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# The Odd Couple: Stadium Naming Rights Mitigating the Public-Private Stadium Finance Debate

Christopher B. Carbot<sup>1</sup>

## I. INTRODUCTION

*They'll arrive at your door as innocent as children, longing for the past. Of course, we won't mind if you look around, you'll say. It's only \$20 per person. They'll pass over the money without even thinking about it: for it is money they have and peace they lack. And they'll walk out to the bleachers; sit in shirtsleeves on a perfect afternoon. They'll find they have reserved seats somewhere along one of the baselines, where they sat when they were children and cheered their heroes. And they'll watch the game and it'll be as if they dipped themselves in magic waters. The memories will be so thick they'll have to brush them away from their faces. People will come, Ray. . . . People will most definitely come.<sup>2</sup>*

Former roommates cheering wildly in the student section in March. Breezy summer afternoons spent with grandchildren in the outfield bleachers. Coworkers holding tailgate meetings on Sundays in November. Few things in society can better bring together individuals who otherwise have nothing in common. The relationships created between sports teams and their home cities are difficult to rationalize: whether it is the NFL's New Orleans Saints spearheading a city's rebirth in the wake of a devastating natural disaster,<sup>3</sup> or a sleepy Midwestern town living and dying each week with its high school or college basketball teams' fate,<sup>4</sup> sports teams and their

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<sup>1</sup> Copyright 2009 by Christopher B. Carbot, all rights reserved. 2009 J.D. Candidate, Florida International University College of Law. The author would like to thank Alicia Carbot, Fernando Carbot, and Charmelle Garcia for their support and guidance during law school and beyond. Many thanks as well to Professor Andre Smith, Professor Ediberto Roman, and Vanessa Ortiz for their advice and tutelage throughout this project.

<sup>2</sup> FIELD OF DREAMS (Universal Pictures 1989).

<sup>3</sup> See ALLEN DONNES, PATRON SAINTS: HOW THE SAINTS GAVE NEW ORLEANS A REASON TO BELIEVE (2007).

<sup>4</sup> See generally JOHN FEINSTEIN, THE LAST AMATEURS: PLAYING FOR GLORY AND HONOR IN DIVISION I COLLEGE BASKETBALL (Back Bay Books 2001) (chronicling the NCAA's Patriot League, a division of obscure programs in terms of national recognition); ADRIAN WOJNAROWSKI, THE MIRACLE

cities often form a uniquely symbiotic bond, with the identity of one reflected in the other. Indeed, some would suggest that were it not for the presence of sports teams, some cities would be relative unknowns in the American landscape. As one professional sports team supporter has stated, “You can have Disney World and every major attraction, but if you don’t have a team, in the eyes of the world you’re not a big league city.”<sup>5</sup>

These relationships obviously could not be possible without a venue for these events to take place. As such, the stadiums<sup>6</sup> in which contests occur play an integral role in the experience.<sup>7</sup> Some venues transcend the teams themselves, attaining the status of a veritable sports Mecca even when their tenants experience stretches of futility.<sup>8</sup> This is particularly true of many older facilities, their venerable facades evoking memories of eras gone by. As one noted sports broadcaster eloquently remarked:

No such awe or sense of landscape was generated by the multisport, artificial turf clones that blighted baseball’s landscape in the 1960’s and 70’s. They were impersonal and nondescript; soulless, with no suggestion of history, no sense of place. Baseball’s best move of the past decade has been to spurn them by building new “old” ballparks . . . Of course, they can’t carry the history of an Ebbets or Forbes Field, *and in some cases I wouldn’t want to defend the way they were financed*, but at least they pay tribute to the game . . . .<sup>9</sup>

These facilities, often strategically integrated into the city’s downtown districts or other major urban arteries, can sometimes become more recognizable than buildings far more essential to the city’s daily operations. The special ones become destinations unto themselves, mainstays on casual

OF ST. ANTHONY: A SEASON WITH COACH BOB HURLEY AND BASKETBALL’S MOST IMPROBABLE DYNASTY (Penguin 2006) (addressing the New Jersey’s St. Anthony’s boys basketball team, which despite substandard economic support – over 50% of the students’ families live below the poverty line – manages to rank among the nation’s best programs).

<sup>5</sup> See KENNETH L. SHROPSHIRE, THE SPORTS FRANCHISE GAME: CITIES IN PURSUIT OF SPORTS FRANCHISES, EVENTS, STADIUMS, AND ARENAS 7 (1995) (quoting Patrick Williams, who spearheaded Orlando’s successful attempt to lure a professional basketball team).

<sup>6</sup> The author intends the word stadium and its various permutations to encompass stadiums, arenas, ballparks, and other sporting venues.

<sup>7</sup> While the focus of this comment centers on the financing of professional sporting venues, the development and maintenance of non-professional sports facilities should not be underestimated, as these venues are also common breeding grounds for debates on financing and allocation of funds for maintenance. As the sports industry becomes more commercialized and lucrative, other venues run the risk of becoming obsolete and extinct as well. See, e.g., Israel Gutierrez, *Baseball Heaven: Great Memories Mark Dodgertown’s Final Days*, MIAMI HERALD, Mar. 9, 2008, at D1 (examining the history behind the Holman Stadium in Vero Beach, Florida, the spring training home of MLB’s Los Angeles Dodgers from 1953-2008).

<sup>8</sup> See, e.g., CURT SMITH, STORIED STADIUMS: BASEBALL’S HISTORY THROUGH ITS BALLPARKS, 166 (Carroll & Graf 2001) (“Wrigley Field has always been more than a stadium. It is not a place merely to watch but to experience and embrace something beyond baseball.”).

<sup>9</sup> *Id.* at x-xi (emphasis added).

tourists' itineraries, local residents' weekend plans, and purists' "places to watch a game before I die" checklists.<sup>10</sup>

As impressive as these legendary locales may sound, there is another, more negative reality surrounding sports stadia: they are among the most hotly contested and criticized structures erected throughout the United States.<sup>11</sup> Two of the most increasingly prevalent issues at the intersection of law and sports are those of stadium finance,<sup>12</sup> and their modern naming rights practices. The public subsidization of these facilities has been of particular concern to many legislatures and other policymakers, as well as the citizens in the cities where these decisions are to be made.<sup>13</sup>

In essence, the crux of the current debate surrounding stadium financing is that the public too often foots the bill—in many cases the *entire* bill—for the construction of multi-million dollar facilities, the main benefits of which are to be reaped by private corporations.<sup>14</sup> Rather than construct the stadium without taxpayer assistance, corporate sports franchises turn to municipalities already having other financial obligations for funding.<sup>15</sup> These points are clearly not without merit, as despite providing a major entertainment outlet for the city, a forceful argument can be made that between a private organization set to reap most of the facility's financial rewards and a municipality already saddled with other fiscal responsibilities, the burden of financing a new stadium should fall at the franchise's feet. Paying for the construction of stadiums and arenas has thus proven to be a different sort of zero-sum game: any victory by private franchises and leagues formulaically results in a loss for the public sector, and vice-versa, while failing to address and remedy the greater issue of finding mutually agreeable solutions to the problem.

<sup>10</sup> See generally JIM GORANT, *FANATIC: TEN THINGS ALL SPORTS FANS SHOULD DO BEFORE THEY DIE*, 148-64 (Houghton Mifflin Harcourt 2007) (a day game at Wrigley Field between the Chicago Cubs and Atlanta Braves, the Boston Red Sox's Opening Day at Fenway Park, and a Green Bay Packers game at the frozen tundra of Lambeau Field were among the featured events in the book).

<sup>11</sup> See, e.g., KEVIN J. DELANEY & RICK ECKSTEIN, *PUBLIC DOLLARS, PRIVATE STADIUMS: THE BATTLE OVER BUILDING SPORTS STADIUMS* (2003); see also Brent Bordson, *Public Sports Stadium Funding: Communities Being Held Hostage by Professional Sports Teams Owners*, 21 *HAMLIN L. REV.* 505 (1998); Todd Senkiewicz, *Stadium and Arena Financing: Who Should Pay?*, 8 *SETON HALL J. SPORTS L.* 575 (1998).

<sup>12</sup> *Id.*; see also Robert H. Thornburg, *Stadium Naming Rights: An Assessment of the Contract and Trademark Issues Inherent to Both Professional and Collegiate Stadiums*, 2 *VA. SPORTS & ENT. L.J.* 328 (Spring 2003).

<sup>13</sup> See DELANEY & ECKSTEIN, *supra* note 11 (providing an in-depth and well-researched case study on stadium financing, including an examination of the delicate and intricate dealings amongst policymakers, taxpayers, and franchise owners).

<sup>14</sup> See Senkiewicz, *supra* note 11, at 577 (stating "while owners want to reap the benefits associated with having a state-of-the-art facility, they have little interest in paying for it themselves. Today's stadiums and arenas are primarily financed by state and local governments.").

<sup>15</sup> *Id.* ("This is so, despite the fact that public budgets everywhere are tight . . .").

This comment seeks to address the modern public-private stadium financing debate, not in terms of allocating fault to one side or declaring the other's cause to be more compelling, but in exploring the existence of relief from an unlikely source—one which often draws as much public ire as private owners reaching into taxpayer pockets. Specifically, this piece's main proposal is to tweak current stadium naming rights agreement practices to increase the role of namesake corporations in financing new stadiums and arenas.

Part II of this comment will briefly delineate the history and background leading up to the stadium construction boom that has occurred over the last twenty years, followed by a discussion of the various methods employed to fund the increasingly more expensive facilities of the late 20<sup>th</sup> and early 21<sup>st</sup> centuries.<sup>16</sup> Particular attention will be given to the public purpose doctrine and tax-exempt bond financing, the two largest pillars of modern-day stadium financing.

The focus will then shift in Part III to another oft-maligned recent trend: that of the "corporatization" of stadium naming rights practices, tracing its genesis from the first "corporate" namesake stadium up through the 1980's boom of stadium naming rights agreements that still continues today.<sup>17</sup> Included in the discussion will be an exploration of the rights, obligations, and other issues arising out of naming rights agreements, including trademark, service mark, and exclusivity of use.

Part IV of the piece will engage in an objective analysis of the arguments on both sides of the stadium finance debate,<sup>18</sup> including the potential pitfalls surrounding stadium naming rights, and the more intangible factors, often city-specific, that inform and shape the debates over stadium financing.

Part V will explore the possibility of new approaches to stadium financing in an attempt to bridge the gulf between the private and public sectors. Suggestions in this discussion range from minor alterations of current financing practices, to frontier solutions such as this piece's primary suggestion: increase the role of corporations that seek to gain stadium naming rights when it comes time to pay the tab for the facility.<sup>19</sup>

## II. A LONG WAY FROM THE SANDLOT: THE FINANCING OF PROFESSIONAL SPORTS STADIUMS

The sporting industry has experienced a sharp increase in growth and exposure over the last twenty-five years, both as a recreational spectator's

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<sup>16</sup> See *infra* Part II.

<sup>17</sup> See *infra* Part III.

<sup>18</sup> See *infra* Part IV.

<sup>19</sup> See *infra* Part V.

event and a lucrative entertainment and business universe.<sup>20</sup> The days of being able to hop the fence before the game and watch your favorite player are long gone. By and large, the innocuous innocence of professional sports has faded like an old baseball card.

As a result of the increased competition for revenue and other business advantages, the venues in which these games are contested have also come to reflect efforts to create a full-scale entertainment experience aimed at bringing in more customers and keeping them there while creating larger revenue streams in the process.<sup>21</sup> At both the collegiate and professional levels, quaint, no-frills stadiums like Miami's Orange Bowl, despite their romanticized notions of history and tradition,<sup>22</sup> can no longer viably compete in the marketplace with facilities costing upwards of a half-billion dollars to construct.<sup>23</sup> As bigger and better facilities now become the gold standard (and perhaps even a prerequisite for economic and on-field success), the financing costs for these behemoth venues have increased exponentially as well.<sup>24</sup> With these increased asking prices come even louder questions of how much of the price tag should be slung over the shoulders of local and state governments as opposed to private franchises.<sup>25</sup>

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<sup>20</sup> See, e.g., Richard P. Cole, *Law, Sports, and Popular Culture: The Marriage of a Relationship Scorned*, 23 W. NEW ENG. L. REV. 431 (2002); Lindsay J. Rosenthal, *From Regulating Organization to Multi-Billion Dollar Business: The NCAA is Commercializing the Amateur Competition it has Taken Almost a Century to Create*, 13 SETON HALL J. SPORTS L. 321 (2003); Kerry M. Fraas, "Bankers Up!" *Professional Sports Facility Financing and Other Opportunities for Bank Involvement in Lucrative Professional Sports*, 3 N.C. BANKING INST. 201 (Apr. 1999).

<sup>21</sup> See *Dolphin Stadium, Historic Transformation*, <http://www.dolphinstadium.com/content/architecture.aspx> (last visited Apr. 5, 2008) (explaining that the facility is currently in the midst of a massive renovation, the end product of which is expected to be "a state-of-the-art venue that will offer the most inspired and unmatched stadium experience in the world." Among the additions are interactive exhibits, new restaurants and lounges, upgraded luxury suites, and massive high-definition television monitors.).

