced ExCo members colluded to secure the 2022 World Cup for the QFA—and, in some instances, acted directly to thwart the USSF bid and thus harm U.S. soccer interests.¹²⁶ The common element linking them is billionaire Mohamed Bin Hammam, whom Blake and Calvert in *The Ugly Game* portray as the primary architect of the plot to buy the World Cup for Qatar.¹²⁷ This is based upon eyewitnesses, an immense amount of electronic data, and their own secret recordings.¹²⁸

In 2010, Bin Hammam was president of the Asian Football Confederation and a member of the Executive Committee and so he had a vote for the 2018 and 2022 bids.¹²⁹ Blake and Calvert chronicle how he parlayed that single vote into seven total through two vote-swapping pacts. He arranged for the Asian voters from countries with rival bids for 2022—Qatar, Japan, and South Korea—to support each other in later rounds as their national association’s bids were eliminated in early rounds.¹³⁰ He supported the joint Spanish/Portuguese bid for 2018 with the Asian votes in

124. 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.”).

125. See Conn, *supra* note 3 (reporting that FIFA officials have been suspended or banned).

126. See BLAKE & CALVERT, *supra* note 4, *passim* (describing corrupt behavior by FIFA officials in the 2022 bidding process).

127. BLAKE & CALVERT, *supra* note 4, at 3.

128. *Id.* at 2–3.

129. *Eckert Summary*, *supra* note 56, at 28. See also Keogh, *supra* note 55 (showing that Bin Hammam was both the Asian Football Confederation chief and a supporter of the award of the 2022 World Cup to Qatar).

130. BLAKE & CALVERT, *supra* note 4, at 176–77.

exchange for the votes of ExCo members from Spain, Argentina, and Brazil for the Qatar bid for 2022.¹³¹

As a wealthy construction tycoon,¹³² Bin Hammam had access to millions of dollars with which he bought additional votes for the QFA bid.¹³³ For example, both before and after the vote, he wired payments to ExCo member Jack Warner of Trinidad and Tobago and to Warner's sons—including payments to accounts in Salt Lake City and New York City.¹³⁴ He secured three of the African Executive Committee member votes—Issa Hayatou of Cameroon, Jacques Anouma of Ivory Coast, and Amos Adamu of Nigeria—by providing lavish junkets to Kuala Lumpur and Doha for these men and for the heads of the African national associations.¹³⁵ Cash payments and/or bank deposits were arranged from accounts controlled by Bin Hammam, his daughter Aisha, and his company KEMCO.¹³⁶

Bin Hammam also managed to deny a vote to the USSF.¹³⁷ Just before the voting, FIFA suspended Reynald Temarii of the OFC after he was caught on video soliciting bribes, although his official suspension resulted from general rules violations.¹³⁸ The OFC planned to replace Temarii with a voter who was instructed by the Oceania national associations to vote for the Australian association's bid—which was eliminated after the first round—and, alternatively, for the USSF bid.¹³⁹ Just before the voting in Zurich, Bin Hammam met with Temarii and encouraged him to appeal his suspension, during which time the OFC seat would remain vacant and the

131. *Id.* at 212–15. See also Owen Gibson, *FIFA Under New Pressure over Mohamed Bin Hammam's Qatar 2022 Role*, *GUARDIAN* (Apr. 22, 2015, 17:00), <http://www.theguardian.com/football/2015/apr/22/fifa-mohamed-bin-hammam-qatar-2022-world-cup> (reporting that Sepp Blatter “confirmed that ‘a bundle’ of votes were traded between Qatar and Spain/Portugal”).

132. Bin Hammam is a billionaire who owns KEMCO Group, which is a holding company of several companies involved in construction and engineering services. *BLAKE & CALVERT*, *supra* note 4, at 7–11. See also *About Us*, KEMCO GRP., <http://www.kemco-qatar.com/AboutUs.html> (last visited Nov. 21, 2016) (“Since 1985 KEMCO became a Sole Proprietorship owned by Mr. Mohammed Bin Hammam Al Abdulla.”).

133. See *BLAKE & CALVERT*, *supra* note 4, at 390–97 (describing corrupt behavior of FIFA officials).

134. *Id.*

135. *Id.* at 101–02.

136. *Id.* at 101–02, 109–12, 119–20.

137. *Id.* at 256.

138. See *id.* at 257–61 (describing further corrupt practices of FIFA officials).

139. *Id.* at 261–62.

vote for the USSF gone.¹⁴⁰ Bin Hammam paid hundreds of thousands of dollars in legal and detective fees for Temarii's appeal.¹⁴¹

FIFA banned Bin Hammam from soccer because of payments to Warner and other Caribbean national association officials based on the findings of the special ethics investigator Michael Garcia, a former United States Attorney.¹⁴² FIFA has not released the 430-page report authored by Garcia, instead publishing only a 42-page summary by its ethics head Hans Joachim Eckert that Garcia himself disclaims as “contain[ing] numerous materially incomplete and erroneous representations.”¹⁴³ Despite the criticism heaped upon the Eckert Summary, it nonetheless corroborates many of the illicit activities of Bin Hammam: “several different improper payments to high-ranking CAF [Confederation of African Football] football officials during the time before the December 2, 2010, FIFA Executive Committee vote”; “a payment of USD 1,212 million Mr. Bin Hammam appears to have made to Mr. Jack Warner”; and “offer[ing] to arrange for the payment of Mr. Temarii's legal fees” to appeal his suspension and thus “eliminate a vote for Qatar's competition in the FIFA World Cup™ bidding process.”¹⁴⁴

The Eckert Summary attributes the payments to Bin Hammam's unsuccessful bid for FIFA President rather than to the World Cup bid—even though the CAF-related payments occurred prior to the World Cup vote.¹⁴⁵ It also recognizes that “Bin Hammam supported Qatar's bid and

140. *Id.* at 263.

141. *Id.* at 256–67; David Bond, *FIFA Bans Adamu and Temarii Over World Cup Vote Claims*, BBC SPORT, <http://news.bbc.co.uk/sport2/hi/football/9203378.stm> (last updated Nov. 18, 2010).

142. *See, e.g., Eckert Summary, supra* note 56, at 28 (finding that FIFA “banned Mr. Bin Hammam from football-related activity for life”); FIFA.COM, *supra* note 4 (writing that FIFA banned Bin Hammam due to the report by Michael Garcia); *Louis Freeh, Private Eye*, FORTUNE (Jul. 25, 2013, 11:26 AM), <http://fortune.com/2013/07/25/louis-freeh-private-eye/> (reporting that FIFA had initially proceeded to ban Bin Hammam based upon the investigation of private detective and former FBI director Louis Freeh).

143. Holly Watt & Ben Rumsby, *Michael Garcia Quits as FIFA Ethics Investigator*, TELEGRAPH (Dec. 17, 2014, 4:45 PM), <http://www.telegraph.co.uk/sport/football/world-cup/11299503/Michael-Garcia-quits-as-Fifa-ethics-investigator.html>. *See also* Holly Watt, *Michael Garcia's Resignation Statement*, TELEGRAPH (Dec. 17, 2014, 4:23 PM), <http://www.telegraph.co.uk/sport/football/world-cup/11299563/Michael-Garcias-resignation-statement.html> (discussing Mr. Eckert's 42-page summary); David Conn, *FIFA Ethics Report Summary Showcases a Warped Sense of Integrity*, GUARDIAN (Nov. 13, 2014, 10:06 AM) [hereinafter Conn, *FIFA Ethics*], <http://www.theguardian.com/football/blog/2014/nov/13/fifa-ethics-report-summary-warped-sense-integrity> (criticizing the summary for identifying “[s]everal appalling instances of apparent corruption, collusion and vote-buying” yet concluding that these did not compromise the World Cup bidding process).

144. *Eckert Summary, supra* note 56, at 28–29.

