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PANEL 1: TEAM RELOCATION & LEAGUE EXPANSION

Presented by: NYU Real Estate & Urban Policy Forum
NYU Law & Business Association

LAUREN WISEMAN: Hi everyone. Thank you so much for joining us so early in the morning. We are two members of the organizing committee. My name's Lauren Wiseman and this is Sam Cox. We're going to get this show on the road.

We'll let our moderator David Abrams take it from here, but thank you so much on behalf of JLB, Sports and Society, the Sports Law Association, and of course Winston and Strawn, our named partners. Thank you so much and enjoy.

* Editor's Note: The Q&A sessions with the audience are not reflected in this transcript. This transcript has been edited for clarity.

DAVID ABRAMS: Thanks. Thank you very much. Good morning. Welcome. Happy Holidays. Happy Passover, Easter, Good Friday. I'm glad that you're all here with us this morning.

I'm David Abrams. I am a Clinical Assistant Professor at the NYU Tisch Institute for Sports Management, Media, and Business. I'm honored to moderate this panel of esteemed professionals and sports. I'm joined by several highly-qualified members of the Sports and Sports Law community in what will be a very interesting, informative hour with you all. Let me introduce our panel and we'll get started.

All the way to my far left is Marc Edelman, professor of law at the Zicklin School of Business Bureau College where he specializes in Sports Law, IP Law, and Gaming and Fantasy Sports Law. Mr. Edelman is also a private practice attorney who has experience with several major leagues and players' unions, as well as fantasy sports providers. He's also a fellow Penn Quaker. Please welcome Marc Edelman.

David Feher is a partner in the Litigation Department in Winston and Strawn and is a co-chair of the firm's Sports Law practice. Aside from his extensive experience in litigation, negotiation, and arbitration involving contracts, IP, and antitrust, he has served as outside counsel to the NFLPA and the NBAPA, and served as one of the prime negotiators of the CBA as well as any trust settlements for both of these leagues. Please welcome David Feher.

Seth Wickersham is a Senior Writer for ESPN The Magazine. Seth primarily covers the NFL but has written about all manner of sport. His most recent article published yesterday in ESPN The Magazine, I suggest you all go out and buy that magazine and read the article, which covers the ongoing saga of the Oakland Raiders' proposed move to the City of Las Vegas. This article supplements a fantastic piece that Seth wrote in 2016. I'm sure he's done many others in the meantime, but just pointing to that on the decision process of the NFL regarding relocation to Los Angeles. Please welcome Seth Wickersham.

Jodi Balsam is an Associate Professor of Clinical Law at the Brooklyn Law School. She teaches Sports Law at Brooklyn and also at the NYU School of Law. She developed and taught innovative sports contracts and negotiations classes at NYU's Tisch Institute. By the way, I teach

that class now, so I'm very appreciative of her work in front of me. She also taught at the Bucerius Law School in Hamburg, Germany. An accomplished author and teacher, Professor Balsam has worked with the NFL where she managed many contractive litigation matters for the League. She was also a litigator with Simpson Thatcher, and Bartlett representing Sports Entertainment clients in anti-trust matters and complex commercial litigation. Please welcome Jodi Balsam.

We have a very deep panel here with lots of experience so I'm assuming you'll ask great questions, but we're gonna start with a number of them to get you started.

We live in interesting times now. Legal and financial battles are occasionally contested in the courtroom, and certainly on TV and over social media. We have a packed agenda with a number of topics, but let's open up our discussion with the recently filed lawsuit by the City of St. Louis vs. NFL, regarding the potential damages suffered by St. Louis in the loss of the NFL's Rams to the City of Los Angeles. Professor Balsam, what's St. Louis trying to achieve in this lawsuit?

JODI BALSAM: First I want to remark that the NFL has come a long way since the 1980's when it fought tooth and nail against cities being abandoned by their home teams in the legendary Raiders litigation that went on for half a dozen years.

Now we have, in just the last 18 months, three NFL teams relocating. The Rams, who were in St. Louis for 20 years, moved back to Los Angeles, where they originated. The Chargers are now moving to Los Angeles, and, of course, as Seth laid out, the Oakland Raiders are going to Las Vegas in a couple years.

So what are the home towns, in this case St. Louis, trying to do? Their lawsuit is a bit of a long shot, but they are making a statement about how the leagues have abandoned their fans. How the leagues have betrayed the loyalty that the fans and the cities who've supported them financially, have been providing for years.

The essence of the complaint is that the League's own relocation policies, a contract that the League has with its clubs, has generated third-party beneficiaries in the form of cities and convention centers and stadia who are owed a duty by the League to conform and comply with their own relocation policies, and that the League did not do so.

The League's relocation policies prefer and favor, according to terms, keeping teams in their home towns. The League did not take the steps that they were required to under their own policy to give the St. Louis community the best chance of retaining the Rams.

Now this is a stretch of an argument because they are painting themselves as somewhat innocents and not naïve and trusting of the League and believing statements that were made to them during the course of hard bargaining.

But let's rewind to 1995. So what happened in 1995? The Rams were an LA team, had been for 30 some odd years, and St. Louis was on the other side of the table. St. Louis was doing all of the, now described as under-the-table hard bargaining, fraudulent misrepresentation conduct to get the Rams to move to St. Louis. So how naïve were they during the process in which they were trying to retain their team?