<sup>22</sup> The Orange Bowl, one of college football's most historic and storied venues, has long been recognized for its atmosphere and "mystique" throughout the University of Miami's successful decades of the late 20<sup>th</sup> century. See, e.g., Randall Mell, *Stadium Offers Wonderful Memories*, ORLANDO SENTINEL, Nov. 9, 2007, at D1.

<sup>23</sup> The University of Miami Hurricanes football team, the Orange Bowl's main tenant, completed its final season at the historic facility in 2007. Rather than complete the extensive renovations required to update the facility, beginning August 2008 the Hurricanes began playing their home games at Dolphin Stadium. The Orange Bowl was demolished in 2008, with plans to construct a new state-of-the-art ballpark for the Florida Marlins on the site. See Mike Bianchi, *UM Fans, Don't be Crushed by Orange Exit*, ORLANDO SENTINEL, Aug. 26, 2007, at C1 (arguing that the University of Miami football program's professional-caliber talent over the past twenty-five years has had much more to do with the team's success than the outdated stadium's "aurora").

<sup>24</sup> Andrew H. Goodman, *The Public Financing of Professional Sports Stadiums: Policy and Practice*, 9 SPORTS LAW. J. 173, 174 (2002) ("since just 1989, taxpayers have lavished \$5.2 billion on the four major sports leagues . . . under the guise of stadium financing . . . [t]he cost of construction for stadiums opening between 1999 and 2003 alone will total \$13.5 billion.").

<sup>25</sup> *Id.*

## A. The Stadium Arms Race and the Rise of Public Subsidization

Professional sports have become an increasingly lucrative universe over the last twenty years, as reflected in the revenues of major American sports leagues and their constituent franchises. The year 2006 saw Major League Baseball teams rake in a then-record \$496 million,<sup>26</sup> and the league as a whole generated a staggering \$5.8 billion of revenue in 2008, despite many teams feeling the effects of an economic downturn.<sup>27</sup> Franchise values have reached particularly astronomical heights in professional football, where the National Football League's clubs are consistently the most valuable franchises in all of professional sports, and some individual teams are worth nearly \$1 billion.<sup>28</sup> While factors such as more far-reaching broadcast contracts have played important roles in this increasing popularity, profitable stadium situations have undoubtedly had an immense impact as well.<sup>29</sup> In fact, some suggest that new stadiums and their greater revenue streams play *the* biggest role in increasing franchise value.

### 1. A Brief Timeline of Stadium Evolution

Today's multimillion dollar state-of-the-art facilities, with high-definition monitors, luxury suites, and innumerable concession options, are a far cry from the humble beginnings of sporting venues.<sup>30</sup> The early twentieth century saw mostly baseball stadiums crop up across the country in what became the "classic" or "jewel box" design era,<sup>31</sup> with the ballparks often quirkily designed to fit into existing parcels of land.<sup>32</sup> Many stadiums

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<sup>26</sup> Kurt Badenhausen, Michael K. Ozanian, & Christina Settimi, *Baseball's Big Bucks*, FORBES.COM, Apr. 19, 2007, [http://www.forbes.com/2007/04/19/baseball-team-valuations-07mlb-cz\\_kb\\_0419baseballintro.html](http://www.forbes.com/2007/04/19/baseball-team-valuations-07mlb-cz_kb_0419baseballintro.html) (last visited Apr. 5, 2008).

<sup>27</sup> See Michael K. Ozanian & Kurt Badenhausen, *Baseball's Most Valuable Teams*, FORBES.COM, Apr. 22, 2009, <http://www.forbes.com/2009/04/22/yankees-mets-baseball-values-09-business-sports-intro.html> (last visited May 6, 2009).

<sup>28</sup> See *Forbes Franchise Values*, ESPN SPORTS BUSINESS, <http://espn.go.com/sportsbusiness/s/forbes.html> (last visited Apr. 5, 2008) (providing a list of most valuable franchises). The NFL's Washington Redskins are the most valuable franchise in all of professional sports with a \$1.1 billion valuation. *Id.* Overall, the NFL's 32 teams accounted for 32 of the 33 highest-valued franchises, all with a value of over \$500 million. *Id.* The only non-NFL team in the top 33 is the New York Yankees of MLB, at #16.*Id.*

<sup>29</sup> Adam Safir, *If You Build It, They Will Come: The Politics of Financing Sports Stadium Construction*, 13 J. L. & POL. 937, 938 (1997) (noting the impact of favorable stadium leases on skyrocketing value of NFL and MLB franchises).

<sup>30</sup> The origins of the stadium trace back to ancient Greece, home of the first Olympics over 2,000 years ago. Perhaps the most famous however, even centuries after its initial construction, is the Roman Colosseum, still today a great heirloom of structures designed specifically for the public to gather for entertainment. Believed to be constructed around 70 A.D., the Colosseum hosted innumerable gladiatorial battles and other public exhibitions, ranging from dramatic performances to animal hunts.

<sup>31</sup> See SMITH, *supra* note 8, at 55-262 (discussing the classic era of baseball parks from 1909 to 1961).

<sup>32</sup> *Id.* at 55 ("each fit into an urban parcel, which made for some unique angles").

from this era came to be known as “the contemporary equivalent of cathedrals,”<sup>33</sup> such as Yankee Stadium with its white picket façade evoking the ancient Roman Colosseum.<sup>34</sup>

During the 1950’s and 60’s, many cities obtained second and third major sports franchises, which raised concerns about financial and land availability and ultimately led to the rise of multipurpose venues.<sup>35</sup> These facilities, which could aptly accommodate two franchises, were erected with increasing frequency throughout the 1960’s and 1970’s, coinciding with the increase in municipally-funded stadiums, one major exception being the former Joe Robbie Stadium. Financed by then-Miami Dolphins owner Joe Robbie,<sup>36</sup> the stadium was at the time considered one of the finest in the country,<sup>37</sup> particularly revolutionary for its inclusion of a club level and luxury suites, the revenues from which were used to repay the bonds the facility was constructed with.<sup>38</sup> The Stadium was particularly innovative for its use of luxury suites as revenue stream, a groundbreaking phenomenon in professional sports that came to be standard-fare for football stadiums by the end of the century.<sup>39</sup>

A major selling point of multi-sport facilities was the cost efficient manner in which they could house two major franchises, thus saving the public millions of dollars in additional construction costs<sup>40</sup> while making those cities attractive candidates for additional professional sports franchises. As such, throughout the 1970s “highway accessible, multipurpose stadium[s]” became the major sporting facility trend, with new parks being constructed in cities including Pittsburgh, Cincinnati, and Philadelphia.<sup>41</sup> These venues were not without their critics, however, who pejoratively referred to the blandly designed, steel and concrete structures as “cookie cut-

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<sup>33</sup> *Id.* at 65.

<sup>34</sup> *Id.* at 137.

<sup>35</sup> *Id.* at 302 (suggesting that the rise of professional football in the 1960’s and 70’s contributed to the shift toward generic, multi-sport facilities during that era: “One by one, football stadiums raided baseball’s soul.”).

<sup>36</sup> See Katherine C. Leone, *No Team, No Peace: Franchise Free Agency in the National Football League*, 97 COLUM. L. REV. 473, 489 n. 120 (1997).

<sup>37</sup> See *Dolphin Stadium History*, available at <http://www.dolphinstadium.com/content/history.aspx> (last visited Apr. 5, 2008).

<sup>38</sup> *Id.* (“Inclusion of a Club Level, along with Executive Suites, helped to finance the construction of the stadium. Season ticket holders committed to long-term agreements and in return they received first-class amenities in a state-of-the-art facility which is still used as a model for new facilities across the country.”). In keeping with the multi-sport stadium movement, Joe Robbie Stadium was designed with the foresight to accommodate a future professional baseball franchise, a move that proved visionary when the expansion Marlins began play in 1993. *Id.*

<sup>39</sup> SHROPSHIRE, *supra* note 5, at 9 (explaining that by 1999, the only NFL stadium without luxury suites was Robert F. Kennedy Stadium in Washington, D.C.).

<sup>40</sup> Goodman, *supra* note 24, at 184.

<sup>41</sup> DELANEY & ECKSTEIN, *supra* note 11, at 156.

ters.”<sup>42</sup> One top player of the era noted that “[w]hen I’m at bat, I can’t tell whether I’m in Cincinnati, Philly, or St. Louis.”<sup>43</sup> Another remarked “[y]ou’d be kind to say [multisport stadiums] had the charm of a parking garage.”<sup>44</sup> Nonetheless, the proliferation of multipurpose facilities continued relatively unobstructed through the 1980’s.

Beginning in the early 1990’s, the business aspect of professional sports entered an era of unprecedented success, leaving many multipurpose stadiums in the unenviable position of being relatively new, yet already outdated by virtue of having caught the tail-end of the multisport venue wave. Record ticket sales, league expansion, and other factors combined to create a booming industry for franchises, sponsors, and other affiliated entities: in the span of less than fifteen years in some cases, stadiums were becoming obsolete, particularly those that housed multiple franchises and lacked sport-specific and luxury amenities.<sup>45</sup> The sport-specific stadium became the hottest commodity for franchises, a symbol of having arrived at the pinnacle of sporting entertainment. In the eyes of many owners, by the late 1990’s obtaining a new facility tailored to the particular sport’s and franchise’s needs became a necessity in order to assure viability as a franchise.

Many professional teams often seek new facilities to gain more favorable lease agreements and other revenue-generating streams, much to the chagrin of public taxpayers who consider current facilities to be adequate.<sup>46</sup> With this increase in stadium and arena construction, taxpayer involvement increased as well, a trend which prompted legislative proposals aimed at curbing the increasingly large public subsidizations.

## 2. Legislative Proposals to Curb Public Subsidization: The Stadium Financing and Relocation Act of 1999

The Stadium Financing and Franchise Relocation Act of 1999 (SFFRA)<sup>47</sup> was originally introduced by Senator Arlen Specter to the Senate

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<sup>42</sup> See generally SMITH, *supra* note 8, at 301-464.

<sup>43</sup> *Id.* at 301.

<sup>44</sup> *Id.* at 302.

<sup>45</sup> See Goodman, *supra* note 24, at 184 (addressing owners’ “desire for obtaining optimal seating capacity for individual franchises, which translates into larger revenues,” resulting in “[e]arlier multipurpose stadiums [becoming] obsolete, too small for football, and too large for baseball . . . The return to the single-purpose stadium allows a football team to have an ideal 70,000-seat stadium, and a baseball team to seat an ideal 45,000 spectators.”).

<sup>46</sup> See Gregory W. Fox, *Public Finance and the West Side Stadium: The Future of Stadium Subsidies in New York*, 71 BROOK. L. REV. 477, 491 (2005) (discussing the “less-than-optimal revenues” generated by the New York Jets’ current stadium situation).

<sup>47</sup> See Stadium Financing and Franchise Relocation Act of 1999, S. 952, 106th Cong. (1999), available at <http://thomas.loc.gov/cgi-bin/query/z?c106:S.952>: (last visited Apr. 5, 2008).

on May 4, 1999.<sup>48</sup> The purpose of the SFFRA was “[t]o expand an antitrust exemption applicable to professional sports leagues and to require, as a condition of such an exemption, participation by professional football and major league baseball sports leagues in the financing of certain stadium construction activities, and for other purposes.”<sup>49</sup> In other words, the SFFRA’s main goal was to increase league responsibility and participation towards the financial commitments new stadiums require by setting aside a percentage of broadcast revenues, in exchange for increased antitrust protection for all four major American professional sports leagues (NBA, NFL, MLB, and NHL).<sup>50</sup> Additionally, Senator Specter sought to prevent franchises from relocating if a new stadium deal could not be struck, as clubs often attempt to coerce cities into granting—and paying for—a new facility under the threat of relocation.<sup>51</sup> As per the SFFRA, antitrust laws would not apply where there are joint agreements:

by or among persons engaging in or conducting the organized professional team sports of football, baseball, basketball, or hockey, by which any league of clubs participating in that professional sport sells or otherwise transfers all or any part of the rights of the member clubs of that league in the sponsored telecasting of the games of that professional sport that are engaged in or conducted by those member clubs;<sup>52</sup>

Of course, the carrot of expanded antitrust exemptions did not come without a fair exchange, in the form of leagues placing 10% of revenues generated from broadcasts in a trust to be used for the financing of new stadiums:

The exemption under subsection (a) for a joint agreement described in subsection (a)(2)(A) shall apply, with respect to a football league or major league baseball league only if the league of football or major league baseball clubs involved--

(A) agrees—

\* \* \*

(ii) not later than 90 days after the date of enactment of the Stadium Financing and Franchise Relocation Act of 1999, to establish a special

<sup>48</sup> *Id.*

<sup>49</sup> *Id.*

<sup>50</sup> See Marc D. Oram, *The Stadium Financing and Franchise Relocation Act of 1999*, 2 VA. J. SPORTS & L. 184, 202-03 (Spring 2000).