145. *Id.* at 28.

that his actions with respect to Mr. Temarii influenced the voting process[,]” but concludes that this “did not affect the outcome of the FIFA World Cup™ 2018/2022 bidding process as a whole.”¹⁴⁶ This glosses over the concession that the process itself was tainted, and, more to the point, ignores the collusion to create vote-swapping pacts—which are not even mentioned in the Eckert Summary—and these pacts’ impact on the vote. Critics have therefore called the Eckert Summary a “farce” and “whitewash” because “Fifa does not want the headache of cancelling the votes and re-running the bids.”¹⁴⁷

FIFA can do little to derail the U.S. and Swiss investigations, however, which are already yielding evidence of corruption, much of it related to the allegations against Bin Hammam. The superseding indictment describes payments made to Warner by “Co-Conspirator #8,” including wiring \$1,211,980 for a credit to an account held in Warner’s name.¹⁴⁸ While the indictment attributes these payments to Bin Hammam’s FIFA presidential run,¹⁴⁹ Blake and Calvert describe this as hush money so that Warner would not make Bin Hammam’s plot public.¹⁵⁰ The indictment’s reference to Bin Hammam means that the DOJ is scrutinizing his activities, so the ongoing investigations might yield evidence linking the payments to the World Cup bid.¹⁵¹ After all, the DOJ has the cooperation of former U.S. ExCo member Chuck Blazer—who has been linked to illicit activities with Warner—and of Warner’s sons Darrell and Daryan, and it has indicted Warner, who awaits extradition.¹⁵² Two other ExCo voters, both part of the alleged

146. *Id.* at 29.

147. *See, e.g.,* Conn, *FIFA Ethics*, *supra* note 143 (finding that claims of corruption did not lead to a new vote, FIFA instead claimed they “s[aw] no evil” relating to Bin Hammam’s involvement).

148. Superseding Indictment at 120–24, *United States v. Hawit*, No. 15-252 (E.D.N.Y. filed Nov. 25, 2015).

149. *Id.*

150. BLAKE & CALVERT *supra* note 4, at 390–97.

151. Superseding Indictment at 34, *United States v. Hawit*, No. 15-252 (E.D.N.Y. filed Nov. 25, 2015).

152. *See, e.g.,* Todd & Jewell, *supra* note 8, at 260 (citing *May DOJ Press Release*, *supra* note 1); *see also* Transcript at 30–31, *U.S. v. Blazer*, 13-CR-602, 13-MC-1011 (E.D.N.Y. Nov. 25, 2013) (testifying to conspiring with other FIFA executives to accept bribes, including for the 1998 and 2010 World Cups); Stephanie Clifford, *Ex-FIFA Official Chuck Blazer Admitted Accepting Bribes for World Cup Votes*, N.Y. TIMES (Jun. 3, 2015), http://www.nytimes.com/2015/06/04/sports/soccer/soccer-official-chuck-blazer-admitted-accepting-bribes-for-world-cup-votes.html?_r=0 (discussing Mr. Blazer, Daryan, and Daryll as cooperating witnesses); *Jack Warner Wins Fight to Challenge US Extradition on Corruption Charges*, CARRIBEAN360 (Jan. 24, 2016), <http://www.caribbean360.com/news/jack-warner-wins-fight-to-challenge-us-extradition-on-corruption-charges> (describing the FBI’s claims against Jack Warner).

Spain-Qatar voting pact, have also been indicted: Nicolas Leoz and Ricardo Teixeira.¹⁵³

The U.S. and Swiss attorneys general continue to expand their investigations into the bidding process.¹⁵⁴ Swiss authorities have access to otherwise secret Swiss bank accounts; they have already frozen tens of millions of francs in accounts related to FIFA executives—including potentially one of Nicolas Leoz—and provided account information to U.S. authorities.¹⁵⁵ FIFA has cooperated in providing emails and other documents to Swiss authorities.¹⁵⁶ It thus seems likely that evidence supporting the allegations of corruption by Bin Hammam is forthcoming.

V. RECOVERING FROM BIN HAMMAM

MLS as a would-be plaintiff thus has a potential defendant in Mohamed Bin Hammam. As a U.S. company, MLS might prefer to sue in a U.S. court—such as a federal district court with familiar rules of procedure and evidence, in particular the Southern District of New York where MLS is headquartered—under established American legal theories like tortious interference with prospective economic advantage. This Part explores the contours of that lawsuit to show that MLS has a reasonable chance of asserting personal jurisdiction over Bin Hammam, proving every element of the tort, and enforcing the judgment against him. All litigation comes with uncertainty, such as proving that, but for Bin Hammam’s actions, the USSF would have won the 2022 bid against four competitors, or overcoming the

153. *December DOJ Press Release, supra* note 1. *See also Brazil Investigation Uncovers Qatari Payment to Ricardo Teixeira*, WORLD SOCCER (June 15, 2015), <http://www.worldsoccer.com/news/brazil-investigation-uncovers-qatari-payment-to-ricardo-teixeira-362859> (reporting on Brazilian police investigation of Teixeira that unearthed evidence of payments made to him by Qatari construction companies, but noting that those companies are not affiliated with the Qatar Bid Committee).

154. *See, e.g., Hosenball, supra* note 2 (describing FBI probe into bidding process); Dan Roan, *FIFA: Sepp Blatter Faces Swiss Criminal Investigation*, BBC NEWS (Sept. 25, 2015), <http://www.bbc.com/news/world-europe-34363289> (discussing the circumstances of the Swiss investigation of Blatter); Todd & Jewell, *supra* note 8, at 249 (uncovering hard evidence of corruption); Andrew Warshaw, *FIFA-gate: Lynch Promises More Arrests as US Widens Investigation*, INSIDE WORLD FOOTBALL (Sept. 14, 2015), http://www.insideworldfootball.com/fifa/17868-fifa-gate-lynch-promises-more-arrests-as-us-widens-investigation?acm=9893_1103 (quoting U.S. prosecutor Loretta Lynch, “no individual is above the law”).

155. Andrew Warshaw, *Swiss Freeze FIFA-Related Bank Accounts on Request of US*, INSIDE WORLD FOOTBALL (Dec. 17, 2015), http://www.insideworldfootball.com/fifa/18545-swiss-freeze-fifa-related-bank-accounts-on-request-of-us?acm=9893_1175.

156. Ben Simon & Eric Bernaudeau, *FIFA Will Give Swiss Prosecutors Access to Key Emails “With Conditions”*, YAHOO! NEWS (Sept. 24, 2015), <http://sports.yahoo.com/news/fifa-grant-access-valcke-emails-under-conditions-002744998--sow.html>.

three-year limitations bar for actions that occurred over five years ago. That uncertainty is magnified in transnational proceedings: choice of law principles might lead the U.S. court to apply foreign law, and the Qatari civil code lists several somewhat vague grounds that would require a court to decline enforcing a foreign judgment.

A. Jurisdiction in New York under New York Law

Even if Bin Hammam has never travelled to the U.S.,¹⁵⁷ a U.S. court should have personal jurisdiction over him under *Calder v. Jones*.¹⁵⁸ Bin Hammam's plot targeted the U.S.—the 2022 World Cup could only be in Qatar if it did not go to a rival bidder like the USSF. Therefore, a U.S.-based MLS necessarily felt, and will continue to feel, the effects of his intentionally tortious actions in the U.S.¹⁵⁹ While his plot targeted the USSF rather than MLS, Bin Hammam as a voting ExCo member should have known that MLS supported the bid with financing and facilities, and, more importantly, that a World Cup USA would have a tremendous benefit for MLS. Accordingly, he knew his actions would have a “devastating impact” on MLS, so he should “reasonably anticipate being haled into court” in the jurisdiction where MLS resides, New York.¹⁶⁰ To the extent some of the harm could be considered related to where MLS has its teams throughout the U.S. and Canada, a New York court will have jurisdiction over all related damages.¹⁶¹

Although U.S. courts typically apply their own laws for torts committed abroad,¹⁶² defendants sometimes urge application of foreign

157. He is a billionaire businessman and former member of FIFA's ExCo, so it seems he would have travelled here. BLAKE & CALVERT, *supra* note 4, at 454 (“In his heyday, Bin Hammam was abroad much more than he was ever at home, jetting from city to city . . .”). Bin Hammam was denied a visa to travel to the U.S. in 2011, however, so he may have insufficient minimum contacts to support specific jurisdiction over him in any one state. *Id.* at 331. *See also* Superseding Indictment at 119, United States v. Hawit, No. 15-252 (E.D.N.Y filed Nov. 25, 2015) (listing the defendants' contacts with the U.S.). The extent of his contacts to support general jurisdiction in any one state are unknown. *See* GEOFFREY C. HAZARD, JR. ET AL., CIVIL PROCEDURE 124 (6th ed. 2011) (defining general jurisdiction as “jurisdiction over any claim against the defendant, whether or not it arises out of the defendant's contacts with the state”).

158. *Calder v. Jones*, 465 U.S. 783, 788–89 (1984).

159. *Id.* at 788–90. *See also* HAZARD ET AL., *supra* note 157, at 117 (“Intentional torts also satisfy the purposeful availment requirement.”).