I think it's a pretty tough battle to fight here, but it does say something about the supposed public trust that sports leagues have with their home communities and how, at least on one side of the equation, the leagues are not keeping up their part of the bargain. I think we can expect to see more lawsuits like this. Perhaps even one from Oakland.

DAVID ABRAMS: Before I ask others to weigh in and, maybe, think about this topic, how does the court measure damages if it gets to that point? At what level of lost wages, lost revenues, can we possibly believe that juries can come up with an answer?

JODI BALSAM: There are actually some concrete numbers in the complaint itself about what the city has financially suffered. Remember this is a court of equity, so there are going to be opportunities to provide close enough measures of damages.

But the city is claiming they're on the hook for 30 years of bond and stadium financing payments. Six years left to go and the Rams aren't even in town anymore. That they have invested an infrastructure. That they have relied on wage and business revenue generation opportunities associated with the Rams. Those can be quantified. I'm not saying it's likely they'll collect, but they can be quantified.

DAVID FEHER: Hi. First off before I say anything I want to say, my personal views are not the views of my clients.

I think in terms of looking at all these relocation issues you have to have a really long view and understand the dynamic that's going on because in the first instance, these are ownership decisions. Individual owners are deciding where the best place is for them and then they have to interact with their fellow owners in terms of either getting approval or having to get into a fight with them. Having to get into a fight with your fellow owner is not a small thing.

I mean Al Davis was a real outlier in terms of his willingness to sue his fellow owners. There are a lot of folks who, in the most recent debates about Las Vegas, when they were looking at it, made some public comments along the lines of, "That the owners might have been willing to let other people do certain things." But with Mark Davis, even though Al was dead, because Al was such a renegade they were still holding it against the Raiders. There are lots of personal dynamics going on within ownerships because these are people. Most of them are billionaires, but they're people. They have long memories and future prospects for dealing with each other.

The other thing is, in terms of location and franchises, there have been other periods of musical chairs where Houston, a very large market, lost its franchise to Tennessee and then they got an expansion franchise.

Cleveland lost its franchise to Baltimore. Actually, I think Al Davis, if I remember right, fought that he was going to get Baltimore and Art Modell stole it from him, which is one of the reasons he was angry if I remember the public reports right.

Some of these dynamics relate to what's available and what's on the table in terms of enticing you to go to a new location, which is very important. But also, some of it is cyclical and some of it relates to the nature of the business overall, because when you talk about fan loyalty, there's fan loyalty and then there's revenue generation. As time has gone by, the relationship between those two is a little bit different, because for a lot of franchises today, revenue generation is primarily media-driven and a lot of it is national media-driven with the NFL. For a lot of locales, much more of the revenue is generated from corporate sponsorships. So you'll see with the debate about Las Vegas, a lot of it wasn't about how many fans they have, or what the people were going

to sit in the general admission seats were going to do, but rather how many corporate sponsorships were they going to have, and what kind of naming rights deal could they do? What's the interaction in terms of can the casinos weigh in with sponsorships, and how does that relate to the NFL rules?

If casinos are not in on the sponsorship game, they can buy tickets but they can't do sponsorships. How does that affect the revenue streams? The industry as a whole has been changing over the last 20-some years in terms of the revenue streams that are important because of the media landscape, and because of the corporate sponsorship landscape. So these are all factors. Also, the ownerships of the teams has changed, because when you go back 20-some years, the owners were largely families who came into the League. You know Dan Rooney got the team famously, I think I don't know, from horse racing proceeds he used to buy the team, and there were similar stories for the Mara family and for the McCaskeys and all of these. They were old-line families. The new generation of ownership is different. A lot of them are much more hard-charging business people who are bottom line oriented.

When you look at LA, a lot of that was football, but a lot of that was a real estate play, from all public reports. When you look at a lot of other sports arenas that are being done, they're much more development oriented. When you look at what the Ilitch family is doing in Detroit, it's not just about moving . . . and the Pistons, it's not just about moving from suburban Detroit to downtown Detroit, which was kind of a relocation. It's about development in a particular area of the city, which from the point of view of Detroit, I know is incredibly important in terms of the development of the city and changing the nature of the city. So it's sports-related, but it's also related to real estate. Also, I've seen articles lately about how having a franchise in your location isn't even so much about the money that it returns on a given economic basis. It's more about what economists would call "psychic-ing," both to owners but also to cities in terms of what it can generate on a secondary basis. All that I'm saying is that whenever somebody sues, or whenever anybody's looking at it, there are a lot of factors, there is a lot of negotiation among ownerships.

Things are not all that clear, and the thing I'll end on is that things aren't always so predictable, because when you look what happened with St. Louis, for anyone to think that that was a forward-ordained outcome, I know I didn't know what was going to happen, and I know that two owners got real surprised when their Carson project got voted down. That was viewed by a lot of people as a battle between the traditionalists and the committee who had supported the Carson project. Then all of sudden the Jerry Jones wing of the ownership came in and said, "This is a real estate deal, this is a much more impressive, broader play. This is for the future of the NFL and for the much larger development." So a lot of things going on. I'm sure if the discovery gets that far in that case, it will barely scratch the surface.