<sup>51</sup> Zachary A. Phelps, *Stadium Construction for Professional Sports: Reversing the Inequities Through Tax Incentives*, 18 ST. JOHNS J. LEGAL COMMENT. 981, 999-1000 (2004); see also Daniel S. Mason, *Appropriate Opportunism or Bad Business Practice? Stakeholder Theory, Ethics, and the Franchise Relocation Issue*, 7 MARQ. SPORTS L.J. 399 (1997).

<sup>52</sup> Stadium Financing and Franchise Relocation Act of 1999, S. 952, 106th Cong. (1999), available at <http://thomas.loc.gov/cgi-bin/query/z?c106:S.952>: (last visited Apr. 5, 2008).

trust fund into which the league will deposit an amount equal to 10 percent of the amounts received under that joint agreement for the sale or transfer of the rights in sponsored telecasting of the games of the professional sport of that league in the United States, on the condition that any funds in the trust fund that are not obligated during the 10-year period beginning on the date on which those funds are deposited in that trust fund shall be withdrawn from that trust fund and treated as gross revenues of the league;

(iii) to use the amounts in the trust fund established under clause (ii) only for financing, in accordance with this section, the construction or renovation of playing facilities from which games of the teams of that league will be televised; and

(iv) to make available to a local governmental entity, upon request of that entity, from the amounts in the trust fund established under clause (ii), assistance for the cost of the construction or renovation of playing facilities to be used by a member club in that league (if that construction or renovation was not completed prior to the date of introduction of the Stadium Financing and Franchise Relocation Act of 1999), up to a maximum of one-half of that cost . . .<sup>53</sup>

Of the utmost importance to the expanded antitrust protection afforded to major professional sports leagues were the leagues' ability to more strictly control franchise relocation, specifically to deny a member club the right to transfer to a new location.<sup>54</sup> Naturally, the proposed bill received heavy opposition from the NFL and MLB, which tend to be the leagues whose respective constituent members call for sport-specific facilities.<sup>55</sup> Chief among the leagues' arguments were concerns that smaller market teams would be disproportionately affected;<sup>56</sup> and, that requiring 10 percent of broadcast revenues to be put toward new stadium financing would be both unnecessary and insufficient to achieve the desired purpose of alleviating public subsidization.<sup>57</sup> Ultimately, the SFFRA failed to be enacted into law despite the potential impact it would have had on current stadium-finance practices. The Senate adjourned in September 1999 without a proper vote

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<sup>53</sup> *Id.* at § 1(b)(1)(A).

<sup>54</sup> See Oram, *supra* note 50, at 202.

<sup>55</sup> Goodman, *supra* note 24, at 184 (contrasting hockey and basketball, which "have the same ideal seating capacity" and are thus more economically efficient co-tenants, to football and baseball, where markedly different schedules and ideal seating capacities result in less economically-efficient facility sharing).

<sup>56</sup> *Id.* at 205-08. (noting that small and medium market teams rely more heavily on broadcast revenues than their large market counterparts).

<sup>57</sup> *Id.* (the NFL argued that the league already contributes heavily to the construction of its new stadiums, while MLB argued that 10% of its broadcasting rights would not provide a significant contribution to the financing of new stadiums).

on SFFRA's future, thereby effectively deciding to deny the Act legal force.<sup>58</sup>

### 3. Financing the Construction Of Stadiums and Other Sporting Venues

As bigger and better facilities now become standard fare, debates as to how such venues should be financed often turn ugly, with franchises often threatening relocation and leagues threatening contraction.<sup>59</sup> Financing the costs of modern-day sporting venues goes far beyond rustling under the public's couch for loose change, or conversely, the franchise owner privately footing the bill as was common practice in the early twentieth century. Indeed, the form and function of funding methods vary wildly, with differing levels of support and effectiveness. As will be discussed, the two major pillars of modern-day stadium financing are the public purpose doctrine and tax-exempt bond financing. Subsection (a) below will engage in a thorough analysis of the public purpose doctrine and tax-exempt bond financing structures under Internal Revenue Code § 141, as well as a roadmap of how franchise owners today navigate the public subsidization waters. Subsection (b) will address other common stadium financing methods, including various large-scale taxation approaches which are often employed to supplement bond disbursements.

#### a. The Public Purpose Doctrine and Bond-Issuance Financing

##### i. The Public Purpose

By far the most common method of financing new stadiums today is via issuance of various bonds. This method, however, is typically one of the most maligned avenues of paying for stadiums, due to a franchise's ability to secure financing for a new facility at greatly discounted rates. Franchise owners favor the use of municipal bond financing because such an approach typically results in tax exemption, largely by virtue of falling within the ambit of the "public purpose doctrine."<sup>60</sup> As one scholar has colorfully described it, the essential inquiry of the public purpose doctrine as applied to sports stadium financing is whether "stadiums provide a sig-

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<sup>58</sup> See S. 952 legislative history, available at <http://thomas.loc.gov/cgi-bin/bdquery/z?d106:SN00952:@@X> (last visited Apr. 5, 2008).

<sup>59</sup> See Bordson, *supra* note 11 (providing insightful commentary of how strenuous stadium financing negotiations can become).

<sup>60</sup> The public purpose doctrine is rooted in the economic theory that federal subsidies are warranted where a public purpose is to be served. See, e.g., Goodman, *supra* note 24, at 179-80; see also Mildred Wigfall Robinson, *Public Finance of Sports Stadia: Controversial but Permissible...Time for Federal Income Tax Relief for State and Local Taxpayers*, 1 VA. SPORTS & ENT. L.J. 135 (2002).

nificant benefit to the public that warrants massive subsidies,”<sup>61</sup> so as to “ensure that taxpayer dollars are being spent on projects that benefit the public, not private individuals and corporations.”<sup>62</sup> The answer to this inquiry as to whether sports stadiums serve an adequate public purpose is often in the affirmative, as will be explained below.

While the public purpose doctrine has its roots in curbing public aid to the railroad industry,<sup>63</sup> its applicability to the public subsidization of sports stadiums and other facilities has been asserted since the early twentieth century.<sup>64</sup> In what is perhaps the earliest case involving a public purpose challenge to the subsidization of a professional sports facility, *Meyer v. City of Cleveland*<sup>65</sup> involved a taxpayer challenging a voter-approved bond issuance of \$2,500,000 to construct a fireproof stadium on the lakefront.<sup>66</sup> Despite the taxpayer’s concerns that such a debt was to be incurred largely for the benefit of the Cleveland Indians baseball team, the *Meyer* court concluded that “[g]enerally speaking, anything calculated to promote the education, the recreation or the pleasure of the public is to be included within the legitimate domain of public purposes.”<sup>67</sup> The court reasoned that in addition to baseball games, the stadium would be used for “pageants, patriotic celebrations, playground festivals . . . civic demonstrations . . . outdoor opera, band concerts, musical festivals . . . expositions, and baseball, football, boxing, wrestling, and other athletic contests,”<sup>68</sup> all of which justified subsidization by virtue of the “the power of cities and towns to maintain institutions which educate and instruct as well as please and amuse their inhabitants.”<sup>69</sup> The broad, sweeping nature of *Meyer*’s precedent continued to echo throughout the twentieth century, as evidenced by subsequent challenges to public stadium subsidization and appurtenant developments,<sup>70</sup>

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<sup>61</sup> See Fox, *supra* note 46, at 507.

<sup>62</sup> *Id.*

<sup>63</sup> See Dale F. Rubin, *Public Aid to Professional Sports Teams—A Constitutional Disgrace: The Battle to Revive Judicial Rulings and State Constitutional Enactments Prohibiting Public Subsidies to Private Corporations*, 30 U. TOL. L. REV. 393, 394-97 (1999) (explaining that the historical rationale for prohibiting public aid to private corporations arises out of the millions of dollars indebted to railroads for the benefit of private railroad companies).

<sup>64</sup> See *Meyer v. City of Cleveland*, 171 N.E. 606 (Ohio Ct. App. 1930).

<sup>65</sup> *Id.*

<sup>66</sup> *Id.*

<sup>67</sup> *Id.* at 607.

<sup>68</sup> *Id.* at 608.

<sup>69</sup> *Id.* at 607.

<sup>70</sup> See, e.g., *Anaheim v. Michel*, 259 Cal. App. 2d 835 (Cal. Dist. Ct. App. 1968) (addressing eminent domain and public use issues regarding the development of a parking facility for Anaheim Stadium); see also *Ginsberg v. Denver*, 436 P. 2d 685, 688 (Colo. 1968) (upholding city’s bond financing of a stadium for the Denver Broncos football team without first submitting the proposal to taxpayer voting); *Lifteau v. Metropolitan Sports Facilities Comm’n*, 270 N.W. 2d 749, 754 (Minn. 1978) (“the acquisition or construction of a stadium to be used in part by one or more professional sports teams constitutes a public purpose for which public expenditures could be legally undertaken”).

with an increasingly broad construction of “public purpose”<sup>71</sup> facilitating the development of professional sports stadiums throughout the nation.

### ii. Capitalizing on Tax-Exempt Bond Issuances

The opportunities for stadium subsidies to qualify for tax-exemptions became more abundant with the Revenue and Expenditure Control Act of 1968 (RECA), which expanded the scope of the public purpose doctrine.<sup>72</sup> Particularly, RECA exempted certain sports facilities deemed to be quasi-public in nature, which included stadiums, ski slopes, and golf courses.<sup>73</sup> Under RECA, sports facilities could gain the tax-exempt finance bond benefits if two requirements were met: (1) if professional sports teams “used more than 25% of the stadium’s services,” and (2) “when more than 25% of the debt service was retired with revenues generated by the stadium through rents, ticket taxes, and shares of profits from concessions and parking facilities.”<sup>74</sup>

The Internal Revenue Service’s (IRS) promulgation of the 1986 Tax Code made it more difficult for private-sector franchise owners to take advantage of the tax benefits afforded to them for stadium construction under the old regime. These changes came much to the relief of many in the public sector, who had become increasingly frustrated with franchise owners benefiting from tax breaks for stadiums that in theory served a public purpose, but in practice catered largely to private interests of the teams which called the stadiums home. Among the changes to the Code were the reductions of the required percentages for tax exemption from 25 percent to 10 percent, while requiring that the bond issuance in question pass only one of either the use of proceeds or securities interest tests.<sup>75</sup> Thus, under the current regime, bonds for stadium construction attain tax-exempt status if either (1) the sports team uses less than 10% of the stadium’s services, or (2) less than 10 percent of the debt service on the bonds is secured by private business.<sup>76</sup>

### iii. Navigating the Waters to Achieve Public-Subsidization Success

As illustrated above, the public purpose doctrine and RECA’s 10 percent tests are critical armaments in the professional sports franchise’s tool-

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<sup>71</sup> Ginsberg, 436 P. 2d at 688 (“The modern trend is to expand and liberally construe the term “public purpose.”).

<sup>72</sup> See Goodman, *supra* note 24, at 179-80.

<sup>73</sup> *Id.* at 180.

<sup>74</sup> *Id.* at 181.

<sup>75</sup> *Id.* at 182-83.

<sup>76</sup> I.R.C. § 141 (1986); see also Safir, *supra* note 29, at 937.

box when it comes to building new stadiums; and franchise owners must tread carefully to effectively reap the benefits of such doctrines. I.R.C. § 141 is of great importance to stadium finance, particularly subsection (b)(2), which delineates the private security or payment test.<sup>77</sup> Since § 141 classifies a private activity bond as any bond which meets *both* the private business use and private security or payment tests,<sup>78</sup> and bonds issued for stadiums will almost invariably fail to meet the private business use test,<sup>79</sup> avoiding classification as a private activity bond to achieve tax-exempt status typically hinges on the private security or payment test. Thus, to gain tax-exempt status for their bond issuances, franchise owners seek to meet the subsection § 141(b)(2) requirement by maintaining the percentage of bond amounts secured with payments of property from a private use below the 10 percent threshold.<sup>80</sup>

I.R.S. § 141 and the public purpose doctrine depend heavily on one another in meeting the requirements of § 141(b)(2). To gain tax-exempt interest status, team owners consistently seek the favor of local and state municipalities to secure municipally-backed bonds, as opposed to backing the bonds with revenue generated by the new facility,<sup>81</sup> since such an arrangement would fail both § 141 tests. It is at this juncture where taxpayers often challenge the legitimacy of the stadium's status as a public facility within the scope of the doctrine.<sup>82</sup> As evidenced by cases as early as *Meyer*,<sup>83</sup> and more recently *Poe v. Hillsborough County*,<sup>84</sup> challenges to the legitimacy of backing professional sports stadiums with public purpose and public facility justifications often fail.<sup>85</sup> The general defense to the challenge of subsidizing such sports facilities with public bonds generally advances an argument for the recreational, entertainment, economic, and other benefits professional sports stadiums generate for the public— an argument

<sup>77</sup> I.R.S. § 141(b)(2) (“except as otherwise provided in this subsection, an issue meets the test of this paragraph if more than 10 percent of the proceeds of such issue is (under the terms of such issue or any underlying arrangement) directly or indirectly—(A) secured by any interest in (i) property used for a private business use, or (ii) payments in respect of such property, or (B) to be derived from payments (whether or not to the issuer) in respect of property, or borrowed money, used or to be used for a private business use.”).