160. *Calder*, 465 U.S. at 789–90.

161. *Keeton v. Hustler Magazine, Inc.*, 465 U.S. 770, 775–78 (1984).

162. Walter W. Heiser, *Forum Non Conveniens and Choice of Law: The Impact of Applying Foreign Law in Transnational Tort Actions*, 51 WAYNE L. REV. 1161, 1163 (2005) (“Indeed, courts that employ modern choice-of-law rules tend to favor the selection of forum law.”).

law.¹⁶³ Assuming there is a conflict between the U.S. and foreign law, the court must then engage in a conflict of law analysis.¹⁶⁴ The laws of three different jurisdictions seem the most likely to control: New York, the domicile of MLS and place of injury as well as the location of some tortious acts like wiring money; Qatar, the domicile of Bin Hammam and KEMCO, the base where Bin Hammam arranged for trips and payments, and the location of one of the junkets where CAF members were allegedly bribed; and Switzerland, the headquarters of FIFA, the location of the 2022 World Cup vote, and the place where Bin Hammam met with Temarii to encourage him to appeal his suspension. New York engages in an interest analysis to 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 the litigation.”¹⁶⁵ The significant contacts in such an analysis are “almost exclusively, the parties’ domiciles and the locus of the tort.”¹⁶⁶ When the parties are from different domiciles, and the tortious acts occurred in one jurisdiction but the plaintiffs sustained injury in another, the locus of the tort is the place of injury.¹⁶⁷ Because MLS will be deprived of World Cup-related revenues and suffer a loss to its business value in New York City, New York’s choice of law rules lead squarely to application of New York law, whether MLS sues in state or federal court.¹⁶⁸

163. *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 (2015) (noting parties’ disagreement over application of New York, Israeli, or Chinese law in tort lawsuit).

164. *Allstate Ins. v. Stolarz (In re Allstate)*, 613 N.E.2d 936, 937 (N.Y.1993).

165. *Babcock v. Jackson*, 191 N.E.2d 279, 283 (N.Y.1963).

166. *Schultz v. Boy Scouts of Am., Inc.*, 480 N.E.2d 679, 684 (N.Y. 1985).

167. *Id.* at 683 (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).

168. *See Liberty Synergistics, Inc. v. Microflo Ltd.*, 718 F.3d 138, 151 (2d Cir. 2013) (citing *Klaxon Co. v. Stentor Elec. Mfg. Co.*, 313 U.S. 487, 494–97 (1941)) (articulating rule that “a federal court exercising diversity jurisdiction must apply the choice-of-law rules of the state in which that court sits to determine the rules of decision that would apply if the suit were brought in state court”). *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).

B. The Substantive Law: MLS Has a Reasonable Chance of Prevailing on a Claim for Tortious Interference with Prospective Economic Advantage

A party with a bidding interest in an international contract who is harmed by the corrupt practices of another can recover money damages by proving tortious interference with prospective economic advantage.¹⁶⁹ Whether called tortious interference with prospective economic relations or with prospective business relations, the New York version of this common law tort provides:

[T]he plaintiff must 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.’¹⁷⁰

That the New York Court framed this tort as one of business or economic “relations” rather than “advantage” does not doom MLS even though the business relationship at issue in the 2022 World Cup bid was a potential contract between FIFA and the USSF, not MLS. The concept of “business relations” is loose. The plaintiff does not need to be the bidder but can be an entity in a close business relationship with the bidder, such as a wholly owned subsidiary.¹⁷¹ While MLS is a separate entity from the USSF, MLS is sanctioned by FIFA through the USSF. MLS and the USSF collaborate on national team issues, the MLS president served on the USA Bid Committee, and MLS donated office space and \$2 million to the bid.

169. See, e.g., Travis Newport, *Tortious Interference with International Contracts*, 9 CURRENTS INT’L TRADE L.J. 80, 80 (2000) (describing when a party can claim tortious interference); Gideon Mark, *Private FCPA Enforcement*, 49 AM. BUS. L.J. 419, 484 (2012) (describing previous claims for “tortious interference with prospective economic advantage . . .”); *Korea Supply Co. v. Lockheed Martin Corp.*, 63 P.3d 937, 941–43 (Cal. 2003) (detailing how a Korean government agent for an unsuccessful airplane contract bidder sued the winning bidder for tortious interference with prospective economic advantage for offering bribes and sexual favors).

170. *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”)). Though states have different names and elements for this tort, New York’s version comports with other jurisdictions and the *Restatement (Second) of Torts*. Todd & Jewell, *supra* note 8, at 270–71. See also RESTATEMENT (SECOND) OF TORTS § 766B (1979) (“One who intentionally and improperly interferes with another’s prospective contractual relations . . . is subject to liability to the other for the pecuniary harm resulting from loss of the benefits of the relation [where] the interference consists of (a) inducing or otherwise . . . (b) preventing the other from acquiring or continuing the prospective relation.”).

171. *Kirch*, 449 F.3d at 401.

Further, as mentioned above, Bin Hammam as an ExCo member and voter can be charged with knowledge of the importance of the 2022 World Cup to MLS because this fact was cited in FIFA's evaluation of the USSF bid.¹⁷² The numerous payments (many of them backed by emails or bank records), the vote-swapping pacts, and perhaps most importantly, paying for Temarii's lawyer to keep the OFC replacement from voting for the USSF bid, indicate that Bin Hammam's interference was intentional.

Because a contract establishes a legally binding relationship, "a plaintiff may recover damages for tortious interference with contractual relations even if the defendant was engaged in lawful behavior."¹⁷³ A nonbinding business relationship, however, provides merely some prospect of an economic benefit, such as a future contract.¹⁷⁴ Accordingly, it requires not merely that the defendant interfere but that the conduct also be "criminal or independently tortious," or that the defendant use "[w]rongful means" like force, fraud, or meritless litigation.¹⁷⁵ That element is easily satisfied because states, nations, and the international community recognize commercial bribery as unlawful and indeed criminal.¹⁷⁶ Bribes need not be cash payments but can be the conferring of "any benefit," such as paying for Temarii's appeal to deny the USSF a vote or promising a coveted vote in the bidding process.¹⁷⁷ Because the vote swapping pacts improperly

172. USA BID EVALUATION REPORT, *supra* note 45, at 29.

173. *Carvel Corp. v. Noonan*, 818 N.E.2d 1100, 1103 (N.Y. 2004) (quoting *NBT Bancorp Inc. v. Fleet/Norstar Fin. Grp. Inc.*, 664 N.E.2d 492, 496 (N.Y. 1996)).

174. *Id.*; see *D'Andrea v. Rafla-Demetrious*, 3 F. Supp. 2d 239, 251 (E.D.N.Y. 1996) (referring to "specific precontractual relations" or "some sort of binding, if not contractual, relationship"), *aff'd* 146 F.3d 64 (2d Cir. 1998)

175. *Noonan*, 818 N.E.2d at 1103-04.

176. See, e.g., Convention Against Corruption, U.N.-U.S., art. 35, Dec. 9, 2003, T.I.A.S. No. 06-1129 (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, 18 (2005), http://www.americanbar.org/content/dam/aba/migrated/intlaw/policy/crimeextradition/conventioncorruption08_05.authcheckdam.pdf (last visited Nov. 22, 2016) (reporting that the U.S. 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. N.Y. Penal Law § 180.00 ("A person is guilty of commercial bribing in the second degree when he confers, or offers or agrees to confer, *any benefit* upon any employee, agent or fiduciary without the consent of the latter's employer or principal, with intent to influence his conduct in relation to his employer's or principal's affairs.") (emphasis added). See also *Korea Supply Co.*, 63 P.3d at 958-59 (affirming denial of motion to dismiss where plaintiff alleged that defendant's paying bribes and offering sexual benefits constituted tortious interference with competitor's bid).

diverted the World Cup away from the USSF and toward a competitor, they may also be tortious under a theory of unfair competition.¹⁷⁸

The final element may be the trickiest because it requires proving both causation and damages. As to causation, plaintiffs' claims often collapse on this element because they cannot show an "extant business relationship" or interference with "specific precontractual relations" that is more than speculative.¹⁷⁹ MLS has both the extant relationship and precontractual relations. The professional league is affiliated with the USSF, which is a member association of FIFA, and the USSF submitted a bid for the 2022 World Cup. Bin Hammam could counter that MLS cannot prove causation: as the USSF was one of five bidders, MLS can only speculate that the U.S. association would have won the World Cup but for Hammam's interference.¹⁸⁰ The presence of additional bidders is not itself fatal to a tortious interference claim.¹⁸¹ Indeed, the QFA and the USSF were the final remaining bids. MLS can present evidence that Bin Hammam wrongfully secured more votes than the 14-8 margin of victory. Six votes came from pacts with Asian, South American, and Spanish ExCo members. He obtained three more votes with payments to African and Caribbean ExCo members. The USSF could establish that it had a reasonable probability of success in the final vote but for Bin Hammam's interference.