MARC EDELMAN: All right. You know, lawsuits usually begin with a plaintiff being upset about something, not with the plaintiff having a legal claim. The challenge of lawyers is then to take what the potential plaintiff is upset about and couch it in the form of a legal claim. The St. Louis case was couched by the lawyers as a third-party beneficiary contract law claim, and I'm not bullish on that particular claim. But if we forget the claim for a moment and think about what the city of St. Louis really is upset about, to me it becomes a lot more interesting. An NFL team only plays eight home games in the regular season. Without getting into the numbers, I think it's probably fair to presume that the city of Las Vegas could support an NFL team, and the city of St. Louis could support an NFL team, which leads to an interesting question about why aren't there more NFL teams?

There are more than 32 team cities that could sustain the NFL, and there are more than 32 sets of communities that would like to have, and would pay for, an NFL team. Why don't we have more? The way sports is structured in the United States is different from almost any other type of business, even any other joint venture, and even different from the way sports operate in most countries around the world. Our sports League is what's known as a closed system, which means that you can't just create a new football team, and by winning, and winning, and winning you don't eventually get up to the NFL. The NFL has to either have one of its 32 existing teams sell to a new market, or they have to decide to expand. I wonder why isn't the NFL expanding if there

are more cities that want teams? Why don't we have 36 NFL teams? Or 64 NFL teams?

On the surface you would think that the NFL owners would love to have the additional expansion fees. One of the things that team owners have learned through the years is that it's in their interest to have a greater demand for cities for their franchises than supply of franchises out there. While at first glance it might sound odd, if you think about it, it's really a good business opportunity. If you think about supply and demand on the most basic level of micro-economics, as long as the demand exceeds the supply, you're able to charge a very high price for something. So if you look around and you ask why is it there are cities that are willing to pay close to $1 billion to build new facilities for privately-owned sports teams, a big part of the reason is that as long as we don't have enough supply of teams, they'll be other cities that will want to compete for those teams, and be willing to pay the money.

I'm not sure what the cognizable legal claim is. We've seen the claim fail under anti-trust, and we've seen the claim fail under other grounds. But what really seems to be underlying this, is not so much a team is moving, but that the 32 quasi-competitors in this NFL joint venture have reached an agreement with each other to limit the number of teams in the NFL in a way that will continuously lead to cities having the incentive to offer great sums of money and free stadiums to get teams, and cities always being stuck in the prisoner's dilemma of either ponying up large amounts of money, or facing the reasonable fear of what happened with St. Louis and San Diego, which is the loss of the teams.

DAVID ABRAMS: Before I bring Seth into the equation about NFL expansion and the relocation process, Jodi brings up a really interesting point that 20 years ago when the Rams left Los Angeles for St. Louis, they were looking to move into a stadium that was . . . it's a hole, 20 acres. Now when a team leaves, it's leaving the downtown district of Detroit, which is 150 acres and multiple commercial real estate developments, homes, retail, office buildings. Could you imagine if the Atlanta Braves in 20 years pick up and move out of Cobb County, Georgia? They're not just leaving the hole where the stadium is, or was, downtown. Now they're leaving something which is a massive real estate development, so the lawsuit that comes 20 years from now, and hopefully we can all meet again,

we'll set our clocks, it's going to be much, much different. Much more of a complex thought process.

So with that, I'm gonna hand it over to Seth for a minute. Talk about NFL expansion and relocation process. It sounds as though the NFL is sort of making it up as they go along. How does this open them up to liability and continued litigation over the next few years?

SETH WICKERSHAM: First of all, thank you guys for coming. My mom always wanted me to go to law school, so she's very happy that I'm here. I find this, the past 15 months or so when you've seen the three relocations of NFL teams, fascinating because it's really the story of Jerry Jones on one side and a group of traditionalist owners and the League office on the other. I think one of the most interesting things is that, with the Rams in St. Louis and with the Raiders and Oakland, the guy who does strategy and financing for the NFL, Eric Grubman, was negotiating with the city almost against the wishes of the owner of the team who already had one foot out the door. It was a very odd position and I think that . . . I'll first just go back to LA for a second. David's absolutely right.

The owners play by their own rules and they tend to make them up as they go along, and when LA started because of Eric Grubman, there was a piece of land that was near LAX right next to the form in LA. For years, Jodi could speak to this, for years, for decades, the League had struggled with how to get back into LA. There was a silent auction for this piece of land and Eric Grubman bid on it against Stan Kroenke, the owner of the Rams, and neither of them knew.

Kroenke had an idea, but Eric kept it from so many people in the League office because I think number one, he thought that was the best thing to do from an ethical standpoint, and number two because I think the League wanted to try and control the process more. Instead, Stan Kroenke outbid him for this land and with Jerry Jones behind him who was telling him all along, "Just go. Don't wait for permission. Just go."

Stan Kroenke, a very, very, very wealthy man had the means to be able to do it, but he didn't have the political juice within League circles to do it. So what you had was that he was buying this piece of land in California. He was being told by Jerry Jones to just go. The Chargers and the Raiders, who were really reticent to move, realized that they were behind in the game and

they were going to lose their best city for leverage in trying to get their own stadiums.

They plotted out to have a separate piece of land in Carson, California which was 12 miles south and it really became a dual war in ownership circles that I think hasn't quite even healed yet. Jerry Jones on one side was really in favor of Stan all along and was very shrewd about it. At one point, Michael Bidwell, who was the president of the Cardinals and his family owns the Cardinals, he said, "We need to think about what's best for the League. I don't think the Rams moving to LA is what's best." Jerry cut him off. Jerry said, "When you guys moved from St. Louis to Phoenix, was that best for the League?" When Michael tried to answer, Jerry cut him off again. He goes, "You did it for the money." The entire room laughed.