<sup>78</sup> I.R.S. § 141(a) (“... ‘private activity bond’ means any bond issued as part of an issue (1) which meets (A) the private business use test . . . and (B) the private security or payment test . . .”).

<sup>79</sup> See Fraas, *supra* note 20, at 208-09 (“most facilities fail this private use test because the portion of the revenues from the stadium activities accruing to the private teams and owners is above the threshold level.”).

<sup>80</sup> *Id.*

<sup>81</sup> *Id.* at 209 (“sports team owners seek municipality-backed bonds, instead of backing the facility with the facility's own revenues, in order to classify the facility as public, not private, use property”).

<sup>82</sup> See *infra* pp. 539-41.

<sup>83</sup> See *supra* note 20.

<sup>84</sup> *Poe*, 695 So. 2d at 672 (addressing the constitutionality of publicly-subsidized bonds in the construction of a new professional football stadium for the Tampa Bay Buccaneers).

<sup>85</sup> See *supra* note 24; see also *supra* pp. 533-34.

that typically succeeds in preserving public aid for new stadium construction.<sup>86</sup>

Moreover, extending the public purpose doctrine's reach was the *Poe* court's reasoning that "a bond issue does not violate article VII, section 10 so long as the project serves a 'paramount public purpose,' and any benefits to private parties from the project are incidental."<sup>87</sup> Thus, a private sports franchise's deriving great financial and competitive benefit from playing in a new stadium is often deemed as incidental to the facility's greater purpose to serve the public as a center for entertainment. The *Poe* court also suggested that a stadium should not be precluded from being built with public dollars simply because the public purpose service it provides generates private profit:

The mere fact that someone engaged in private business for private gain will be benefited by every public improvement undertaken by the government or a governmental agency, should not and does not deprive such improvement of its public character or detract from the fact that it primarily serves a public purpose. An incidental use or benefit which may be of some private benefit is not the proper test in determining whether or not the project is for a public purpose.<sup>88</sup>

Thus, once a legislative body determines a new stadium to be beneficial to the public, owners of private professional sports teams currently enjoy a comfortable degree of latitude in attaining publicly-subsidized bonds for the construction of new home facilities, despite heavy criticism and opposition from actual members of the general public.

#### b. State and Local Tax Approaches

In addition to bond issuances and public purpose justifications, modern stadium finance methods also rely a great deal on a multitude of tax implementations. By far the most ubiquitous are general sales taxes, as such a tax can be levied in just about any city in America, and does not require some sort of niche market industry to generate revenue as other tax-based revenue efforts do.<sup>89</sup> While not as productive an approach for all ci-

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<sup>86</sup> See, e.g., *Martin v. City of Philadelphia*, 215 A.2d 894, 896 (Penn. 1966) (suggesting that public projects may include "anything calculated to promote the education, the recreation or the pleasure of the public."); *Ginsburg*, 436 P.2d at 688-89 ("Municipal corporations are not limited to providing for the material necessities of their citizens. Generally speaking, anything calculated to promote the education, the recreation or the pleasure of the public is to be included within the legitimate domain of public purposes.").

<sup>87</sup> *Poe*, 695 So. 2d at 675 (emphasis added).

<sup>88</sup> *Id.* at 677 (citing *State v. Bd. of Control*, 66 So. 2d 209, 210 (Fla. 1953)).

<sup>89</sup> See generally *Senkiewicz*, *supra* note 11, at 585 (explaining that one of the most successful examples of general sales taxes levied for stadium finance is Arlington Texas, which raised \$135 million

ties, those with strong tourism industries often find that hotel and other tourist taxes provide a reliable means of generating revenue while diverting most of the burden away from its local, resident taxpayers.<sup>90</sup>

In addition to tourist and general sales taxes, many cities also implement various versions of alcohol, tobacco, and lottery taxes— sometimes pejoratively termed “sin taxes”— in their revenue generating plans.<sup>91</sup> While these taxes are imposed on only the fraction of the local population that consumes such commodities and thus far less “fair” than some other taxes, they tend to be implemented with little political resistance, “likely because of implications of moral correctness.”<sup>92</sup>

### III. WELCOME TO (*YOUR NAME HERE!*): THE PROLIFERATION OF STADIUM NAMING RIGHTS

Just as stadium icons such as the ivy walls of Wrigley Field, or (to a less historic degree) the Buccaneer pirate ship at Tampa’s Raymond James Stadium often become local or national symbols, the same can be said of the names of the stadiums themselves, whose nicknames often become part of the city’s vernacular. Fans of sports teams typically view the team and stadium as being theirs, and both in the case of professional and collegiate venues, coin familial nicknames that often supersede the stadium’s official name in the city’s popular culture.<sup>93</sup> Thus, deciding what to name a sporting venue can be just as important as determining its location or design. Section A below will provide a brief introduction to what is often considered the precursor to modern corporate stadium naming practices. Section B will follow with a look into the boom of corporate stadium naming rights agreements, which interestingly coincided with the end of the multi-purpose

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for the Ballpark at Arlington with a 0.5% local sales tax increase); *see also* Goodman, *supra* note 24, at 194.

<sup>90</sup> *See* Senkiewicz, *supra* note 11, at 585 (explaining that the cities which have made use of tourist taxes include Phoenix, Nashville, Miami, and Orlando).

<sup>91</sup> Goodman, *supra* note 24, at 196.

<sup>92</sup> *Id.* at 186 (explaining that Baltimore’s Oriole Park at Camden Yards, considered one of the pinnacles of modern stadium design, was financed in part with lottery proceeds); *see also* Senkiewicz, *supra* note 11, at 586.

<sup>93</sup> *See, e.g., Indians Record-Setting Sellout Streak Over*, USA TODAY, Apr. 5, 2001, available at <http://www.usatoday.com/sports/baseball/indians/2001-04-04-sellout.htm> (last visited Apr. 5, 2007) (Cleveland’s Jacobs Field came to be popularly known as “The Jake” as the facility rose to prominence along with the MLB’s Indians during the mid-to-late 1990’s. From June 1995 to April 2001, “The Jake” welcomed 455 consecutive sellout crowds. From the park’s opening until April 2001, 496 of the Indian’s 526 regular season games were sellouts.). *But see 100 Things about 100 Years of Gator Football*, ST. PETERSBURG TIMES, Aug. 27, 2006, available at [http://www.sptimes.com/2006/08/27/Sports/100\\_things\\_about\\_100\\_.shtml](http://www.sptimes.com/2006/08/27/Sports/100_things_about_100_.shtml) (last visited Apr. 5, 2008) (Conversely, “The Swamp” has become the most popular name for the University of Florida football team’s home field. Originally named Florida Field and later rededicated Ben Hill Griffin Stadium in honor of University benefactors, it is nonetheless most popularly known as “The Swamp” after former coach Steve Spurrier likened a swamp to being a friendly home for alligators but not other creatures.).

venue era and the emergence of single sport stadiums. Section C will look into the “nuts and bolts” of stadium naming rights agreements, exploring the contractual, intellectual property, and other legal issues inherent in those agreements.

#### A. The “Corporatization” of Stadium Naming Rights

Corporate entities have not missed the boat with respect to recognizing the lucrative potential of association with a professional sports league, franchise, or event. This has led to a boom in the practice of corporate naming rights deals, much to the despair of “purist” sports fans. Although not a new concept—in addition to the unintentionally corporate-named Wrigley Field,<sup>94</sup> Anheuser-Busch gained the naming rights to the MLB St. Louis Cardinals’ home field in the 1960’s<sup>95</sup>—the “corporatization”<sup>96</sup> of stadium naming rights took off in the late 1980’s and early 1990’s. The tipping point for the corporatization phenomenon occurred when Great Western Bank purchased the naming rights to what was then the Los Angeles Forum, transforming it into the Great Western Forum, which played host to the Los Angeles Lakers during their “Showtime” dynasty era. The dot-com boom of the late 1990’s and early 2000’s further stoked the mad dash to secure the most lucrative corporate naming rights agreements available.

#### B. The Naming Rights Deal

Stadium naming rights deals bring with them a plethora of rights, obligations, and other legal implications involving various bodies of law, particularly those of intellectual property and contracts. This section will explore some of the legal issues inherent to naming rights agreements. Per-

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<sup>94</sup> Early choices in stadium naming typically reflected a team (such as Yankee Stadium) or an individual who played a critical role in building the facility or franchise (such as Comiskey Park, home to the Chicago White Sox from 1910-1991, named after White Sox founder and owner Charles Comiskey). Ironically, one of these early instances of naming a facility after a franchise pioneer inadvertently also became the first seed in the development of corporate naming rights practices. Wrigley Field, one of the most famous venues in all of sports and home to the Chicago Cubs, is more commonly recognized today as the name of a popular chewing gum company than as one of the franchise’s earliest owners. William Wrigley, who happened to be the head of the Wrigley gum enterprise, purchased the Cubs from Charles Weeghman in 1918, and made numerous improvements to the park while also changing the name from Cubs Park to Wrigley Field. See SMITH, *supra* note 8, at 128 (“The gum squire lowered the field, put a scoreboard in left, and double-decked the grandstands.”).

<sup>95</sup> SMITH, *supra* note 8, at 316 (explaining that the Anhauser-Busch beer company owned the St. Louis Cardinals by the early 1960’s, at which point the corporation pledged \$5 million towards the building of a new stadium to revive the downtown St. Louis area; after extensive renovations, the park was renamed Busch Stadium).

<sup>96</sup> I intentionally use the term “corporatization” as a literal and figurative derivative of “modernization,” which has occurred to a great degree in sports over the last 40+ years, ranging from the stadia to the development of free agency and salary caps. The influx of corporate participation in sports is but one of the many evolutions and revolutions that have occurred throughout this period of modernization.

haps the biggest issue raised by stadium naming practices is that of trademark and trade use rights, as the venue and its corporate namesake come to require similar protections of the same general trademark or name. As defined by the Lanham Act,<sup>97</sup> a trademark:

includes any word, name, symbol, or device, or any combination thereof -- (1) used by a person, or (2) which a person has a bona fide intention to use in commerce and applies to register on the principal register established by this Act, to identify and distinguish his or her goods, including a unique product, from those manufactured or sold by others and to indicate the source of the goods, even if that source is unknown.<sup>98</sup>

The spectrum of trademark classes consist of generic, descriptive, suggestive, and arbitrary or fanciful, in the ascending order of protection afforded and likely eligibility for Lanham Act protection.<sup>99</sup> While there is much left to interpretation on the borders of these classes, the general guideline in assessing whether a mark is to be considered suggestive (and therefore entitled to trademark protection) or merely descriptive (and therefore not) is whether an “imaginative leap” is required by the consumer to connect the mark to a particular service or good.<sup>100</sup> While the standard rule of trademark is that the mark holder must use the mark in commerce to acquire the appurtenant rights,<sup>101</sup> there is one particular exception that has created a large carve-out to the rule. A product, service, or other mark may come to be known by consumers and the general public at large by a name other than the officially registered trademark, thus creating other valuable trademarks via public use.<sup>102</sup>

Of course, the millions of dollars paid for the opportunity to have a corporate name associated with a professional stadium would be money poorly spent, without one of the most important legal rights associated with intellectual property and trademark: exclusivity. There would be no reason to spend for stadium naming rights if other companies could also portray themselves as being associated with the franchise or facility. Such situations have arisen in the past, requiring courts to determine the level of exclusivity the right in a facility’s name carries.

In *Facility Management of Louisiana v. Continental Hotel Property*,<sup>103</sup> the operators of the Louisiana Superdome<sup>104</sup> sought to permanently enjoin

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<sup>97</sup> 15 U.S.C. §§ 1111-1129 (2007).

<sup>98</sup> 15 U.S.C. § 1127 (2007).

<sup>99</sup> *Abercrombie & Fitch Co. v. Hunting World, Inc.*, 537 F.2d 4, 9 (2d Cir. 1976).

<sup>100</sup> Thornburg, *supra* note 11, at 340.

<sup>101</sup> 15 U.S.C. § 1127; *see also* Thornburg, *supra* note 11, at 341.

<sup>102</sup> *Id.* at 341.

<sup>103</sup> *Facility Mgmt. of La., Inc., v. Cont’l Hotel Prop., Inc.*, 32 U.S.P.Q. 2d 1316 (E.D. La. 1994).

the defendant from using the Superdome name in connection with a motel, called the Superdome Motor Inn.<sup>105</sup> In determining whether defendant impinged on the Louisiana Stadium and Exposition District's right to the Superdome name, the court rejected the defendant's contention that the plaintiffs meet the general standard for trademark infringement—namely that “the use of a trademark is likely to cause confusion or mistake or to deceive as to the source of origin of the goods or services involved in the use.”<sup>106</sup> Instead, the *Facility Management* court determined that the legislature clearly intended that the Stadium and Exposition District have exclusive use of the term “Superdome.”<sup>107</sup> While the court did not directly address whether the Inn actually caused a likelihood of confusion, *Facility Management* does demonstrate that a substantial level of deference is given to the owner of a specific trademark in a naming right, particularly when explicitly stated by the legislature.