In the earlier voting rounds, MLS's causation argument faces further uncertainty. The broader distribution of votes and knock-out format could alone have caused the USSF's elimination prior to the end. This makes Bin

178. *Anesthesia Assocs. of Mount Kisco, LLP v. Northern Westchester Hosp. Ctr.*, 873 N.Y.S.2d 679, 684 (N.Y. App. Div. 2009).

179. *See, e.g., Transeo S.A.R.L. v. Bessemer Venture Partners VI L.P.*, 936 F. Supp. 2d 376, 412 (S.D.N.Y. 2013) (holding that plaintiff's "allegations about its potential relationships with a third party [were] wholly speculative and conclusory" because they "fail[ed] to establish any extant business relationship" with which defendant interfered); *D'Andrea*, 3 F. Supp. 2d at 251 ("A cause of action for interference with prospective economic advantage contemplates a defendant who has interfered with specific precontractual relations or a prospective relationship between the plaintiff and a third party that would have proceeded to some sort of binding, if not contractual, relationship but for the defendant's interference.").

180. 14 LEE S. KREINDLER ET AL., *NEW YORK PRAC., N.Y. LAW OF TORTS* § 3:22 (2016) ("To maintain an action for tortious interference with prospective contractual rights plaintiff must show that he or she would have received the contract had it not been for defendant's interfering acts . . . [so] [a] mere probability of getting the contract is insufficient . . .").

181. *See, e.g., Pepper-Reed Co. v. McBro Planning & Dev. Co.*, 564 F. Supp. 569, 570-71 (D.V.I. 1983) (denying motion to dismiss complaint for tortious interference with business relations brought by a construction company that was an unsuccessful bidder for a project with multiple bidders); *Compass Settles UN Deal Lawsuits*, BBC NEWS, <http://news.bbc.co.uk/2/hi/business/6054476.stm> (last updated Oct. 16, 2006) (reporting that a UK catering company, Compass, paid \$74 million to rivals ES-KO International and Supreme Foodservice to settle claims in a lawsuit that a division of Compass had used insider information to win a contract to supply UN peacekeepers in Liberia with food and water).

Hamman's actions in funding Temarii's appeal crucial. The USSF could have counted on the OFC as a sure vote but for Bin Hamman's interference. In light of the strength of the USSF bid compared to the others, the USSF's second-place finish in addition to the missing OFC vote may be enough to show that the USSF had a reasonable probability of winning the bid. Another avenue of attack is to show that Bin Hamman committed acts after the bidding process to keep the World Cup in Qatar.¹⁸² A large payment to Jack Warner in 2011 may have been hush money to keep Warner from revealing the plot. Should MLS prove the 2011 payment was a bribe, FIFA would have power to award the 2022 World Cup to another association—like the runner-up, USSF.¹⁸³

Although the claim relates to a contract, the action sounds in tort, so plaintiffs could potentially recover market and consequential damage. Market damage is the difference between the value of the entitlement that plaintiff lost, or in some cases never gained. Consequential damages are distinct from the entitlement but still stem from the entitlement's loss.¹⁸⁴ The typical measure of consequential damages is lost profits. This means MLS can recover those, assuming it starts showing a profit in the years leading up to the 2022 World Cup. Even if MLS is not profitable, the measure of market damages is broad enough to allow plaintiffs to recover for any loss proximately caused by the tortious conduct, such as diminution in business value.¹⁸⁵ Most professional sports leagues grant a franchise to

182. See *Fishman v. Estate of Wirtz*, 807 F.2d 520, 546–47 (7th Cir. 1987) (finding that defendants committed the tort of unlawful interference with prospective advantage by blocking purchaser of Chicago Bulls from procuring stadium lease).

183. See FIFA STATUTES art. 85 (“The Executive Committee shall have the final decision on any matters not provided for in these Statutes or in cases of force majeure.”).

184. See, e.g., DAN B. DOBBS, LAW OF REMEDIES: DAMAGES—EQUITY—RESTITUTION 216–24 (2d ed. 1993) (defining market and general damages); DAN B. DOBBS, THE LAW OF TORTS 1296–97 (2000) (defining the damages available to a party claiming tortious interference); 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.”).

185. See, e.g., DOBBS, THE LAW OF TORTS, *supra* note 184, at 1297 (writing that “the plaintiff can recover all proximately caused damages” in tortious interference cases); *Robehr Films, Inc. v. Am. Airlines, Inc.*, No. 85 Civ. 1072 (RPP), 1989 WL 111079, at *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”); *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 company it sought to acquire).

individual team owners, so courts assess damages for tortious conduct by computing the value of the team.¹⁸⁶ Because MLS owns a part of all teams in the league, its diminution is the teams' collective value assuming the 2022 World Cup was in the U.S., minus their value because of Bin Hammam's tortious conduct; the resulting damages total well over \$1 billion. Loss of television revenue is also a consequence of the tortious conduct and therefore potentially recoverable.

Plaintiffs need not prove damages "to a mathematical certainty" but need only produce evidence to permit the trier of fact to "make an intelligent and reasonable estimate of the amount."¹⁸⁷ New York law "does not bar the recovery of damages when the extent of the harm is uncertain and not capable of precise determination or measurement" and instead requires only "[r]easonable certainty in establishing the extent and amount of damages, even with respect to substantial damages"¹⁸⁸ Courts have affirmed multi-million dollar damage awards in suits for tortious interference with prospective economic advantage where an economics expert testified to lost profits.¹⁸⁹ Therefore, MLS should be able to prove injuries through an economic analysis similar to that in Part III.¹⁹⁰ However, where the calculations are based on insufficient data, such as a calculation of profits based on only two years of operations, courts disallow recovery because damages are too speculative.¹⁹¹ MLS has been in operation for over two decades, so its revenues and business value are calculable. Yet lost profits may or may not be, depending on MLS profitability over the next several years. In addition, lost television revenues are too speculative.

186. *Fishman*, 807 F.2d at 550–55 (affirming assessment of damages related to tortious conduct that prevented plaintiff from purchasing the Chicago Bulls by determining what a willing buyer would pay for the team).

187. *Newport*, *supra* note 169, at 85 (citing *Multi-Channel TV Cable Co. v. Charlottesville Quality Cable Corp.*, 65 F.3d 1113 (4th Cir. 1995)).

188. 16 KREINDLER ET AL., *supra* note 184, § 21:10.

189. *Inter Med. Supplies, Ltd. v. EBI Med. Sys., Inc.*, 181 F.3d 446, 461–63 (3d Cir. 1999) (applying New Jersey law).

190. *See, e.g., 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.") (internal citations omitted); Roger D. Blair & Amanda Kay Esquibel, *Yardstick Damages in Lost Profit Cases: An Econometric Approach*, 72 DENV. U. L. REV. 113, 120 (1994) ("Techniques like multiple regression analysis allow an expert to systematically incorporate more relevant data in a composite yardstick and consequently produce a more reliable and precise damage estimate.").

191. *See Signature Health Ctr., LLC v. State*, 902 N.Y.S.2d 893, 909 (N.Y. Ct. Cl. 2010) (disallowing calculation of lost profits that considered only two years of plaintiffs' operations).

Assuming the jury finds that Bin Hammam's plot was "especially egregious," MLS could also recover punitive damages for this intentional tort.¹⁹²

C. New York's Statute of Limitations Does Not Bar the Action

New York's three-year statute of limitations for tortious interference and the lack of a discovery rule seem fatal to MLS's suit.¹⁹³ Some courts hold that the statute runs from the act of interference.¹⁹⁴ With Bin Hammam's actions occurring from 2009 to 2011, such an interpretation means that MLS's suit is already time-barred. The Court of Appeals of New York rejects "the wrongful act of defendant . . . [as] the relevant date for marking accrual" in a case involving tortious interference with contracts.¹⁹⁵ Instead, "when all elements of the tort can be truthfully alleged in a complaint," a tort cause of action accrues when an injury is sustained.¹⁹⁶ Other New York courts have recognized the date-of-injury accrual doctrine to allow tortious interference with prospective business opportunity claims to be brought more than three years after the acts constituting interference.¹⁹⁷ Economists measure the "World Cup bump" by comparing tier-one league attendance the year a nation hosts a World Cup with attendance from the previous year. Thus, MLS's suit is not time-barred because it is not even ripe until 2022.¹⁹⁸

192. 14 KREINDLER ET AL., *supra* note 180, § 3:24. *See also* DOBBS, THE LAW OF TORTS, *supra* note 184, at 1298 (writing that punitive damages are recoverable "when the facts are said to show malice or other states of mind that warrant such damages").