A couple months later, Jerry Jones got up and took the room and went into an eight-minute speech about why everyone should get in line behind Stan Kroenke. He said, and this is in my story, he said, "You have to have good LA with big balls." Even Kroenke, he was not a very emotive person, he kind of laughed at the meeting. It was just bizarre. Even so, I think that the Carson Project would have won, if not for two things that happened again very late in the game.

The first was that at 11:00pm the night before the vote, Jerry Jones alone offered a resolution that he knew would get the most support of owners . . . . Most people liked the Rams idea but they didn't want St. Louis to lose a team and they kind of didn't want the Chargers to get hosed. Nobody really cared about the Raiders and Jerry Jones offered an 11th hour proposal that would send the Rams there and give the Chargers a year to decide whether or not to join them. Stan Kroenke's big concession was that he didn't want to share a stadium. Even though he had to build it for two teams, he didn't want a partner.

Most owners didn't want a second team in LA and nobody wanted the Raiders there because even though the Raiders have the best fan support there, there's just so much drama with Al Davis. There's their logo being synonymous with gangs. There's concerns that Mark Davis would get to LA and mess it up. So they wanted Kroenke's project but they wanted the other teams to be taken care of and he introduced that. Then they voted on it on a silent ballot. It won 21 to 11 I think. I think

that was the first vote and that you need 24 votes to relocate. They did like a preliminary vote, and I think it won 21 to 11.

They knew it was over. The Chargers and the Raiders knew it was over and Jerry had won. I think that Jerry feeling bad about that helped set the stage for what happened two weeks ago with the Raiders and Vegas, which I can get into a little bit later. I think that the big takeaway is just that Jerry Jones is at the heart of this stuff and it's a really fascinating time for the NFL. He's really the one who . . . I don't know if he's the most powerful owner in the NFL, but he's definitely the most influential.

JODI BALSAM: I just want to step in and say that yes, the structure of league sports results in a very unique decision-making dynamic, but one of the unique things about that dynamic is that it's exceptionally public, and what leagues do and the decisions they make, even despite the fact that it initially occurred in a so-called backroom, it immediately becomes public and the setup for intense scrutiny more than any other business. There's always a disappointed party for the leagues, despite how popular they are, especially in relocation situations. It's never a win-win. Somebody is going to be disappointed.

This I think presents all sorts of unique challenges for the lawyers counseling the league and I one, since this is a law colloquium, I just want to focus on that for a minute because a lawyer who regularly represents leagues in these kinds of controversies, gave really helpful advice to my sports slot class earlier this semester when he came for a visit . . . which is that when you are sitting in the shoes of league lawyer advising your clients, leagues and teams, how to handle this intensely public and controversial type of decision making, keep in mind that it's all about the consumer.

It's all about your customers. Every decision should be framed in a way that serves the ultimate consumers interest, and so I would just like to return to something that Mark said earlier about the League expansion process and how the leagues have designed this so that they can extract monopoly profits from scarcity of League teams available to the consumer. I would just say that a good lawyer would respond to that with, "Well no. There are actually some highly pro-competitive, pro-consumer benefits to this scarcity."

For example, how many elite players are there out there that could stock all these additional teams that the consumer supposedly is interested in? Will it totally dilute the quality of play that will ultimately reduce the quality of the product and fan interest? It will. If you have many more teams it will reduce each individual team's chances of winning a title. Once again, diluting fan interest and the quality of the product.

A larger League would mean that franchises are playing fewer games against each other so that you won't have the same traditional rivalries. You won't have the same level of interest in certain games, and too many teams crowding a smaller market will mean that, for instance, if St. Louis had two or three teams, that's a market that couldn't possibly sustain that many teams. In fact, Chicago couldn't sustain more than one NFL football team which is why St. Louis even got a team in the first place. Let's go way back.

The first team to play in St. Louis were the old Chicago Cardinals who became the St. Louis Cardinals because Chicago couldn't sustain two professional football teams. So you would have team failures periodically because of the excess of teams in a league like the NFL. I would just say to put on your lawyer hats right now. It's important to remember that your job, if you represent a team or a league, is to understand the market at that deep a level to be able to justify the league conduct for pro-consumer reasons. If you're ever at a dead end where there is no pro-consumer reason out there for something the league is doing, that's when you're in trouble.

DAVID ABRAMS: I'll hand it off to David for one second. I think Mark's comment was that an off-shoot, an unintended consequence of maintaining 32 teams is that we'll have franchise-free agency. I don't think he was suggesting diluting the sport such that every city would get it, and I think we all understand the consequences of diluting professional sports, but unfortunately we'll live with either a very competitive business and also competition between cities as we move forward. David.

DAVID FEHER: A few things, I think the current number of teams is not accidental and I think that leagues over time calibrate their number of teams so that there are always one or more eager parties on the outside wanting to get in to maintain the scarcity, because the people who own the teams are at-heart capitalists and they know the value of

supply and demand. They take that into account when they set the number of teams. I think the overall structure of sports in the United States is different than it is in other nations.

I remember in the free agency trial in the early 90's, which seems like ages ago but it really wasn't, we were mocked for pointing to some examples in Europe about how soccer teams have relegation and they're open leagues. We're using it as kind of a side issue. People were saying, "Oh, that's un-American." Look at what's happening now with soccer and now when you look at the competitive impact of relegation and promotion in European and other soccer leagues, it has a quite vigorous effect.