In negotiating naming rights deals, the parties “typically agree not only to make reasonable efforts to use the name in facility identification, but also facilitate media usage in all communications.”<sup>108</sup> Such clauses provide an even greater marketing network for the corporate namesake than would otherwise be provided. Other agreements typically negotiated into deals are those related to the extent of visibility the corporate name receives: in the most beneficial contracts for naming rights holders, the company name may appear everywhere from the playing surface to the napkins at the concession stand.<sup>109</sup>

#### IV. WHO'S TAB IS IT ANYWAY?

*“That's as good as money, sir. Those are I.O.U.'s.”*<sup>110</sup>

##### A. Financing Stadiums

While cities and their fans enjoy the presence of sports teams, the enthusiasm tends to fade when talk turns to building new home stadiums. One common gripe shared by citizens and politicians alike is the disingenuous perception wealthy owners create by asking for financial assistance

<sup>104</sup> The Superdome is the home of the NFL's New Orleans Saints and the NCAA Division-1A Sugar Bowl.

<sup>105</sup> *Facility Mgmt of La., Inc.*, 32 U.S.P.Q. 2d at 1316.

<sup>106</sup> *Id.*

<sup>107</sup> *Id.*

<sup>108</sup> Larry M. McCarthy & Richard Irwin, *Names in Lights: Corporate Purchase of Sport Facility Naming Rights*, CYBER-JOURNAL OF SPORTS MARKETING, available at <http://catalogue.ausport.gov.au/fulltext/1998/cjasm/v2n3/mccarthyirwin23.htm> (last visited Apr. 5, 2008).

<sup>109</sup> *Id.* (providing an example of extensive brand imaging: the United Center in Chicago, where the United name appears on “employee uniforms, napkins, plates, trash cans, letterhead, and drinking cups.”).

<sup>110</sup> DUMB AND DUMBER (New Line Cinema 1994).

toward building a stadium from which the benefits—namely profits and other revenue streams—will largely be enjoyed by the franchise. The gist of this argument is that the public should not have to subsidize the costs of financing facilities that often require over \$500 million to construct, to then enjoy only the intangible benefits of the new stadium’s “public purpose” service as a location for leisure and entertainment.

While the state of affairs surrounding stadium finance is replete with conflicting interests and divergent viewpoints regarding who should pay, the details regarding the methods of funding these facilities are often the target of debate as well. Unfortunately (though not surprisingly), there is no single financing avenue that is without its shortcomings.

In the eyes of many opposed to public stadium subsidization, the main culprit is the tax-exempt bond approach, and by extension, the franchise owners who unscrupulously take advantage of the regime. According to critics, franchise owners are able to circumvent and exploit existing structures regarding bond financing and tax exemption, to substantially reduce their burden while shifting the bulk of the financing costs to the public sector.

The application of lottery proceeds toward financing new stadiums has also come under much scrutiny. Some scholars have argued that a lottery is essentially an implicit regressive tax across an entire state, more forcefully impacting lower-income individuals who tend to spend more on lotteries, but incidentally are less likely to be able to afford to be consumers of sporting event products.<sup>111</sup> Redistributing lottery revenue towards financing stadiums also inevitably results in a weaker revenue stream for programs already receiving funds.<sup>112</sup> Conversely, others have noted that while there are drawbacks incident to the use of lottery proceeds borne by individuals who may otherwise not have any connection or interest to the new facility, the success of such an approach can be determined by the willful participation in state lotteries, as opposed to passive participation via tax increases.<sup>113</sup>

Much like lottery revenue redistribution, tax increases also have various shortcomings which detractors of public stadium subsidization cite as being problematic to equitable public financing solutions. To be sure, many stadiums have successfully and willfully been financed with the help of general sales taxes.<sup>114</sup> However, the main argument against such measures, especially increases in local sales taxes, is that these taxes are overbroad.<sup>115</sup>

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<sup>111</sup> Goodman, *supra* note 24, at 196-97.

<sup>112</sup> *Id.* Many states, such as Florida, target public school systems as a beneficiary of lottery revenue.

<sup>113</sup> Senkiewicz, *supra* note 11.

<sup>114</sup> One such example is the ballpark at Arlington, home of the MLB Texas Rangers. *See* Goodman, *supra* note 24, at 194-95.

<sup>115</sup> *Id.*

By their very nature, these broad-sweeping sales tax increases are borne by the entire citizenry, while a much smaller fraction of the population actually enjoys the new stadium's entertainment benefits.<sup>116</sup> The imposition of general sales taxes, opponents argue, requires the entirety of the taxpaying populous to bear the burden of financing the stadium or arena, regardless of whether they even want the facility there at all or will make use of it.<sup>117</sup> This is especially true where the venue is to be constructed as part of a downtown or urban revitalization project, as existing residents in these areas tend to be lower income earners who are in essence financially precluded from attending games even if they wanted to despite having the facility a short distance away and having footed the bill for a portion of its costs.<sup>118</sup> As a result, these poorer citizens tend to be disproportionately impacted by the tax measure.<sup>119</sup>

Other tax-based revenue generating measures such as hotel and tourist taxes seem to relieve some of the financial burden caused by public subsidizations, a particularly attractive option in cities generating a great deal of economic revenue from tourism. A prime example is Miami, where nearly \$150 million of the costs for the NBA's Miami Heat's new arena was financed by hotel and other tourism-related taxes,<sup>120</sup> and the Florida Marlins newly-approved stadium agreement, which includes \$297 million in Miami-Dade County tourist tax revenues to be used for financing the new ballpark.<sup>121</sup> Nonetheless, the same complaints of general local sales taxes are also levied at tourist taxes, namely that they do not raise the revenues from those that will enjoy the benefits of the new facility unless those individuals take in a stadium event as part of their visit.<sup>122</sup> These tourist taxes also possibly have the negative effect of deterring potential visitors because of the tax increases.<sup>123</sup> Thus, it appears that a common chink in the armor of lottery and tax revenue-generating methods is that the size of the population bearing the costs for the facility is much larger than the size of the population that will utilize it and reap its benefits.

Perhaps the most infamous recent example of financing issues affecting the development of a new sports facility is the New York Sports and Convention Center in New York City. Also dubbed the West Side Stadium,

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<sup>116</sup> *Id.*

<sup>117</sup> Senkiewicz, *supra* note 11, at 585.

<sup>118</sup> Goodman, *supra* note 24, at 194-95.

<sup>119</sup> Senkiewicz, *supra* note 11, at 585 ("all citizens pay the same percentage of sales tax, which means that poorer citizens pay a disproportionate share . . .").

<sup>120</sup> See <http://law.marquette.edu/s3/site/images/sports/referenda.pdf> (1996 referenda to provide \$141.2M toward financing the American Airlines Arena via hotel and transportation taxes).

<sup>121</sup> Memorandum accompanying Baseball Stadium Agreement (Orange Bowl), p.2 (on file with author); Charles Rabin & Matthew Haggman, *Marlins WinLit*, MIAMI HERALD, Mar. 24, 2009 at 1A.

<sup>122</sup> Goodman, *supra* note 24, at 194-95.

<sup>123</sup> Senkiewicz, *supra* note 11, at 587.

the project called for a new 75,000 seat retractable-roofed stadium for the NFL's New York Jets, as well as a massive convention center capable of accommodating various other events.<sup>124</sup> The facility, estimated to cost upwards of \$1 billion to construct,<sup>125</sup> was to be erected in the Far West Side of Manhattan, on the Hudson Rail Yard grounds. The project was to also be the center piece of New York's bid to host the 2012 Summer Olympics.<sup>126</sup> Despite support from New York City mayor Michael Bloomberg and New York State governor George Pataki,<sup>127</sup> the endeavor was eventually defeated. Opposition to the project was as strong as its support, particularly at the local level, where there was much consternation over the \$600 million public subsidy required to bring the complex to fruition,<sup>128</sup> half to be funded by the city via tax exempt bonds and half by the state.<sup>129</sup> As with many other stadium proposals,<sup>130</sup> the Sports and Convention Center was to be the crown jewel of a vast economic growth project, in this case aimed at developing the Far West Side, deemed Manhattan's "last great frontier."<sup>131</sup>

However revitalizing and ground-breaking the project was to have been, it was met with heavy resistance at both the local and state level. Various workers' unions and other political groups believed the enormous cost to subsidize the facility's construction could be better spent elsewhere.<sup>132</sup> Additionally, Madison Square Garden (MSG)—the home venue for the NBA's New York Knicks, WNBA's New York Liberty, and NHL's New York Rangers—and its affiliated commercial entities also denounced the plan.<sup>133</sup> Some commentators have suggested that MSG's opposition to the plan was borne out of a concern with having a new state-of-the-art complex with which to directly compete for hosting events (MSG is also located in Manhattan's West Side).<sup>134</sup> Also of concern would be the construction's adverse effects on the Metropolitan Transit Authority (MTA),

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<sup>124</sup> See Fox, *supra* note 46.

<sup>125</sup> *Id.* at 488. The cost of the stadium and convention center construction alone was estimated at \$1.4 billion.

<sup>126</sup> *Id.* at 478.

<sup>127</sup> *Id.* at 488-89.

<sup>128</sup> *Id.* at 489.

<sup>129</sup> *Id.* at 494-95.

<sup>130</sup> A classic selling point for numerous stadium and other sports facility proposals is to pitch the new venue as the centerpiece of an area revitalization project, drawing commercial and residential interest to the area. Some scholars, however, would argue that these promises turn out to be empty ones. See DELANEY & ECKSTEIN, *supra* note 11, at 114-18 (questioning the correlation between, and impact of, Coors Field on Denver's urban revitalization).

<sup>131</sup> Fox, *supra* note 46, at 492-93.

<sup>132</sup> See Winnie Hu, *Police Union Joins Opponents of West Side Stadium Project*, N.Y. TIMES, Aug. 28, 2004, at Sec. B.

<sup>133</sup> See Peter Keating, *Another Kind of Moneyball*, NEW YORK MAGAZINE, Jan. 10, 2005, available at <http://nymag.com/nymetro/news/columns/turf/10875/> (last visited Apr. 5, 2008).

<sup>134</sup> *Id.*

New York's public transportation agency, which owns the rail yards over which the West Side complex was to be built.<sup>135</sup>

## B. Local Influence and Public Debate

Despite the ever-increasing emphasis placed on the "business of sports" and the necessity of a cash-cow state of the art facility as an integral component to franchise success, there are numerous variables emanating from individual scenarios that often become pivotal factors in how the stadium financing debate plays out in a particular city. Indeed, professional sports teams often act as lightning rods and rallying points for a city, enriching the community in ways that do not show up on a financial report by giving citizens who may otherwise have nothing in common a shared interest and loyalty. The ultimate target consumers for franchises are their fan bases, and as such the dynamics between the citizens of the community (i.e. fans of the team and those that foot the bill for at least part of the facility), the franchise, and the municipal government require a subtle tightrope act. Many of these "soft variables," such as the desire of elected officials to remain politically popular and franchises seeking to appease the fan base, substantially affect the manner in which these matters are decided. These variables manifest themselves not on balance sheets, but through the media, political discourse, and other local channels.

Supporters of public stadium and arena subsidization frequently proffer studies demonstrating that the new facility will bring with it copious economic benefits to the area in the form of greater revenue and increased job opportunities,<sup>136</sup> and other assessments of "spending increase[s] associated with the stadium."<sup>137</sup> According to some analysts, every dollar spent on professional sports increases household income by seventeen cents and another dollar and seventy-five cents is realized by the economy;<sup>138</sup> seventy-six jobs are also created for every million dollars spent on professional sports.<sup>139</sup> From a non-economic perspective, former players themselves have also noted that new stadiums increase fan interest and attendance figures.<sup>140</sup>

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<sup>135</sup> See generally, New York City Independent Budget Office Background Paper: The Long-Term Costs and Benefits of the New York Sports and Convention Center, February 2005, available at [http://www.ibo.nyc.ny.us/iboreports/nyscc\\_bpfeb2005.pdf](http://www.ibo.nyc.ny.us/iboreports/nyscc_bpfeb2005.pdf) (last visited Apr. 5, 2008).

<sup>136</sup> See, e.g., SHROPSHIRE, *supra* note 5, at 13-19 (noting the "inconclusive conclusions" garnered from predictive stadium economic impact studies); Senkiewicz, *supra* note 11, at 587-89.

<sup>137</sup> Safir, *supra* note 29, at 952.

<sup>138</sup> Senkiewicz, *supra* note 11, at 588.

<sup>139</sup> *Id.*

<sup>140</sup> See Clark Spencer, *Perez Says Deal Helpful*, MIAMI HERALD, Feb. 22, 2008, at 3D (Baseball Hall of Fame player Tony Perez "saw a transformation in 1970, when the Cincinnati Reds moved out of decaying Crosley Field and moved into modern Riverfront Stadium. Crowds swelled, and the Reds became a baseball powerhouse . . .").