193. *Kronos, Inc. v. AVX Corp.*, 612 N.E.2d 289, 291–92 (N.Y. 1993) (citations omitted); *see also* N.Y. C.P.L.R. § 214(4) (MCKINNEY, Proposed Official Draft 2015) (providing three-year limitations period).

194. *Thome v. Alexander & Louisa Calder Found.*, 890 N.Y.S.2d 16, 30 (N.Y. App. Div. 2009).

195. *Kronos*, 612 N.E.2d at 292 (citation omitted).

196. *Id.*

197. *See, e.g., City Store Gates Mfg. Corp. v. Empire Rolling Steel Gates Corp.*, 979 N.Y.S.2d 606, 607–08 (N.Y. App. Div. 2014).

198. MLS might wish to recover additional money, such as the \$2 million it contributed to the USSF. As part of the cost of preparing the World Cup bid, MLS knew that it was spending that money whether or not the bid was successful, so it does not relate to Bin Hammam's tortious interference. More importantly, MLS should not attempt to recover the \$2 million because it might suggest to the court that the limitations period has already started to run, thus foreclosing the possibility of recovering the damages related to the "World Cup bump." *See Kronos*, 612 N.E.2d at 293 (concluding that, even if plaintiff alleges no damages that are barred by limitations, "we would nonetheless be bound to recognize them if the only reasonable inference to be drawn from plaintiff's allegations is that it suffered some loss at that time").

D. Questions about Enforcing the Judgment in Qatar

A nine- or ten-figure judgment means nothing if MLS cannot collect. Despite the enormity of the judgment, Bin Hammam's wealth is not the main concern. In addition to whatever personal wealth he has, he is sole proprietor of KEMCO, which has hundreds of millions of dollars of capital.¹⁹⁹ As discussed in Part IV(A), however, Bin Hammam has little if any personal connection to the U.S. Therefore, he likely does not have significant assets here. KEMCO also seems to operate only in Qatar. MLS would therefore have to execute the judgment in Qatar, which adds another layer of complexity because the varying and inconsistent standards for recognition and enforcement mean that nations do not have to recognize and enforce foreign court judgments.²⁰⁰

At first blush, the necessity of enforcing a judgment in Qatar presents no obstacle. Qatar's Civil and Commercial Procedure Law considers reciprocity:

Judgments and orders passed in a foreign country may be ordered for execution within the State of Qatar 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.²⁰¹

The laws of individual states govern recognition and enforcement of foreign money judgments in the U.S.²⁰² New York like the majority of states has adopted the Uniform Foreign Money Judgment Recognition Act

199. See, e.g., KEMCO GRP., *supra* note 132 (demonstrating KEMCO's capital); BLAKE & CALVERT, *supra* note 4, 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).

200. See Jeff Todd, *The Rhetoric of Recognition*, 45 MCGEORGE L. REV. 209, 222–25 (2013) (explaining that recognition and enforcement are guided by comity rather than obligation or treaty so that standards vary even among U.S. states).

201. LAW NO. (13) OF 1990, art. 379 (Qatar); Minas Khatchadourian, *Conducting an ICC Arbitration in Qatar: A Few Legal Safeguards*, 18 NO. 1 IBA ARB. NEWS Feb. 2013, at 34, 35. 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. *Qatar Legal Portal (Al-Meezan)*, HUKOOMI, http://www.hukoomi.qa/wps/portal/services/inividuallandingpages/legal%20services/qatarlegalportalalmeezan!/ut/p/a0/04_Sj9CPykyssy0xPLMnMz0vMAfGjzOIt_S2cDS0sDNz9fVvNDTyDHT2d_HzdDA1CjPULsh0VAZGTuVA! (last visited Nov. 22, 2016).

202. Todd, *supra* note 200, at 223.

of 1962, though with minor variations.²⁰³ The New York version of the Uniform Act provides that any foreign country judgment which is “final, conclusive and enforceable where rendered” is “conclusive between the parties,” meaning that it is entitled to the same full faith and credit that a New York Court would give to a judgment entered in a sister state.²⁰⁴ The Act does have some mandatory and discretionary grounds for nonrecognition like lack of due process or lack of personal or subject matter jurisdiction.²⁰⁵ None of these defenses should be relevant to an MLS judgment, assuming that Bin Hammam is properly served with process. In light of the Second Circuit’s recent declaration that the policy of New York’s recognition law is to allow for “generous” enforcement of foreign money judgments,²⁰⁶ a Qatari court should find that a New York court would enforce a Qatari judgment.

Enforceability requires more than reciprocity, however. The Qatari Civil and Commercial Procedural Law provision on enforcement of foreign judgments adds another level of review before a court can order execution on a judgment. This requires courts to verify that the courts of Qatar do not have sole jurisdiction over the dispute; that the litigants “were summoned and duly represented;” that the judgment is *res judicata* in the issuing court; and that the judgment “shall not include anything that contravenes the public order and conduct in the State.”²⁰⁷ The first element should present little difficulty because it is common for multiple states to have concurrent jurisdiction over transnational commercial disputes,²⁰⁸ particularly where the action sounds in tort rather than contract because there is no choice of court or arbitration provision. Qatar does have an unfair competition law that proscribes the conduct of Bin Hammam.²⁰⁹ That law says nothing about

203. *Id.* at 223 (citing UNIF. MONEY–JUDGMENTS RECOGNITION ACT, 13 U.L.A. pt. 2 (1962)); *Id.* at 254 (citing N.Y. C.P.L.R. §§ 5301 *et seq.*).

204. N.Y. C.P.L.R. §§ 5302–03 (MCKINNEY 2016); Todd, *supra* note 200, at 223–24 (quoting UNIF. FOREIGN MONEY–JUDGMENTS RECOGNITION ACT § 2, 13 U.L.A. 46 (1962)).

205. N.Y. C.P.L.R. § 5304.

206. *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)).

207. LAW NO. (13) OF 1990, art. 380 (Qatar).

208. *See, e.g.*, Louise Ellen Teitz, *Both Sides of the Coin: A Decade of Parallel Proceedings and Enforcement of Foreign Judgments in Transnational Litigation*, 10 ROGER WILLIAMS U.L. REV. 1, 9 (2004) (“Given the increasingly transnational character of daily transactions, litigants are considerably more likely to find themselves embroiled in simultaneous proceedings in two or more locations,” in part because the courts of multiple countries have concurrent jurisdiction); *Scheiner v. Wallace*, 832 F. Supp. 687, 693 (S.D.N.Y. 1993) (“The general rule of comity requires the domestic court to exercise jurisdiction concurrently with the foreign court.”).

209. LAW NO. (19) OF 2006, art. 3(4) (Qatar) (“It shall be prohibited to conclude agreements or contracts or to undertake practices that violate the rules of competition, in particular the

exclusive jurisdiction in Qatari courts; indeed, the geographic reach of the law is unclear.²¹⁰ In addition, the law provides for “criminal suit or proceedings” and a fine for “[a]ny person convicted,” so it does not seem to apply to civil suits.²¹¹

The second element appears to be an inquiry into whether the judgment debtor received due process, similar to a ground for nonrecognition under New York law, and it may be relevant if Bin Hammam fails to appear and defend. U.S. courts can enter a default judgment on a defendant that has received notice of suit consistent with Constitutional due process.²¹² U.S. courts likewise will enforce a foreign default judgment, again assuming that “a reasonable method of notification is employed and reasonable opportunity to be heard is afforded to the person affected.”²¹³ Qatar is not a party to the Hague Service Convention, so MLS must ensure that it serves process on Bin Hammam through procedures recognized by Qatari law; such as letters rogatory to ensure that notice is not a bar to enforcement.²¹⁴ The wording of Article 380(2)—that the parties must be “summoned and duly represented”—might be read to require the court to verify not only that the judgment debtors received notice but that they also actually participated in the foreign proceedings.²¹⁵ Such a reading seems implausible because then all Qataris could avoid foreign courts simply by not showing up. More importantly, Qatari courts are empowered to enter default judgments if the

following: . . . [p]reventing or hindering any person from practicing his economic or commercial activities on the market . . .”).