On all of these panels or discussions, what I generally tend to go to is a basic premise that, on the whole, in these sorts of business enterprises, competition is good. It's very, very hard to say, "Well, if we change this or if we lift this restriction, then there's going to be all of these bad consequences." I've lived through the anti-trust trial where it was a joke as to the NFLs excuses why players should not be allowed to choose where they'd be employed at the end of their contract.

We had Chuck Noll and the Pittsburgh Steelers say that if you give guaranteed contracts to football players, they're going to be distracted. I had one player with a guaranteed contract and he was running down the field and he looked to the side and he tripped and he didn't score the touchdown and woe is us and all sorts of things befell us.

The other thing was, I took Chuck Noll's deposition and I said, "Mr. Noll, do you have a guaranteed contract?" He said, "Yes." "Has that affected your performance over the years?" "Well, no, no." There's very often a lack of consistency in owner positions as to how things benefit consumers when they really don't because they're capitalists. Each of them is trying to get as much money as they can in their own pocket, which by the way, yields very shifting alliances.

Also, when you look at stadiums, they cost so much these days to generate this revenue. Very few owners can build it all by themselves. When you look at the dynamic of the negotiations, part of what's going on is Mark Davis isn't building that Las Vegas stadium by himself. He's getting I think 200 or 250 million dollars from the NFL league loan fund. Similarly, hundreds of millions of

dollars are going to LA. The players are contributing through salary cap credits and all sorts of ways that we negotiate.

By the way, they have limits and the NFL's publicly said, "Oh, we want more." Leave that for another day, but these are many-sided situations with lots of different people contributing in the alliances shift. On the whole, the owners at their heart are not just vigorous, but vicious competitors. The biggest joke, and I'm serious about this, was a case that went through the Supreme Court called *American Needle* where the NFL claimed, "Oh, we're a joint venture and we should be treated as a single entity for purposes of intellectual property contracts," which by the way, at the time, was right before the 2011 CBA negotiation. They were going to ram that truck through everything else and claim single-entity status on everything else that they possibly could.

It went before the United States Supreme Court, and people were saying, "Oh, conservatives and liberals and is it going to be 5-4 or 6-3, what's the vote?" It was 9-nothing because, at their heart, the justices all unanimously realized that the NFL owners are cut throat competitors against each other as much as they are in any other marketplace. That has a big impact.

DAVID ABRAMS: The NFL, and I've been waiting for a long time to ask a question like this, the NFL is inconsistent in how it measures its future. They have a long-standing rule of out of market cross ownership and keeping that sacrosanct. You can't own a team outside of your particular market, but Stan Kroenke owned the Colorado Avalanche and the Denver Nuggets. I don't care what trust he had it put in, but he owned that and the League has also denied other owners from doing the same because they wanted Stan Kroenke to be in the club.

Explain to me how they allowed that to happen and then awarded him, not only for cross ownership out of market, but also let him move his franchise to Los Angeles. I know the answer, but I just like to hear what everybody thinks about that.

JODI BALSAM: The cross-ownership rule in the NFL has evolved over the years. The common rule is that you may own a team in another league, in another sport, if that team is located in a market where there is no NFL competitor nor where you are the NFL competitor. You can compete against yourself or you can compete against . . . you

can compete in the market, but you're not going to hurt any of your NFL partners.

Clearly, Stan Kroenke's ownership of the St. Louis Rams, now the LA Rams, at the same time that he owned teams in Denver competing against the Broncos violates that rule. There's no explaining it. You're absolutely right that putting it in trust and having his son run the Denver businesses is a blatant violation. What explains it? I don't know. Aversion to litigation? Wanting to keep Stan Kroenke a member of the club? Understanding that eventually they may have to relax that rule and getting ahead of it this way? I really don't have an explanation beyond that.

DAVID ABRAMS: That's what I figured. I mean, I don't think that there is an explanation other than here's somebody who's a very, very well-heeled individual who can do things that maybe some of the owners can't and we want this person happy.

JODI BALSAM: The NFL has a whole host of ownership rules including who gets to be a minority owner, majority owner, transfer of ownership rules, no public ownership rules. There's debt limitations and, frankly, most of these rules are honored in the breach and it's a moving target.

DAVID ABRAMS: Right. Right on.

DAVID FEHER: The one thing that I'd say is anyone who's looking for order or even law in terms of how these relationships are managed, will be sorely disappointed. You can look at all sorts of issues beyond relocation. Look at the flood gate and interactions between Paul Tagliabue, who was the arbitrator in the bounty case where he rendered a decision against Roger and then the relationships between Roger and Bob Kraft in the deflate gate case versus the earlier judgment in the spy gate case. All of the non-legal, non-rules based explanations that have been proffered publicly by people as to, "Oh, why are people acting this way?"

To say that it's a result of an orderly, legal, rational outcome, I think is inconsistent with reality. I think these are people, like it or not, and very powerful people, each of them individually.

DAVID ABRAMS: Good segway into my next topic. There's so much money in media in sports and, obviously, in the major leagues where about 50% of revenues are set aside for players, but there's boundaries. Those boundaries, while moveable, and we're discussing that, there are still

boundaries. Talk about the expansion of the E-sports by the NBA and fantasy sports by some of the NFL owners and the reaction of this environment. Is it planned or is it really a mission to diversify away from the boundaries that constrain them in their mainstream businesses?