Just as frequently, however, those opposed to stadium subsidization cite contrasting studies showing that these economic benefits are grossly overstated and often nearly nonexistent.<sup>141</sup> This usually includes the argument that any real economic benefits realized by the presence of a new stadium are miniscule in comparison to the heavy cost burden suffered by the tax paying populous *en masse*, and governments can reap much better returns on their investments if it is jobs and other economic stimuli they seek to create.<sup>142</sup> Footing the bill for the majority (and some cases entirety) of the new facility is viewed as a fleecing of the citizenry, allowing private owners to reap the vast majority of the economic benefits the new stadium creates.<sup>143</sup> Moreover, the taxpayers who essentially bear the brunt of public subsidization “do not enjoy a proportionate share of the associated benefits” new stadiums are supposed to create.<sup>144</sup> As such, there is a constant back-and-forth played out in the political realm, almost always trickling out into the public.

#### 1. Relocation Threats, Public Factions, Political Votes, and Legal Challenges

One common thread, particularly in small and mid-market cities, is to play up the “big league” national perception the city can gain by keeping or luring a professional franchise by constructing a new stadium.<sup>145</sup> By shaping the community’s self esteem around its relationship with the professional franchise, stadium supporters are often able to squeeze new facilities out of contentious situations.<sup>146</sup> Additionally, these groups also appeal to local business leaders—who often have the potential to be major players in getting a new stadium deal done—with the vision of a more attractive community to outsiders, couching a new stadium as a feather in the city’s cap when it comes to recruiting executives and other business talent.<sup>147</sup>

Other factors such as the franchise’s perceived status or goodwill in the community also play a role in the public’s enthusiasm regarding the subsidization of a new facility. These issues can play just as important a role in the final decision as to whether a subsidized stadium plan will sur-

<sup>141</sup> Zachary A. Phelps, *Stadium Construction for Professional Sports: Reversing the Inequities Through Tax Incentives*, 18 St. John’s K. L. Comm. 981, 1011-12 (2004).

<sup>142</sup> *Id.*

<sup>143</sup> See generally, DELANEY & ECKSTEIN, *supra* note 11; see also Bordson, *supra* note 11.

<sup>144</sup> Goodman, *supra* note 24, at 193.

<sup>145</sup> DELANEY & ECKSTEIN, *supra* note 11, at 38-39; see also Shropshire, *supra* note 5.

<sup>146</sup> *Id.* at 39 (“So in Cleveland we kept hearing that having professional sports (especially in new stadiums) would keep the city from becoming another Akron. In Cincinnati, the presence of professional sports would prevent the city from turning into Louisville.”).

<sup>147</sup> *Id.* (“What are you going to sell [to executives you are recruiting]? You sell the cities amenities. We have a great art museum, a great orchestra, and major sports leagues.”).

vive. For instance, in *Poe v. Hillsborough County*,<sup>148</sup> the Florida Supreme Court granted the use of public bonds to construct the Raymond James Stadium in Tampa for the NFL's Buccaneers. In its decision, the court reasoned that "the Buccaneers instill civic pride and camaraderie into the community and that the Buccaneer games and other stadium events also serve a commendable public purpose by enhancing the community image on a nationwide basis and providing recreation, entertainment and cultural activities to its citizens."<sup>149</sup>

One such example of voraciously contested stadium proposals is that of the Florida Marlins. The Marlins, having begun MLB play in 1993, just recently gained official approval for a new ballpark, capping a decade-long battle to obtain a baseball-only retractable-roofed facility in South Florida.<sup>150</sup> On March 19, 2009, the City of Miami Commission voted on a deal between the Marlins, the City of Miami, and Miami-Dade County,<sup>151</sup> resulting in a 3-2 approval of the agreement.<sup>152</sup> County commissioners, passing the proposal by a 9-4 vote, echoed the city's approval.<sup>153</sup> The county decision proved to be much more tenuous than the county vote, complete with histrionics from one dissenting commissioner who tore apart his copy of the agreement to express his disapproval.<sup>154</sup> While such a dramatic demonstration may be a bit hyperbolic, it underscores the underlying passion of debates over multi-million dollar expenditures for new sports facilities.

A common attack levied at the manner in which new stadium agreements are consummated is that such agreements can be reached without involving the voting public.<sup>155</sup> The passed Marlins proposal is no exception, as evidenced by the proposal-tearing commissioner's arguments against the "unfairness of the negotiations and how it was kept from the public,"<sup>156</sup> given that the proposed agreement for the Marlins' new stadium did not go

<sup>148</sup> 695 So. 2d 672 (Fla. 1997).

<sup>149</sup> *Id.* at 678-79.

<sup>150</sup> See Greg Cote, *With New Stadium, Marlins are Finally Home*, MIAMI HERALD, Mar. 24, 2009, at 1D.

<sup>151</sup> Charles Rabin & Jack Dolan, *Halfway to Home*, MIAMI HERALD, Mar. 20, 2009, at 1A.

<sup>152</sup> *Id.* Voting in favor of the stadium were Commissioners Joe Sanchez, Angel Gonzalez and Michelle Spence-Jones. Commissioners Tomas Regalado and Marc Sarnoff constituted the votes against the stadium.

<sup>153</sup> Rabin & Haggman, *supra* note 121. Commissioners Dennis Moss, Bruno Barreiro, Audrey Edmonson, Natacha Seijas, Javier Souto, Barbara Jordan, Dorrin Rolle, Jose "Pepe" Diaz and Rebeca Sosa voted in favor of the stadium. The votes against the stadium came from Commissioners Carlos Gimenez, Sally Heyman, Katy Sorenson and Joe Martinez.

<sup>154</sup> See Charles Rabin, Matthew I. Pinzur, & Michael Vasquez, *Heading For Home*, MIAMI HERALD, Feb. 22, 2008, at 1A.

<sup>155</sup> See generally DELANEY & ECKSTEIN, *supra* note 11, at 183-204.

<sup>156</sup> Rabin et al., *supra* note 154.

to a voter referendum.<sup>157</sup> Similar situations have transpired in Pennsylvania, where four new professional sports facilities have been approved and opened since 1999 in Philadelphia and Pittsburgh.<sup>158</sup> Some commentators have argued that particularly in Pittsburgh, creative maneuvering by the city's political and corporate communities—known as “local growth coalitions”<sup>159</sup>—facilitated speedy stadium construction despite a stark absence of voter support.<sup>160</sup> These collaborative efforts can often have dispositive effects on public policy decisions, even in the face of heavy popular sentiment opposing the directives:

At heart, a growth coalition is an institutional alliance between the local corporate community and the local government, although the specific form of government involvement may vary. The local corporate community generally runs the growth coalition, which might include media, religious, and labor organizations (in supporting roles) but rarely includes a city's sports teams. Local growth coalitions have an inordinate influence over public policy and use that influence to serve their parochial interests, although they may claim they are pursuing the overall community good. Policies for advocating public dollars for sports stadiums provide just one example of this bias.<sup>161</sup>

Despite nearly leaving South Florida—the franchise was exceedingly close to relocating to San Antonio, Texas in 2006<sup>162</sup>—the favorable commission decisions on the Marlins' new stadium does not signal the end of the franchise's concerns. Details such as the Orange Bowl site receiving “an environmental clean bill of health”<sup>163</sup> and “[d]isputes over whether the county or city police department will earn [the] off-duty pay”<sup>164</sup> afforded to officers working at games, have been settled. Norman Braman's lawsuit,<sup>165</sup> which challenged not only the Marlins' new stadium agreement, but also

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<sup>157</sup> See Israel Gutierrez, *It's Now Loria's Turn to Act*, MIAMI HERALD, Feb. 22, 2008, at 1D (Opining that the vote on the new stadium proposal “won't be put on a ballot for voters to make their position officially known,” despite “the sad attendance numbers the team produces every year.”).

<sup>158</sup> DELANEY & ECKSTEIN, *supra* note 11, at 183.

<sup>159</sup> *Id.* at 2, 9-19 (describing the nature of what the authors call local growth coalitions).

<sup>160</sup> *Id.* at 155-56 (in 1997, voters from every county in the Pittsburgh metropolitan area rejected a referendum to raise regional sales taxes, with revenues largely to be used to fund new stadiums for MLB's Pirates and the NFL's Steelers. Despite the overwhelming public voice against public funding for these facilities, by 2001 both parks were up and running.).

<sup>161</sup> DELANEY & ECKSTEIN, *supra* note 11, at 3.

<sup>162</sup> See David King, *Marlins' Relocation Inevitable*, SAN ANTONIO-EXPRESS NEWS, Apr. 9, 2006, at 11C; Tom Osborn, *Deadline Passes Without Marlins Deal*, SAN ANTONIO-EXPRESS NEWS, May 16, 2006, at 4D. While San Antonio was the closest to luring the franchise away from South Florida, the Marlins also entertained relocation to various other regions, including Las Vegas, Portland, and Oklahoma City.

<sup>163</sup> Michael Vasquez, *Deal May Need Extra Innings*, MIAMI HERALD, Feb. 22, 2008, at 19A.

<sup>164</sup> *Id.*

<sup>165</sup> *Braman v. Miami-Dade County Fla.*, No. 2008-003787-CA-01 (filed Jan. 23, 2008).

the entire overarching three billion dollar public works deal, has been disposed of.<sup>166</sup> Yet, the new stadium is still in limbo, awaiting a final vote by city and county commissioners in March 2009 after a February 2009 session ended in a 2-2 tie.

### C. Stadium Naming Rights Pitfalls: Welcome to the Stadium Formerly Known As...

Emblazoning a name across the facade of a major sporting venue may certainly be an attractive marketing venture for a corporation, but for both the namesakes and the franchises and facility owners that enter into such deals, there are myriad concerns as well. With the signing of a long-term, multi-million dollar naming rights agreement comes the potential for significant legal issues to arise, particularly if either party becomes unable to perform their end of the contract or otherwise seeks to escape the agreement.

The worst-case scenario for parties to a naming rights agreement is if the corporation becomes insolvent: such was the case with the former Joe Robbie Stadium in Miami Gardens, Florida, home to the Miami Dolphins and Florida Marlins. Originally named after the former Dolphins owner who privately funded the entire \$115 million facility in the mid-1980's, the facility was renamed Pro Player Park (and later changed to Pro Player Stadium) following an agreement with Pro Player, the sports apparel division of Fruit of the Loom. Pro Player filed for bankruptcy in 1999, creating a lame duck of a name until 2005, when the naming rights agreement expired and the facility's name was changed to Dolphins Stadium—only to be changed once again, this time to Dolphin Stadium.

Of course, no discussion of stadium naming agreement shortcomings can be had without the proverbial “poster boy” for such deals gone wrong: the Houston Astros of MLB. Enron, a Houston-based energy corporation and a leader in the local business community, spearheaded an effort to construct a new publicly-funded stadium to replace the venerable Astrodome.<sup>167</sup> The Enron-headed task force garnered just enough voter support to approve the project, a \$625 million retractable-roof downtown stadium, which

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<sup>166</sup> *Braman Says Marlins Deal Should be Privately Financed*, Mar. 7, 2008, available at <http://sports.espn.go.com/mlb/news/story?id=3281667> (last visited Apr. 5, 2008) (“*Braman*”) (in addition to a new stadium for the Marlins, the public works agreement includes “a \$1 billion tunnel under Biscayne Bay for trucks [utilizing] the Port of Miami, a passenger trolley line serving the downtown area, additional money for a just-opened performing arts center with budget problems and work on a park that will become home to several Miami museums.”). *Braman*, ironically himself a former professional sports franchise owner, alleged that the public works agreement was “illegally hatched in secret and improperly uses money intended to cure urban blight and help poor people,” but has stated he would drop the lawsuit if the issue were presented to voters in a referendum.

<sup>167</sup> See DELANEY & ECKSTEIN, *supra* note 11, at 177.

opened in 2000.<sup>168</sup> As has been well documented, in December 2001 Enron became the largest corporation ever to file for bankruptcy in the wake of one of the most stunning corporate scandals in American history.<sup>169</sup> This created a nightmare for the Astros, who in the span of less than two years went from playing in a state-of-the-art facility branded with the name of one of Houston's most prized corporations to having a serious contractual mess on its hands. Despite the Astros not having committed any breach of the naming rights contract,<sup>170</sup> the franchise eventually decided it would essentially pay to make its relationship with Enron go away, negotiating a \$2.1 million buyback of the stadium naming rights from the bankrupt giant.<sup>171</sup> After a brief stint as Astros Field, the franchise sold the stadium naming rights to Houston-based Coca-Cola subsidiary Minute Maid Company.<sup>172</sup>

With the rise of the dot-com era at the turn of the millennium, many burgeoning companies sought to expand their brand visibility by acquiring naming rights to sporting venues in various locales. The coalescence of the dot-com bubble's peak and the increasing popularity of stadium naming rights agreements created a perfect storm for professional sports franchises, which were now faced with the glowing potential of a greater number of brands vying for the naming rights to a finite number of facilities. The result was predictable: from 1998-2000 the sports landscape experienced an unprecedented number of technology-based companies entering into naming rights agreements, ranging from established players in the technology industry to nascent brands seeking to jump headfirst into the e-marketplace with high visibility advertising strategies.<sup>173</sup> Of course, unforeseen at the time was that the dot-com "bubble" would burst shortly thereafter in 2001, leaving in its wake a veritable mess for naming rights holders.

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<sup>168</sup> SMITH, *supra* note 87.