210. MAHEER M. DABBAH, *COMPETITION LAW AND POLICY IN THE MIDDLE EAST* 208 (Cambridge U. Press 2007) (“The Law, however, suffers from numerous shortcomings and many of its provisions will require clarification in practice. For example, the Law is silent on the issue of territorial reach.”).

211. LAW NO. (19) OF 2006, arts. 16(1), 17(1) (Qatar).

212. HAZARD ET AL., *supra* note 148, at 409–10. *See also* FED. R. CIV. P. 55 (default judgment procedures in federal court); N.Y. C.P.L.R. § 3215 (default judgment procedures in New York state courts).

213. *Somportex Ltd. v. Philadelphia Chewing Gum Corp.*, 453 F.2d 435, 443 (3d Cir. 1971) (quoting RESTATEMENT (SECOND) OF CONFLICT OF LAWS § 92 (AM. LAW INST., Proposed Official Draft 1967)). *See also id.* at 442 (“That the English judgment was obtained by appellant’s default instead of through an adversary proceeding does not dilute its efficacy.”).

214. HAGUE CONFERENCE ON PRIV. & INT’L LAW, CONVENTION OF 15 NOVEMBER 1965 ON THE SERVICE ABROAD OF JUDICIAL AND EXTRAJUDICIAL DOCUMENTS IN CIVIL OR COMMERCIAL MATTERS (2015), <https://www.hcch.net/en/instruments/conventions/status-table/?cid=17>. *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).

215. LAW NO. (13) OF 1990, art. 380(2) (Qatar).

defendant has been properly summoned but fails to appear.²¹⁶ Therefore, it would be inconsistent to decline enforcement of a foreign default judgment where notice and an opportunity to respond were given. A more likely reading of this provision is that the court can decline execution where the judgment debtor has been denied assistance of counsel.²¹⁷

“The notion of public policy has not received any legislative definition in Qatar,”²¹⁸ so the public policy element might be another obstacle. In the U.S., courts can use this vague standard to support political decisions that are contrary to the rule of law.²¹⁹ From one perspective, the political situation is against MLS. The 2022 World Cup Qatar is a “source of national pride.”²²⁰ Qataris thus feel “combative” toward “[y]ellow press and discredited politicians” in the U.S. and Europe because of their “racist campaign” to strip the World Cup from Qatar.²²¹ In light of the government’s creation of the SCDL and its massive investment in the event, this mood might negatively color how a court views a U.S. judgment against a Qatari national related to the World Cup. From another perspective, the politics favor MLS. After all, MLS can obtain a judgment only if the 2022 World Cup stays in Qatar rather than comes to the U.S. MLS will enforce that judgment after the 2022 World Cup is over because it cannot even file suit until 2022. Plus, the SCDL has distanced itself from Bin Hammam,²²² so a judgment against Bin Hammam could actually indicate that the Bid Committee did nothing wrong. Because Bin Hammam no longer enjoys the favor of the Qatari ruling family,²²³ a Qatari court is unlikely to use the policy ground to decline execution for political reasons.

216. *See id.* at art. 55 (Qatar) (“If the defendant does not appear in the first session, after being personally summoned, the court shall decide on the lawsuit. . . . The judgment on the lawsuit in both cases shall be considered as decided in the presence of the parties.”); *See also* Teyseer Cement Co. v. Halla Mar. Corp., 794 F.2d 472, 475 (9th Cir. 1986) (referencing appellant’s obtaining a default judgment in a Qatar court).

217. *See* LAW NO. (13) OF 1990, art. 40 (Qatar) (allowing parties in judicial proceedings to be represented by attorneys).

218. Khatchadourian, *supra* note 201, at 33.

219. *See* Todd, *supra* note 200, at 264–65 (citing *Chevron Corp. v. Camacho Naranjo*, 667 F.3d 232, 246 (2d Cir. 2012)) (criticizing an appellate opinion decided on policy grounds rather than the language of the relevant statutes as having “a negative impact on the rule of law and on the parties themselves”).

220. Kerr, *supra* note 58.

221. *Id.*

222. *Id.* *See also* SUPREME COMM. FOR DELIVERY & LEGACY, *supra* note 10 (“But let us be clear: Mr. Bin Hammam is from Qatar, but he was not a member of Qatar’s bid team.”).

223. BLAKE & CALVERT, *supra* note 4, at 454–56.

The trickier issue would be conflict with Qatari law, which is a mix of civil codes and *shari'a*,²²⁴ while the judgment would rest on common law tortious interference with prospective economic advantage. Qatar belongs to the Gulf Cooperation Council (GCC). Other GCC states define public policy and public order to relate to private status such as marriage and inheritance, sovereignty, free trade, distribution of wealth, and rules of private ownership. Thus, laws or agreements between individuals relating to these subjects cannot conflict with principles of Islamic *shari'a*.²²⁵ *Shari'a* protects persons from unlawful interference with their business dealings. Islam “gives individuals the right as well as the freedom to engage in trade and as such to earn an income and make a profit,” and the state has “a clear duty . . . to respect and protect this right, which arises under *Shariah*.”²²⁶ A pair of Texas appellate courts accepted the testimony of expert witnesses on *shari'a* in concluding that this duty stops short of recognizing a claim for tortious interference.²²⁷ They reasoned that, under *shari'a*, torts relate only to persons or property, not contracts. Liability related to contracts rests with the breaching party, not the one inducing a breach; and the inducer does nothing unlawful by entering into a new contract with a third party.²²⁸ Though both cases were for tortious interference with contract, at least one expert concluded that responsibility for a person’s failure to enter into a contract would rest with that person and not anyone else.²²⁹

These conclusions do not end the analysis, however. Experts for the defendants in the two Texas cases concluded that tortious interference, including tortious interference with prospective contractual relations, was

224. Khatchadourian, *supra* note 201, at 32 (“Qatar is a civil law country based upon a system of codified laws.”). *See also* Law No. (22) OF 2004, art. 1(1) (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.”).

225. Khatchadourian, *supra* note 201, at 34 (quoting CIVIL CODE, art. 3 (U.A.E.)).

226. DABBAH, *supra* note 210, at 23. *See also id.* at 19 (claiming that “the idea of having a healthy process of competition in the market place and guaranteeing the freedom of market operators to compete is well articulated within Islam” and traces back to the Seventh Century); *Id.* at 22 (“In relation to the economic sphere, there is a clear obligation laid down in the *Quran* on the state and its nationals with regard to establishing economic justice and fair play . . .”).

227. *Bridas Corp. v. Unocal Corp.*, 16 S.W.3d 893, 902–03 (Tex. App. 2000). *See also* *CPS Int’l, Inc. v. Dresser Indus., Inc.*, 911 S.W.2d 18, 22 (Tex. App. 1995); Marc L. Roark, *Reading Mohammed in Charleston: Assessing the U.S. Courts’ Approach to the Convergence of Law, Language, and Norms*, 14 WIDENER L. REV. 205, 212–18 (2008) (summarizing the facts and conclusions about *shari'a* law in both *Bridas* and *CPS International*).

228. *Bridas*, 16 S.W.3d at 903–06.

229. *CPS Int’l*, 911 S.W.2d at 32.

possible.²³⁰ They were on the losing side, but commentators have criticized U.S. courts' approaches to determining Islamic law through expert testimony to arrive at one *right* interpretation.²³¹ The determination of Islamic law comes from a number of sources in descending hierarchical order: the *Q'uran*, the *sunna* (teachings and practice of the Prophet Muhammed), the *ijma* (the consensus of shared opinion of Islamic scholars on a given issue), and the *qiyas* (the analogy, the analytical reasoning to deduce a legal rule).²³² Scholar-jurists called *mufteen* consult these sources in a process call *ijtihad* to derive legal rules to determine how to resolve a dispute, and those opinions become part of the general corpus of Islamic law rather than binding precedent in a common law sense.²³³ Indeed, from the Islamic perspective, granting authority only to one interpretation would be blasphemy because it presumes to know God's law with certainty.²³⁴ As one student commentator puts it, "multiple, differing interpretations of a single legal issue can concurrently be 'true'"²³⁵

Therefore, a tortious interference judgment against Bin Hammam might not be against the public policy of Qatar. The fact that MLS would enforce it in Qatar as opposed to some other Islamic law countries is significant. The tortious conduct in the Texas case *Bridas Corporation v. Unocal Corporation* occurred in Afghanistan, and the court criticized the defense expert for considering *shari'a* law from nations like the United Arab Emirates (U.A.E.).²³⁶ One would think that Qatari law mirrors that of its GCC partner the U.A.E. rather than that of the then-Taliban-controlled Afghanistan.²³⁷ Nor do all *shari'a* experts agree that torts relate only to

230. See, e.g., *Bridas*, 16 S.W.3d at 904–05 (citing Mark Hoyle, an administrative law judge and consultant in Islamic law); *CPS Int'l*, 911 S.W.2d at 31 (citing William Van Orden Gnichtel but casting doubt on his qualifications).