DAVID FEHER: I think it's a combination of things. I'm not just trying to say that everything is complex so nothing is understandable, but I think a lot of it is reacting to the future and also to each of these sports and leagues as to how they're anticipating the future and viewing it different ways. You can go back to an old CBA we negotiated 15/20 years ago where there's a reference to some odd NFL entity that, at the time, I think was going to invest in theme parks or something like that, but it didn't have anything to do with the NFLs core business.

At that time in that negotiation, it was considered very important. Now, it has nothing to do with anything. Whatever they traded for that was a good trade for the players, but that business moment passed. Will E-sports be incredibly lucrative or will it be less of a business and more of a fad? Will it be Pokémon Go or whatever it is? It's really hard to tell, but I think these businesses are trying to protect their flanks and cover their bases. That's what some of these things are.

Some of it, they're trying to leverage their own assets to confront generational issues because a lot of folks, I think, are concerned in the longer term as to whether, generationally, younger folks are less interested in sitting down for three hours and watching people hit each other. As artful and as amazing as it is, some question whether it'll be quite so appealing. How do we draw those people in?

That also plays out, this is away from relocation, but in things like media streaming. The Thursday night deal was just on with Amazon. In terms of that, there was a lot of discussion that, no, they were looking to micro-target certain customers in terms of Amazon Prime customers because slicing up that segment, it's important to get those customers. So our long term business play, that's important. I think there's a mixture from the players point of view. They're generally protected from these revenues, by their CBA revenue sharing arrangements by having a set share more or less of whatever the revenue might be. The one thing that I was very much a part of and I pushed was that our deal went from slicing and dicing revenue into different categories to treating them

all the same. So it doesn't matter which part of the overall NFL business they're in, the players are going to share in it roughly the same way. Those are the sorts of things that you need to address and also anticipate to try to figure out what's going to happen in 5 or 10 years.

MARC EDELMAN: Yeah and just really quickly, this is interesting because it goes back to relocation with the Raiders in Vegas. Jerry Jones was wearing essentially six different hats in a six month or so span. He was overall general manager of the Cowboys, also chief marketer of the city of Las Vegas. He's treated as essentially a lobbyist because he and Bob Craft were early investors in Draft Kings. When he met with the governor of the city in Nevada in October, it was right before the governor signed this $750 million package to put up money for a new stadium that Sheldon Adelson had helped martial through the legislature and the governor wanted assurance that if you sign this that they were going to get a team. Jerry, won over with one vote, said, "I guarantee it," and he asked about lifting the licensing ban in the city of Nevada on Draft Kings. He also benefits from all of these because he's half owner along with the Yankees and Legends, which handles the concessions for just about every new stadium and federal commissioner.

So I found it interesting that, again, I think that this is all are very complicated because they are people and they do kind of play by their own rules and they try too. Even Robert Craft, who is kind on the opposite end of the power spectrum with Jerry where there's a lot of ego managing about who's the most powerful owner in the NFL. Even Robert ended up saying that Jerry is out of control because Jerry's taking all of this into his own hands and seem to benefit financially in a big way from a lot of it. I think Legends might be worth more than some NFL teams at this point.

DAVID ABRAMS: I agree. Mark, I have a question for you but you go ahead first and then I'll ask.

DAVID FEHER: I'm just going to make one quick point on Jerry Jones and then one quick point on DFS. With respect to Jerry Jones, like him or not, as an outside party I found him to be incredibly consistent in his position in a 20+ year period of time. Many people probably don't remember, some people in the room might not have even been alive, but in the early 1990s Jerry Jones brought a lawsuit against all of the NFL teams because he didn't want to be a part of the group licensing to

have a set cola company. He wanted to use his own and he wanted to have his own independent contracts and he wanted to keep more of the revenue. So if there's one consistency I've seen with Jerry Jones and his reasoning, whether it be in terms of revenue sharing or teams moving, he's always taken, to me, what's been a less collective approach and a more individual approach to what league ownership should be, which I don't think is per se good or per se bad. It just is consistent with respect to what he's done.

Along those same lines with respect to Daily Fantasy Sports, I think a lot of people have a misimpression. I think a lot of the media has certainly fueled the misperception that there is a singular view amongst all club owners about what the future of Daily Fantasy Sports should be. The reality is, I've done a good amount of consulting in this area because I'd written very early on Fantasy Sports and the law. Without getting into who feels what, I could tell you that in just about every single one of the professional sports leagues, there is a divide amongst ownership about how they feel about the proliferation of Daily Fantasy Sports and how they feel about the potential proliferation about sports gambling. It's one area where the owners have been good about trying to keep a collective message out there. But I don't think there is a unanimous view.

With respect to Daily Fantasy Sports, Jerry Jones, who's had a very individualistic approach and has been a shareholder of Draft Kings, has probably been as about as bold as any NFL owner could be in terms of growing Draft Kings and growing its bottom line. But there are certainly owners in the NFL that are concerned about the proliferation of Daily Fantasy Sports, both from a business model and also a functional legal model about them perhaps operating in certain states where they're violating the law. One would really have to go owner by owner as opposed to taking a collective view that the league endorses or doesn't endorse something like that.