<sup>169</sup> The news of Enron's collapse has been covered extensively both by major media outlets and academic scholars alike. See, e.g., Marianne M. Jennings, *A Primer on Enron: Lessons from a Perfect Storm of Financial Reporting, Corporate Governance and Ethical Culture Failures*, 39 CAL. W. L. REV. 163 (2003); Geoffrey P. Miller, *Catastrophic Financial Failures: Enron and More*, 89 CORNELL L. REV. 423 (2004).

<sup>170</sup> Enron and the Astros had agreed to a 30-year, \$100+ million naming rights contract in 1999). See also Ann Bartow, *Distributive Justice and Intellectual Property: Trademarks of Privilege: Naming Rights and the Physical Public Domain*, 40 U.C. DAVIS L. REV. 919, 928 n. 29 (2007).

<sup>171</sup> Houston Business Journal, Feb. 27, 2002, available at [http://www.bizjournals.com/houston/stories/2002/02/25/daily20.html?jst=s\\_cn\\_hl](http://www.bizjournals.com/houston/stories/2002/02/25/daily20.html?jst=s_cn_hl) (last visited Apr. 5, 2008); see also Bartow, *supra* note 170, at 928, n. 29.

<sup>172</sup> *Id.*

<sup>173</sup> This extended to other forms of sports advertising as well, as evidenced by startup online pet store pets.com. One of the classic stories of the dot-com bubble is pets.com, which went from meteoric success (including an \$82.5 million IPO) to bankruptcy in the span of less than one year. The young company aired a \$1.2 million 30-second commercial during Super Bowl XXXIV in January 2000, yet "rolled over and died" ten months later. See Tom McNichol, *A Startup's Best Friend? Failure*, CnnMoney.com, Apr. 4, 2007, available at [http://money.cnn.com/magazines/business2/business2\\_archive/2007/03/01/8401031/?postversion=2007022807](http://money.cnn.com/magazines/business2/business2_archive/2007/03/01/8401031/?postversion=2007022807) (last visited Feb. 6, 2008).

Among the most infamous examples of dot-com naming rights debacles is PSINet, which in January 1999 agreed with the NFL's Baltimore Ravens to a twenty year, \$105.5 million naming rights contract for the Raven's home stadium.<sup>174</sup> At the time of the 1999 agreement, PSINet's financial picture was bright and the company was trading at \$51 per share;<sup>175</sup> by April 2001, however, the company was trading at \$0.18 per share.<sup>176</sup> Despite being founded before the dot-com boom, PSINet nonetheless became a casualty of the tech-bubble bursting when it filed for Chapter 11 Bankruptcy in 2001,<sup>177</sup> leaving the Ravens in limbo until the rights were acquired by M&T Bank.<sup>178</sup>

Similarly, in 2002 the NFL's New England Patriots found themselves in a precarious situation with the tech-based namesake of their new facility. The franchise contracted with College Marketing Group Information (CMGI) in 2000 to a then-record-tying \$114 million naming rights agreement, under which CMGI was to pay the team \$7.6 million per year over fifteen years for the rights to "CMGI Field."<sup>179</sup>

By the time the new stadium was completed however, the dot-com bubble had burst and taken CMGI's viability as a naming rights sponsor with it. The company's stock had fallen precipitously, from trading at \$160 per share when the stadium agreement was made in 2000 to \$2 per share at the time of the stadium's opening in 2002.<sup>180</sup> Rather than face the ominous possibility of bankruptcy, CMGI backed out of the naming rights deal a month before the Patriot's first home game at the new facility as part of a massive corporate restructuring plan in an effort to salvage the company's existence.<sup>181</sup> This last minute desertion left the franchise scrambling for a new corporate sponsor, as well as having to remove any remaining vestiges of the CMGI Field name.<sup>182</sup> Grooming product manufacturer Gillette stepped into CMGI's shoes, reaching a fifteen year agreement of its own with the Patriots for the name "Gillette Stadium."<sup>183</sup>

In addition to the wariness the dot-com era has created for franchises seeking naming rights partners, owners and leagues must also be aware of

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<sup>174</sup> Michelle Kessler, *Stadium Deals Have a Win-Lose History*, USA TODAY, Dec. 26, 2006, available at [http://www.usatoday.com/money/2006-12-26-stadium2-usat\\_x.htm?csp=34](http://www.usatoday.com/money/2006-12-26-stadium2-usat_x.htm?csp=34) (last visited Feb. 6, 2008).

<sup>175</sup> Andy Patrizio, *Welcome to Dot-Bankrupt Stadium*, WIRED, Apr. 2, 2001, available at <http://www.wired.com/techbiz/media/news/2001/04/42760> (last visited Feb. 6, 2007).

<sup>176</sup> *Id.*

<sup>177</sup> See *PSINet Inc. v. Cisco Sys. Capital Corp.*, 271 B.R. 1 (S.D.N.Y. 2001).

<sup>178</sup> Kessler, *supra* note 174.

<sup>179</sup> Thornburg, *supra* note 12, at 333.

<sup>180</sup> Kessler, *supra* note 174.

<sup>181</sup> *Id.*; Thornburg, *supra* note 12, at 333.

<sup>182</sup> *Id.* ("This forced stadium crews to shave the 2,000 etched CMGI Field inscriptions off the park before the team's season opener, which was broadcast nationwide on ABC's Monday Night Football.").

<sup>183</sup> *Id.*

the possibility of mergers and acquisitions involving potential stadium namesakes, “particularly where a particular brand or company may be subsumed in a merger.”<sup>184</sup>

Despite such tales of disaster, other franchises’ forays into naming rights agreements during the dot-com era have remained stable and lucrative. Such is the case with the NFL’s San Diego Chargers. The Chargers’ home field, originally named San Diego Stadium and later Jack Kent Stadium in honor of a locally beloved and influential sportswriter, came in need of a major expansion and renovation project in the late 1990’s.<sup>185</sup> Ironically, though much to the chagrin of local fans who considered it sacrilegious to remove the beloved Kent as the stadium’s namesake, the Chargers – and the city of San Diego – found that corporate involvement would provide the answer to funding the expansion project. As such, in 1997 the franchise entered into a naming rights agreement with local telecommunications company Qualcomm totaling \$18 million and running through 2017.<sup>186</sup> Thus, while selling stadium naming rights is not a foolproof practice by any stretch of the imagination, with prudent planning and a quality corporate partner sports franchises can reap extensive benefits from such agreements.

#### V. TIME TO CALL IN THE RELIEVER: BRINGING CORPORATIONS TO THE PLATE?

- “*Surely you can't be serious.*”  
- “*I am serious... and don't call me Shirley.*”<sup>187</sup>

Despite perpetual efforts to quell the storm of controversy surrounding stadium and other sporting facility finance, there seems to be little headway being made toward assuaging the concerns of the parties involved, particularly those in and representing the public sphere. While both the “corporatization” of stadium names and allocation of financing burdens are sore subjects, perhaps a solution can be reached on the financing front by bringing an unlikely potential ally into the picture. This section will discuss various solutions to mitigating concerns inherent in the stadium financing dilemma, ranging from simply tweaking existing applicable legislation, to more uncharted waters and creative collaboration efforts. More specifically, the idea of bringing the often-maligned owners of these new naming rights, i.e. the corporations, to the stadium financing “bargaining table” as third-party intermediaries, may provide a quite unorthodox but amenable solution to municipalities struggling to foot the bill for new facilities.

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<sup>184</sup> McCarthy & Irwin, *supra* note 108.

<sup>185</sup> Thornburg, *supra* note 12, at 332.

<sup>186</sup> *Id.*

<sup>187</sup> AIRPLANE! (Paramount Pictures 1980).

Doing so could potentially alleviate the costs of bringing a new stadium to fruition, particularly those borne by the public sector.

### A. The Odd Couple

The most intriguing – though perhaps most cavalier as well – potential solution for cities and team owners involves an often-demonized player in the modern sporting world: the corporations engaged in the purchase of increasingly lucrative stadium and arena naming rights.

In the wake of the Enron scandal, which among other things left the Houston Astros with a defunct namesake for its ballpark,<sup>188</sup> there may be an understandable wariness surrounding long-term facility naming rights agreements – particularly in the current economic climate of turmoil and recession. One potential manner in which these concerns can be made more palatable to all parties involved is to engage in business with a well-established national corporation in a low risk industry, so as to minimize risk of future insolvency on the part of the stadium namesake. One such example is the aviation industry, which has enjoyed a rich history of naming rights with professional basketball facilities. United,<sup>189</sup> Delta,<sup>190</sup> and American<sup>191</sup> Airlines are but three such corporations to have partnered with NBA franchises in naming rights deals.<sup>192</sup> American Airlines, whose name adorns the home venues of both the Dallas Mavericks and Miami Heat, received an unexpected boon in 2006 when those two teams met each other in the NBA Finals.<sup>193</sup> In what was the first instance of a corporation holding the naming rights to both facilities hosting a league championship event, the

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<sup>188</sup> At the time of Enron's collapse, the Astros' home field was named Enron Field. It has since been renamed Tropicana Field.

<sup>189</sup> The United Center opened in 1994, replacing the Chicago Center as the Chicago Bulls' home arena. United Airlines currently pays \$1.8 million per year for the naming rights; the agreement expires in 2014. See Stadium naming rights, ESPN Sports Business, available at <http://espn.go.com/sportsbusiness/s/stadiumnames.html> (last visited Apr. 5, 2008).

<sup>190</sup> *Id.* The Utah Jazz played its home games in the Delta Center from 1991 until November 20, 2006, when a new naming rights agreement was reached with Energy Solutions, a Utah-based corporation dealing in waste management and processing.

<sup>191</sup> American Airlines agreed to pay an estimated \$42 million over 20 years for the naming rights to the brand-new home arena of the Miami Heat in 1996, which opened as the American Airlines Arena. See Major League Sport Stadium/Arena Referendum's [sic] (since 1990), <http://law.marquette.edu/s3/site/images/sports/referenda.pdf>. American Airlines pays \$2.1 million per year for its Miami naming rights, and will also pay an average of \$6.5 million per year through 2031 for the naming rights to the American Airlines Center, home to the Dallas Mavericks. See Stadium naming rights, *supra* note 189.

<sup>192</sup> While airlines continue to be popular choices for facility naming rights deals, it should be noted that these corporations and the aviation industry in general, have seen their strength weakened a bit in the wake of September 11<sup>th</sup>, 2001.

<sup>193</sup> An All-American (Airlines) Finals, available at [http://www.nba.com/finals2006/arenas\\_060608.html](http://www.nba.com/finals2006/arenas_060608.html) (last visited Apr. 5, 2008).

2006 NBA Finals generated what was calculated to be \$9 million *per game* in revenue for American Airlines.<sup>194</sup>

While selecting a corporation with which to create a naming rights relationship presents an important decision in itself, the financial structure of the agreement is also immensely critical. In typical naming rights contracts, corporations agree to a total contract price for the facility naming rights in exchange for the exclusive naming rights for a particular amount of time, the total of which is to be paid in yearly installments over the life of the agreement. While fairly uncomplicated, this agreement structure could be altered to greatly facilitate the payment of not only naming rights, but of a new facility altogether.

Essentially, this is where corporations can be brought to the bargaining table as third parties, directly contributing to the cost of financing the new stadium or arena. Rather than having the consideration paid for the naming rights pocketed as profit, franchises and facility operators should consider redistributing the naming-rights payment to help fund the actual construction of the stadium itself. With naming rights deals easily exceeding \$25 million dollars over the course of the agreement's duration, and sometimes exceeding \$40 million, reallocating a portion of the funds generated would have a definite beneficial effect of alleviating at least some of the financial burden on the other two parties to the financing deal. Conversely, corporations could be requested to also provide a financial stipend toward the costs of constructing the new stadium. While these companies would likely bristle at the idea of paying more for stadium rights than they already do, and franchises would likewise be leery of sacrificing a heftier bottom line in exchange for cheaper construction costs, the damage to their own respective wallets can be mitigated as well.

One method of recouping lost revenues is to increase the use of "supplemental advertising" throughout the league or franchise product. Sports leagues and franchises could sell advertising space on uniforms, not unlike European soccer clubs and NASCAR race teams. While sports purists certainly would be up in arms at even the notion of such a suggestion, the benefits of such a shift would arguably far outweigh the perceived sacrilege of having a corporate logo on a uniform. Uniform advertising would allow the corporation to recoup some of its losses caused by redirecting naming rights capital to financing the facility's construction, while also extending the image-branding link between the corporation and the franchise to road games as well. Uniform branding has been a staple of European soccer advertising

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<sup>194</sup> *American Airlines Hopes NBA Finals Provide Lift*, PITTSBURGH TRIBUNE-REVIEW, Jun. 12, 2006, available at [http://pittsburghlive.com/x/pittsburghtrib/news/rss/s\\_457607.html](http://pittsburghlive.com/x/pittsburghtrib/news/rss/s_457607.html) (last visited Apr. 5, 2007). The 2006 Finals lasted six of a possible seven games. It should also be noted that the decisions to purchase the arena naming rights in Dallas and Miami were not made in a vacuum: Dallas is American Airlines' largest hub, and Miami the airline's third-largest.

for years with much success, and while American sports fans may bristle at the notion of having their favorite player become a walking billboard, league policy-makers could set specific guidelines and restrictions on uniform branding, such as limiting the location to a small logo on a jersey sleeve or the back of a helmet. However, such a decision to implement uniform marketing would almost certainly have to be made league-wide.