231. See, e.g., 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, 1099 (2011) (arguing "that the inherently pluralistic nature of Islamic law makes it impossible for U.S. courts to legitimately rely upon the expert opinion of Islamic legal scholars in the same way that expert legal opinion has traditionally been applied in legal proceedings"); Roark, *supra* note 227, at 233–36 (criticizing how U.S. courts in interpreting *shari'a* are too formalistic and have problems with translation).

232. Beauchamp, *supra* note 231, at 1102.

233. *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") (internal quotation marks omitted).

234. Beauchamp, *supra* note 231, at 1103.

235. *Id.* at 1099.

236. *Bridas*, 16 S.W.3d at 904–05.

237. Roark, *supra* note 227, at 236 (explaining that an issue in *Bridas* was the defense expert's reading of the law of Egypt, the U.A.E. and Jordan "with nothing that would suggest the Afghan court would be inclined to lean in the same interpretive direction").

injury to persons or tangible property. *Ghasb* is the tort of usurpation, which “is the illegal appropriation of something belonging to another or the unlawful use of the rights of another.”²³⁸ This flexible concept allows recovery of damages for persons who behave tortiously in a contract situation.²³⁹ The Qatar Civil Code likewise has a broad provision regarding tortious conduct: “Any person who commits an act that causes damage to another party shall be liable to indemnify such damage.”²⁴⁰ Vicarious liability is also gaining more recognition in Islamic law countries generally,²⁴¹ and Qatari law specifically recognizes vicarious liability for tortious conduct.²⁴² Finally, while contracting may be a lawful act, Bin Hammam never entered into a contract but instead engaged in bribery and other collusive practices. The Qatari unfair competition law criminalizes such acts.²⁴³

Though the public policy ground might not bar enforcement of a judgment based on tortious interference, it nevertheless presents some limitations and risks. One limitation is post-judgment interest, which New York law allows but which is contrary to *shari’a*.²⁴⁴ A Qatari court would still enforce the judgment but without the interest.²⁴⁵ Another limitation relates to punitive damages, which might not be allowed under the Qatar Civil Code.²⁴⁶ The biggest risk is the extent to which a tortious interference claim is permissible under *shari’a*, so MLS should consider this risk by consulting experts in Qatari and *shari’a* law before engaging in the time and expense of a U.S. suit.

238. 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).

239. *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).

240. LAW NO. (22) OF 2004, art. 199 (Qatar).

241. Tyler G. Banks, Comment, *Corporate Liability Under the Alien Tort Statute: The Second Circuit’s Misstep Around General Principles of Law in Kiobel v. Royal Dutch Petroleum Co.*, 26 EMORY INT’L L. REV. 227, 262–63 (2012) (writing that “the idea of vicarious liability may have been previously rejected, but is now receiving scholarship and validity from Islamic theorists”).

242. LAW NO. (22) OF 2004, arts. 208–211 (Qatar).

243. LAW NO. (19) OF 2006, art. 3(4) (Qatar).

244. N.Y. C.P.L.R. § 5003; Khatchadourian, *supra* note 201, at 35.

245. Khatchadourian, *supra* note 201, at 35.

246. LAW NO. (22) OF 2004, art. 201(1) (Qatar) (“Damages payable by a person responsible for any unlawful act shall be limited to the loss incurred and profit forfeited by the aggrieved party, provided that the loss resulted from the unlawful act.”).

CONCLUDING REMARKS AND ADDITIONAL RESEARCH

Economic analysis of the “World Cup bump” provides MLS the means of showing up to \$1 billion in harm related to the USSF losing the 2022 World Cup. Legal analysis of a suit for tortious interference with prospective economic advantage explains the possibility of recovering money damages from Mohamed Bin Hammam. Neither the means nor the possibility translates to the probability of proving all damages and prevailing in litigation. For example, the largest future source of revenue for MLS might lie with increased television viewership and licensing rights. But the lack of data prevents economic analysis and would likely lead a court to conclude that they are too speculative to recover. MLS must prove that Bin Hammam knew that his interference with USSF’s bid would cause harm to MLS. More importantly, MLS must prove that but for Bin Hammam’s interference, the USSF more likely than not would have won the 2022 World Cup from four other bidders. The three-year statute of limitations might bar the action. Even if it does not, the judgment will have to be executed in Qatar, where courts have several grounds to deny recognition and enforcement, including the possibility that tortious interference is contrary to *shari’a*.

Some issues that exist as we write this Article in 2016 will not be problems in 2022. Regarding damages, one issue that can arise in expert valuation is the trustworthiness of the underlying data. In Part III(A), we used two different methods to estimate attendance and drew on secondary market sales to estimate the average cost of tickets to forecast, as accurately as possible, the lost revenue from game day sales in 2022. For litigation in 2022, MLS will have its own records on actual attendance from the 2021 season and the revenue generated from ticket sales. MLS will also know whether it has shown a profit and its amount by 2022. Time will not erase all uncertainty, however. For example, maximizing damages will require estimating an increase in ticket prices during the five-year bump period, particularly for those stadiums that will be at capacity. This should not bar recovery, both because lost profits and diminution in business value are recoverable in business torts, and because courts have affirmed the calculations of economics experts in determining those damages (especially when based on a plaintiff that has been in business for many years).

Another question that could be answered by 2022 is the location of Bin Hammam’s assets. This Article has assumed that they are primarily in Qatar, the location of his company KEMCO. Additional investigation and/or pretrial discovery might uncover property or accounts in the U.S. that could be executed upon based on the Full Faith and Credit Clause. He

may have assets in multiple countries, necessitating multiple enforcement actions. Even if these assets are relatively small compared to the final judgment, they might be relatively large compared to MLS revenues and thus worth pursuing.

This Article has focused on litigation between MLS, which has the clearest damages related to the “World Cup bump,” and Mohamed Bin Hammam, against whom most of the current evidence of culpability points. Other potential plaintiffs have a significant stake in losing the 2022 World Cup USA, and other potential defendants may have played a role in wrongfully denying it to the USSF. The MLS investors cannot sue for the diminution in team values,²⁴⁷ but as operators of individual teams, they likely will have lost profits independent of those suffered by MLS. Economic theory suggests that player salaries increase as professional sports league revenues grow,²⁴⁸ so MLS players could have a claim. The QFA, its LOC, the SCDL, and their individual officials could also be potential defendants as the sponsor, successors, and/or members of the Qatar Bid Committee. Blake and Calvert detail several connections between the Bid Committee and Bin Hammam—including a shared employee who made illicit payments on behalf of Bin Hammam—and a whistleblower from within the Bid Committee who made allegations of buying votes.²⁴⁹ In light of the enormity of the potential damages, MLS could maximize its chances of full recovery by adding claims of civil conspiracy or even the Racketeer Influenced and Corrupt Organizations Act (RICO) to link all the defendants together and make each jointly and severally liable.²⁵⁰

247. See *Cates v. Int'l Tel. & Tel. Corp.*, 756 F.2d 1161, 1181 (5th Cir. 1985) (citing *Martens v. Barrett*, 245 F.2d 844, 846 (5th Cir. 1957)) (claims for diminution in value of the business entity must be brought by the business itself and not by individuals with a stake in the business, like partners in a partnership or shareholders of a corporation).

248. JAMES QUIRK & RODNEY D. FORT, *PAY DIRT: THE BUSINESS OF PROFESSIONAL TEAM SPORTS* 216 (1992) (discussing the workings of the labor market for professional athletes).

249. BLAKE & CALVERT, *supra* note 4, at 101–02 (describing deputy chief executive of the Qatar Bid Committee Ali Al-Thawadi as the point of contact between Bin Hammam and the Bid Committee). See also *id.* at 72–73, 122 (explaining how Najeeb Cherikal had a contract with the Bid Committee to provide “international relations” services and also made illicit payments on behalf of Bin Hammam); *id.* at 119–20, 287–98 (detailing allegations by Phaedra Al-Majid of no-strings-attached contributions from the Bid Committee to the national associations of some African ExCo members); Hosenball, *supra* note 2 (reporting that the FBI has interviewed Al-Majid).