JODI BALSAM: I actually think the link between Fantasy Sports and relocation is even stronger than has been described. I was talking earlier about how a huge issue in the relocation equation is serving fan loyalty and the public trust that has been granted to NFL teams. What DFS has done is diffused that loyalty. It has made the existence of a hometown fan base less important. I mean, how many of you out here now own a Russell Wilson jersey even if

you've never even been into Seattle? Because he's on your Fantasy Sports team, right? So the existence of Fantasy Sports has made relocation more economically viable and justifiable from the league perspective because fans from every team are everywhere now.

DAVID ABRAMS: Let's go back to Las Vegas for a second. The line between live action sports betting and E-Sports is really starting to blur. I mean, it's clear from your comments. The leagues and individual participants is a bit of a wild west and it's kind of hard to figure out what the rules are. But E-Sports, Fantasy Sports gaming, are all very important now. We have two leagues that have expanded into Las Vegas. How does that change the landscape at all and then how do the leagues protect themselves from either litigation and how do they govern the expansion of all three of these?

JODI BALSAM: I have just two words to say to that. Arm wrestling? Really? I don't know if you could but the NFL is potentially going to discipline players who have participated in an arm wrestling contest that had links to gambling and now they're moving to Las Vegas. Where does the League going forward get credibility to do this?

MARC EDELMAN: But arm wrestling isn't even illegal gambling. That's a game of skill.

JODI BALSAM: But apparently, there was gambling associated with it.

DAVID ABRAMS: Well it was on the property of a casino, which is strange, but the thing I want to note on this is that Las Vegas has more gambling than other places, but this country is different, like it or not, than the way it was 20-30 years ago. You go to every significant city in America and there's a casino. That's just the way America is these days and so to expect there to be complete . . . and also you go to every shop, there are a lot of games. Scratch off lottery games, play games where you do the lottery where it recycles every 10 or 15 minutes or whatever it is. It's just much more prevalent through all of our society and I think treating Las Vegas as somehow inherently different is less and less tenable.

MARC EDELMAN: Yeah and your phone. But going back to Las Vegas, one of the most interesting things was it was one of the most unlikely business relationships, I think, in American history was about a year ago. Mark Davis . . . you remember the Raiders having been burned in L.A., kind of took matters into his own hands and he goes to Sheldon Adelson and discusses getting Sheldon's political

weight behind moving the Raiders to Vegas. Sheldon decides to move forward with that and help steer money towards this public city. Then they enter into some really tense negotiations for a long time because Sheldon realized that he was maybe tripling the value of the Raiders by allowing them to move to Vegas and he thought he should get a piece of that. It was a nonstarter. You can't be a casino owner and be an owner of an NFL team.

So then, they entered into months of non-football revenue negotiations, licensing, concerts, all that stuff. Once the $750 million was signed by the governor and was essentially set out for that project, things changed. There was Mark Davis, who was best known as being the guy who pushed his father's wheelchair in NFL meetings and never said a word, and Sheldon Adelson sitting there without a partnership. They did it in kind of . . . . Well, maybe he thought he was negotiating in good faith and maybe other owners simply didn't want Sheldon involved, but when the partnership fell through in late January, Roger Goodell in his annual State of the League Press Conference at the Super Bowl said, "As a casino owner Sheldon couldn't have gotten the part of non-NFL revenue anyway." That was complete news to the Raiders because they had spent all fall negotiating for non-football revenue, non-NFL revenue with Sheldon Adelson. I think it's a fascinating thing and . . . again, some owners have very different opinions on it, and I think it makes the league incredibly nervous.

JODI BALSAM: Interestingly, there once again are exceptions to that NFL rule. You may be aware that the Rooneys own horse racetracks. I believe the Hunts have some gambling interests. So where the line is drawn? I guess it's drawn at Las Vegas casinos.

MARC EDELMAN: If I could even go one step farther. The Las Vegs Raiders will not mark the first time that an NFL game, or an NFL team has played in a municipality where there has been legal sports gambling, such as Wembley in London. I mean the NFL has played several games a year in London for several years now. In England sports betting is entirely legal. It's regulated. The sport's gambling company's a publicly traded company, and you can go into Wembley and bet on an NFL game on your phone. That wasn't an issue during the period of years when they played there. So this isn't as new as you might be making it out to be.

DAVID ABRAMS: Let me switch gears on one other topic before I perhaps hand it over to the audience to ask some questions.

This is a tough one. Are the leagues using undue influence on communities? Promising marquee events? Promising expansion with large stadium construction? For instance, MLS, the commissioner will be here this afternoon, came out and said that St. Louis is high on the list for expansion should they get their stadium referendum passed. Now it failed a week or two ago so they seem to now have dropped, although, no one has said that. They dropped down on the list. Are they complicit in influencing communities to spend money that they don't have?

The Wall Street Journal reported just this week that Hartford is actually bankrupt, or having financial issues over a minor-league ballpark. I'd love to hear your comment on that.

DAVID FEHER: Even Las Vegas, they're spending $750,000 plus $200,000,000 in capital improvement . . .

MARC EDELMAN: The biggest municipal financing of a sport's facility in the United States.

DAVID FEHER: . . . and I think there were reports about how they're going to have to be $100,000,000 in budget cuts, I think, in their school system because they're short of money, or something like that going on.