Moreover, the concept of in-game marketing is actually not foreign to American professional sports leagues, as at least one league has already experimented with the idea in the past. Major League Baseball flirted with the idea of advertising the film *Spider Man 2* on its bases during the weekend of June 11-13, 2004, only to scrap the idea in the wake of fans voicing their displeasure with the plan.<sup>195</sup> While some fans would vehemently oppose the influx of in-game advertising as another encroachment of commercialization on tradition, it is inarguable that professional sports in the twenty-first century have become increasingly expensive products to create and operate as well. Salary caps, free agency, and player endorsements are but three of the phenomena that have dulled the luster of the “good old days” in professional sports today. The concomitant circumstances around the games are becoming ever more complex, requiring constantly evolving examination of legal and other issues, and perhaps such comparatively minor on-field encroachments must be made to keep up with the increased capital required to succeed in today’s professional sports universe.

In lieu of bringing the advertising onto the playing surface, franchises can also opt to grant stadium naming rights to one corporation for a larger fee, while reaching multiple smaller agreements with companies in other industries for other services. The revenue generated by these agreements can then be put toward financing the facility.

1. “Structurally integrated” naming rights sponsorship: Expanding on the PETCO Park model

Generating stadium construction revenue via increased advertising and corporate sponsorship presence, while a surefire way to raise more capital with which to fund a new facility, may likely be met with stiff opposition by leagues and fan bases. With this in mind, parties to the stadium finance conundrum should also be looking to “think outside the box” when it comes to utilizing their corporate sponsors in a manner that would mitigate the costs of constructing a new state-of-the-art stadium or arena, while also providing additional or unique facets to the event-going experience.

One of the most unique and intriguing professional stadium designs is San Diego’s PETCO Park, home to MLB’s San Diego Padres, and located

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<sup>195</sup> Brad Rock, *Money Can Buy Ad Spot on Me*, DESERET MORNING NEWS, May 12, 2004, at D01.

in a historic San Diego factory warehouse district. During the course of planning PETCO, the city and stadium design team were faced with the challenge of potentially having to tear down the historic Western Metal Supply Co. building, a fixture in the area since 1910.<sup>196</sup> Rather than raze the historical structure to make way for the new ballpark, an agreement was reached between the Padres, the city of San Diego, and historical preservation groups to integrate the Western Metal building into the ballpark's design.<sup>197</sup> PETCO opened its doors in 2004, with the Western Metal building towering over left field: in fact, the southeast corner of the structure actually functions as the left field foul pole.<sup>198</sup> Far from being just a historical relic in a modern-day big league ballpark, the Western Metal building was renovated for the stadium project and now includes bleacher seating and standing room on the roof, twelve party suites, the Padres team store, and a restaurant with a dining terrace.<sup>199</sup> The end result of the Western building's use represents a brilliant balance of San Diego's history and modern sporting entertainments.

While the Western Metal building incorporation was the first of its kind for a sporting facility,<sup>200</sup> this ingenious design strategy can be built upon to be used in situations beyond those involving historical preservation. Whereas the Western Metal building was no longer of any use to its namesake company and was a historical landmark, the idea of physically integrating a corporate building into a facility's design could be built upon to create stadiums featuring fully-functional physical space for the namesake corporation's use.

By integrating a commercially functional structure into a ballpark's design, corporations holding stadium naming rights can become viable third parties in stadium finance negotiations. The perfect storm of such a scenario would involve two players. The first would be a professional sports franchise seeking to move into a new facility as opposed to renovating its current one. The second would be a corporation, preferably of the established national or influential local variety, seeking to move into a new building or expand its operations into a city with a professional sports franchise. Considering the fact that the corporation would be paying for its new office or other building regardless of its location, enticing it to partner with

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<sup>196</sup> See San Diego Ballpark Builders Tops Out Petco Park, Clark Construction, Mar. 5, 2003, available at [http://www.clarkconstruction.com/Portfolio/ViewPressRelease.asp?prid=94&Category=&CategoryName=\("Clark Construction"\)](http://www.clarkconstruction.com/Portfolio/ViewPressRelease.asp?prid=94&Category=&CategoryName=("Clark Construction")) (last visited Apr. 5, 2008).

<sup>197</sup> *Id.*

<sup>198</sup> San Diego Padres 2007 Media Guide, available at [http://www.mlb.com/pressbox/downloads/y2007/sd/petco\\_park.pdf](http://www.mlb.com/pressbox/downloads/y2007/sd/petco_park.pdf).

<sup>199</sup> *Id.*

<sup>200</sup> Clark Construction, *supra* note 196.

the franchise in fusing their two operational facilities together would bring with it a plethora of benefits for both parties involved.

For the franchise and public, the cost of the company's building, entirely paid for by the corporation, would be incorporated into the cost to build the stadium. Depending on the amount of land the building requires, this could result in a fair-sized reduction of the otherwise publicly subsidized portion of the facility's construction. By increasing the third party corporation's interest in the success of the project, less of a financial burden would ultimately be placed on the public, which is where the bulk of the concern surrounding stadium financing rests. Additionally, the end-product would be a highly distinct design, one which would have the potential to draw customers to the stadium who would otherwise not have an interest in the game or event taking place, but who nonetheless are interested in taking in the unique experience.

Such a structurally-symbiotic relationship brings important potential benefits to the corporation as well. There is perhaps no stronger way to advertise a corporate brand using sports as to use a team's facility not only as a supersized billboard, but as a vehicle to integrate a fully-functional office or other building into the actual facility's architecture. This maximum branding would raise the exposure benefits of corporate naming rights to higher level, while reducing construction costs for the franchise and public.<sup>201</sup> Additionally, such a large-scale partnership would result in an increased perception of goodwill among the national and local community and further aid in the development of the brand's identity.<sup>202</sup> With the average professional basketball arena seating upwards of 18,000 spectators, and some NFL stadiums capable of accommodating over 70,000, the presence of a namesake corporation's actual building would create a very tangible connection between the consumer base and the company for which the facility is made. While corporations may hesitate to increase their financial roles in stadium naming agreements, doing so would not likely run afoul of other corporate purposes, as the greater participation and investment in the new stadium can be perceived as providing a significant corporate benefit in the form of increased advertising and fostering of goodwill within the community.<sup>203</sup> Such an arrangement would certainly increase the number of individuals that consume the namesake brand, as the company would essen-

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<sup>201</sup> For more on the extent the impact of naming rights agreements on corporate visibility and exposure, see, e.g., Fraas, *supra* note 20 (Marine Midland Bank estimates that their name was "mentioned or shown "hundreds of millions of times" in the first three months after the opening of Marine Midland Arena, home of the NHL's Buffalo Sabres).

<sup>202</sup> For a deeper look into the considerations and other factors that go into corporate sponsorship sports relationships, see generally Anne M. Wall, *Sports Marketing and the Law: Protecting Proprietary Interests in Sports Entertainment Events*, 7 MARQ. SPORTS L.J. 77 (1996).

<sup>203</sup> See generally A.P. Smith Mfg. Co. v. Barlow, 98 A.2d 581, 585 (N.J. 1953) (addressing the issue of corporate goodwill within the scope of charitable gifts).

tially be bringing its product or service to an already-captive audience numbering in the tens of thousands.

At the heart of the stadium finance debate is the argument that municipalities should not have to subsidize the majority of the cost of constructing new high-end sports facilities for the benefit of wealthy franchises and owners. While professional sports has become a world of high stakes, high dollar business, the term “wealthy” as applied to franchises is still a relative one, as even a team worth hundreds of millions of dollars can still be financially handicapped when compared to the rest of the league. Corporate naming rights holders with increased participation in the design and financing of new stadiums and arenas could become a major ally to these financially weaker franchises, who would otherwise struggle to get new stadiums built in the face of increasing political and popular opposition to the public subsidization of facilities.<sup>204</sup> Consumer services corporations such as Carnival or Office Depot are particularly intriguing, as a retail outpost could also be integrated into a project in addition to a corporate building. These centers would sweeten the pot even further for the corporation entering into this fully integrated naming rights agreement, as the tens of thousands of fans attending each game would also have a travel planning center or office supply store on the premises. This would present an opportunity for more direct increased revenues to the stadium’s namesake, as individuals attending the game could also purchase the company’s products on site, further increasing the visibility of the brand to the fan base.

## VI. ONE SIZE FITS ALL?

Given the groundbreaking nature of increasing potential stadium namesakes’ roles in financing new stadiums, there will certainly be new frontiers, legal and otherwise, such an arrangement would create. One potential issue is whether increased corporate participation in the funding and operation of a facility would negatively impact the stadium’s satisfactory public purpose and I.R.C. § 141 status. Current judicial interpretation of the public purpose doctrine as applied to stadium financing suggests a strong nexus

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<sup>204</sup> One prime example is MLB’s Florida Marlins, who just recently succeeded in a decade-long, well-chronicled battle to have a new stadium built in South Florida. *See supra* pp. 32-34; *see also* Florida Senate Professional Staff Analysis and Economic Impact Statement, *available at* <http://www.floridatoday.com/assets/pdf/A971629430.PDF>. Multiple large corporations are headquartered in Miami, the largest city in Florida, and the surrounding South Florida area. Among them is the world’s largest cruise line operator (Carnival Corporation) as well as two other cruise companies (Norwegian and Royal Caribbean); security giant ADT Security Systems Inc.; other Fortune-500 companies Ryder (a shipping and logistics corporation) and office supply chain Office Depot; Publix Supermarkets; and Alienware, a high-performance computer subsidiary of computer-giant Dell. With such nationally-recognized South Florida-based corporations, a partnership between one of the brands, the Marlins, and the local political community could have potentially helped bridge the long-standing funding gap for a new retractable-roofed stadium in downtown Miami.

to entertainment and recreation opportunities derived from having a new facility at which to host sporting and other events.<sup>205</sup> It remains to be seen whether a modern sports stadium that also houses a functioning corporate structure would change the facility's public purpose status.

Additionally, a structural integration approach would likely result in greater amounts of the bonds used to finance the stadium to be backed by private revenue streams, as the integrated facility would no doubt generate revenue for the benefit of the private corporate namesake. If such revenues reach a level greater than the percentages permissible under current § 141 parameters, those bonds could come in danger of falling within the ambit of private activity bonds pursuant to I.R.C. § 141, thereby losing their tax-exempt interest status.

Recognizing that the era of the "good old days" of sports has been reduced to nostalgic memories, the task for those involved in the modern world of the high stakes, high revenue sporting experience becomes creating the best product possible while avoiding as many of the potential pitfalls that may arise. At the forefront of this balancing act is developing a method of financing new stadiums and other facilities in a manner that will strike a cleaner balance between the private and public interests.

Regardless of the actual measures taken to bridge the stadium finance divide, however, the first and most contentious step in remedying the current divide is to overcome the inertia plaguing the situation as it stands today. Namely, rather than tally every battle waged in the courtroom or legislative branch as a win or loss for one side or the other, professional franchise owners and public taxpayer representatives should seek a more mutually beneficial avenue of resolution. By shifting the paradigm of stadium negotiations from an adversarial approach to a collaborative one where problem solving becomes the focus of the parties' respective efforts, agreements can be reached that strike a more harmonic balance between private and public interests.

More good faith efforts must be made by leagues and franchises to negotiate financial arrangements with their resident cities, as opposed to the common modern practice of engaging in a multi-million dollar version of "chicken," threatening to relocate unless a new publicly-funded home field is built. Conversely, legislators at the state and local level should be more willing to cooperate with franchises making legitimate good faith efforts to find a solution amenable to all involved. While sports, both at the professional and amateur levels, are becoming less reminiscent of the bygone eras of decades gone by, there still remains an indelible uniqueness to that world that is of some moment to the cities in which games are played out. It is the responsibility of the powerbrokers on both sides of the field to showcase

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<sup>205</sup> See *supra* pp. 538-40.

that uniqueness in a manner that does not leave either party feeling hung out to dry.

Of course, there is clearly no “one size fits all” solution to stadium financing. What may work for one city may be anathema to the needs and goals of another. This is particularly true when it comes to implementing tax and other surcharge methods, as evidenced by the wildly varying success of such proposals. Moreover, increasing the role of corporations or otherwise magnifying other commercial components may be met with the inertia inherent in the current status quo: as such, it is important to continue to explore other avenues.<sup>206</sup>

As bleak and contentious as the task may seem for some cities and franchises, the most satisfactory resolutions will likely result from creative strategizing taking into account each particular situation’s unique features. By mixing and matching various available practices, and also considering more novel approaches such as greater corporate involvement where possible, there will hopefully be fewer headaches and more handshakes when it comes time for a new House that Your Favorite Player Built (but everyone else really paid for).

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<sup>206</sup> One such avenue would be altering the existing IRC 10% tests to encourage franchise owners to make more altruistic efforts to fund new stadiums. New stadiums and arenas consistently fail the usage test, as more than ten percent of the facility usage goes assuredly is allocated to the private professional teams that are the facilities’ primary tenants.