250. 18 U.S.C. §§ 1961–64 (2012). See also Thomas J. Leach, *Civil Conspiracy: What's the Use?*, 54 U. MIAMI L. REV. 1, 13 (1999) (describing how civil conspiracy connects all defendants to each tortious act and allows for the imposition of joint and several liability); *Anesthesia Assocs. of Mount Kisco, LLP v. N. Westchester Hosp. Ctr.*, 873 N.Y.S.2d 679, 685 (N.Y. App. Div. 2009) (writing that “a plaintiff may plead the existence of a conspiracy in order to connect the actions of the individual defendants with an actionable, underlying tort and establish that those actions were part of a common scheme”).

These other parties present too many issues to be within the scope of the litigation contemplated by this Article, however. For example, each investor/operator would be a separate plaintiff, thus requiring individual analysis of the relevant data and contracts for each—assuming that that information is publicly available. While MLS players could assert a claim through the MLS Players' Union,²⁵¹ the economic theory underlying their claims is different than that for MLS and thus means a different damage calculation.²⁵² The other defendants likely cannot be joined in a U.S. lawsuit, so claims against them require analysis of separate proceedings. The SCDL as an instrumentality of the Emirate of Qatar enjoys immunity from suit in the U.S. under the Foreign Sovereign Immunities Act (FSIA).²⁵³ Any MLS action against the QFA, its LOC, and their officials would have to be arbitrated in the CAS under Swiss law pursuant to FIFA regulations.²⁵⁴ Neither Bin Hammam as a former FIFA official nor the SCDL as a governmental body needs to submit to arbitration, nor are they likely to do so.²⁵⁵

Additional research on these other claimants and defendants is nevertheless worthwhile. MLS might not yet be profitable, but the investors of some clubs could already be showing a profit as operators, thus allowing for a clear damages showing.²⁵⁶ Economists have identified the increase in

251. *About the MLS Players Union*, MAJOR LEAGUE SOCCER PLAYERS UNION, https://www.mlspu.org/about_mlspu.html (last visited Nov. 22, 2016) (“The Major League Soccer Players Union serves as the exclusive collective bargaining representative for all current players in Major League Soccer.”).

252. See QUIRK & FORT, *supra* note 248, at 216 (estimating damages to players would involve an estimate of “marginal revenue product” equal to the amount that each player adds to overall team revenue) (emphasis omitted).

253. 28 U.S.C. § 1604 (2012); see *id.* §§ 1603(a)–(b) (including, “agency or instrumentality of a foreign state” within the definition of foreign state).

254. Todd & Jewell, *supra* note 8, at 261–62; see also FIFA STATUTES arts. 66–68 (disallowing recourse to ordinary courts of law and instead requiring persons, teams, and leagues within FIFA to submit to arbitration in the Court of Arbitration for Sport, which shall apply FIFA regulations as well as Swiss law).

255. See, e.g., *Eckert Summary*, *supra* note 56, at 18 (describing how the FIFA Code of Ethics empowers the FIFA Ethics Committee to compel current FIFA officials to cooperate with its proceedings but noting that it could gain only voluntary cooperation from former FIFA ExCo members); Todd & Jewell, *supra* note 8, at 250–51 (citing Standard Cooperation Agreement arts. 3, 5, FIFA.COM, http://www.fifa.com/mm/document/affederation/administration/75/81/23/standard_cooperation_agreement_efs_d_47345.pdf (last visited Nov. 17, 2016)) (writing that the national association and its government are separate under FIFA’s standard cooperation agreement).

256. Although individual teams cannot make a profit because they are all owned by MLS, in 2013, *Forbes* estimated that ten of the then-19 teams were profitable based upon earnings before interest, taxes, depreciation and amortization. Smith, *MLS’s Billionaire Owners*, *supra* note 75. If the investor or operator contracts tie payment to measures of performance, those investor or operators would have a claim for lost profits.

player salaries related to increases in league revenues. All that then remains for making a specific showing for MLS players is translating the increased salary from higher team value into damages claims in a lawsuit. Nor should MLS rule out the possibility of multiple proceedings because additional defendants could mean a greater potential to satisfy a judgment, whether in the U.S. or abroad. Arbitration against the QFA, its LOC, and their officials would require a separate analysis of the defendants' wrongful acts and ability to satisfy an arbitral award, and the arbitration's enforceability in Qatar and other countries where the defendants have assets.²⁵⁷ Qatar has significant assets in the U.S.,²⁵⁸ so more detailed consideration of the FSIA and the case law on its provisions for exceptions and enforcement of judgments and arbitral awards might show that the SCDL is a viable defendant.²⁵⁹

This Article can also inform research beyond these parties and these proceedings. For academics, law and economics often mean application of economic concepts to support legal doctrine.²⁶⁰ This Article has demonstrated how applying economic theory by analyzing data can support legal practice, not only through calculating damages but also by furnishing the means to avoid a limitations bar. Interdisciplinary explorations could reveal additional creative applications of economics to law. This Article also considered tortious interference from a transnational perspective, in particular issues with enforcing a judgment in a country that abides by *shari'a*. Academics should consider exploring the compatibility of business torts and *shari'a*, with specific attention to the laws of countries like Qatar,

257. For example, Qatar is a party to the New York Convention, but its Civil and Commercial Code nevertheless permits courts to review international arbitral awards and decline enforcement. Khatchadourian, *supra* note 201, at 34–35 (citing an example of the Qatari Court of Cassation engaging in *de novo* review to set aside an award rendered in an International Chamber of Commerce arbitration in Paris); *see also* LAW NO. (13) of 1990, arts. 204–06 (Qatar) (allowing judicial review and appeal of arbitral awards); New York Convention on the Recognition and Enforcement of Foreign Arbitral Awards, June 10, 1958, 21 U.S.T. 2517 (defining arbitration agreements between foreign parties).

258. *See, e.g.*, Marc Fisher, *Qatar Is Suddenly Investing Heavily in the U.S., Bankrolling D.C.'s City Center, Other Projects*, WASH. POST (Dec. 17, 2013), https://www.washingtonpost.com/local/qatar-is-suddenly-investing-heavily-in-the-us-bankrolling-dcs-city-center-other-projects/2013/12/17/1ffaceca-5c6a-11e3-95c2-13623eb2b0e1_story.html (listing several investments by Qatari state agencies in the U.S., such as Al Jazeera America and a \$1 billion real estate project in Washington, D.C.).

259. 28 U.S.C. §§ 1605(a)(2), 1610(b)(2). *See also* Letelier v. Republic of Chile, 748 F.2d 790, 793–99 (2d Cir. 1984) (interpreting FSIA provisions related to the commercial activity exception and execution upon foreign government's assets located in the U.S.).

260. *See* Jeff Todd, *A Rhetoric of Warning Defects*, 54 S. TEX. L. REV. 343, 358–62 (2012) (explaining how economic theory dominates the law of products liability).

which has a close economic and political relationship with the U.S.²⁶¹—and which has its laws published in English on a free, searchable database.²⁶²

This Article closes with a return to the economics and law of sports, a worthy topic in its own right, especially for the world's most popular sport. In unsealing the first set of indictments in May 2015, U.S. Attorney General Loretta Lynch stated that corruption in international soccer “has profoundly harmed a multitude of victims,” including “youth leagues and developing countries that should benefit from the revenue generated by the commercial rights” and “the fans at home and throughout the world whose support for the game makes those rights valuable.”²⁶³ One coconspirator to this corruption is Mohamed Bin Hammam, and one victim is MLS, which will be deprived of significant revenue from the rights related to a 2022 World Cup USA. As the DOJ seeks “to bring wrongdoers to justice” through criminal proceedings,²⁶⁴ this Article has shown how MLS can apply economic theory and analysis of economic data to have a chance at justice through civil litigation.

261. See, e.g., DABBAH, *supra* note 210, at 207–08 (discussing Qatar's beneficial relationship with the U.S.); Fisher, *supra* note 258 (finding that Qatar is economically benefiting from its expansion into the U.S. TV news market).

262. *Qatar Legal Portal (Al-Meezan)*, *supra* note 201.

263. *May DOJ Press Release*, *supra* note 1.

264. *Id.*