The thing I'll say is that all of this is political. In terms of the monies provided, it's ultimately decided by politicians. San Diego decided in a public vote that, no, they didn't need it. Their community was vibrant enough without an NFL team, and they had Comic-Con, and other franchises, and other things. If they lost the Chargers, you know, some people would be sad, but overall that was . . . they weren't willing to pay that price.

There are other communities that have made that same choice. Oakland has made that same choice. They're willing to go so far but not too much farther. Seattle, even though it's an incredibly vibrant municipality, has drawn certain lines in terms of what they are willing to do with just financing an arena.

So these are different choices made by different politicians. The thing I'll say is that the Rangers decided that they wanted to build a new stadium, when they have a perfectly wonderful stadium right now, but that they need air conditioning. It was announced. It was approved by I think 60% of or more of the voters. If it wasn't the next day, it sure felt like it, but that's a state

where they spend, what, $50,000,000, $75,000,000, on high school football stadiums or whatever it is.

So these are choices that politicians make and why do they make these choices? It's because of the political influence that either voters have or don't have, or that their contributors have or don't have, and it's a different dynamic in each place.

JODI BALSAM: I would add that to circle back to the St. Louis lawsuit filed a couple of days ago, who wants to be the elected official who loses your NFL team? That's a lawsuit that's motivated by local politicians having to have something to say to the electorate about the fact that they lost their NFL team. Now they're going to try to either get some money back out of it from all the taxes that they raised, or they're going to try to develop some leverage to get another team to return.

MARC EDELMAN: On the one hand, we have this in other industries as well. I mean we could think of the city of New London and the amount of money they spent to bring the Pfizer plant, or what we see going on in San Juan, Puerto Rico and the attempt to build a pharmaceutical industry there by subsidizing them coming into the market.

On the other hand, the one distinction that I continue to see in sport, and it circles back to what I said about an hour ago, is how there's a singular league composed of different teams and they are the only ones that are able to create a highest-level sport's team. I think if we look back, now fifty years, it may have been a big mistake when this country allowed the NFL and the AFL to converge into a single league. Perhaps if we still had two premiere professional football leagues in this country, there would be a greater incentive for each league to expand into more cities, and perhaps then we'd have an environment in which the cities are not building the stadiums, or not paying as much money towards building them because it would be in the interest of each league to move there.

DAVID FEHER: Yeah. One thing I want to say and I'm not trying to get people to be cynical, but your lawmakers decide these things. In terms of the NFL and the AFL, there was a political arrangement there. If you go back and look at the antitrust cases, there was originally a case brought by the United States government against the TV broadcast contracts of the NFL. There was a trade there from the anti-trust community to the NFL. Part of the trade: if you ever wonder why NFL games aren't on Saturday until

late in the season, you go to the Sports Broadcasting Act and there's a provision that says that the NFL's antitrust immunity does not extend to I think Friday and Saturday nights through a certain date in the season.

Where it was the most blatant political horse trading you could imagine, there are articles in the newspapers about the, I think, it was the AFL-NFL merger. Where the New Orleans politicians wanted to have a franchise and at the time, shoot, Russell . . . the head of the finance committee was the senator from Louisiana and Hale Boggs was I think one of the house leadership members, and they wanted an expansion franchise in New Orleans. Actually, the congressmen in New York said, "No. We're not going to make that trade. We're not going to give them an anti-trust exemption," and they finagled it in Congress so that they got the franchise in New Orleans.

The odd thing was that some years later—and there's an article about this, and you read this and you can't believe it—where Pete Rozelle boasted that he got the anti-trust exemption, but they were going to expand in New Orleans anyway. So he didn't give anything up. This is like raw political horse trading by your elected officials who have their own interests. I'm sure the people of New Orleans were incredibly happy when they got the Saints. Did they realize at the time that their politicians got taken, which Rozelle boasted about a few years later? I don't know, but they were happy when the games started to be played.

DAVID ABRAMS: Before I hand it off to the audience for the last few minutes. I mean that brings me to my last point. how do the leagues determine what the expansion or relocation fee is supposed to be? Where is the equity in that? Again, we're dealing with expansion in MLS right now where they're looking at adding four more teams over the next few years. Obviously, there is a lot of relocation in NFL. Any sense in how that's determined? Jodi you've worked at the NFL.

JODI BALSAM: Well, they make some judgment of what the increased asset value is once the team relocates. I don't think it's a precise science, but I will say that the fact that you can put a number on that is what makes relocation so attractive, right? So it's really hard to measure or to quantify the long term benefits of staying in place for the League, but believe me when Mark Davis turns over to his partners $350,000,000—the relocation fee for the

LA Clippers—that gets split amongst all the other NFL teams without sharing it with the players. Each NFL owner is going to pocket $11 million, paid over to them by Mark Davis and the Raiders. That's pure profit. They don't have to share a dime of that with the players under the current revenue sharing agreement.

DAVID FEHER: By the way, it does make logical sense from the players' point of view, because it's like a transaction among the owners when they revenue-share amongst themselves, since it's one owner to another owner. We don't get it, but it makes it beneficial to the receiving owner. That's for damn sure.

MARC EDELMAN: I actually look at the relocation fees as paying off the concussion settlement. If you look at the amount, the money that was raised and the amount that's paid in the concussion settlement, it's almost a break even.

DAVID ABRAMS: Interesting.

JODI BALSAM: I think they're coming out ahead.

DAVID ABRAMS: Our time has ended. I want to thank our panel, you've been wonderful. Very insightful. Thank you very much.