

# NO RELO, NO MOVE: THE KEY TO THE NFL’S RELOCATION QUANDARY

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INTRODUCTION .....	99
I. THE TRANSFORMATION OF RULE 4.3 .....	100
II. A CHECKERED PAST: THE HISTORY OF NFL RELOCATION.....	102
A. <i>The Raiders Pave the Way</i> .....	102
B. <i>Other Teams Follow Suit</i> .....	104
III. THE \$790 MILLION COST OF DOING BUSINESS.....	106
A. <i>The Aftermath of Filing</i> .....	109
IV. RELOCATION CONTRACT DRAFTING 101 .....	110
CONCLUSION.....	112

## INTRODUCTION

If you were to poll the average American sports fan, it would likely be uncontroverted that the National Football League (NFL) would be the sport that carries the most popularity and fanfare amongst the “big four” American sports. Every fall through the winter, fans come together every week to rally around the NFL franchise that inhabits the city they call home. For municipalities, these NFL franchises are moneymaking machines that are sometimes the lifeblood of a city’s economic well-being. But just like many things in life, nothing lasts forever. Throughout its history, the NFL—like other professional sports leagues—has seen its fair share of teams relocating from one city to another. The decision to relocate a team may be driven by a variety of factors, such as a perceived lack of fan support, deteriorating facilities, or a myriad of incentives offered by a city hoping to land an NFL franchise. As a result, these NFL

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owners decide to relocate their NFL franchise to another city, leaving their loyal fans in the dust without an NFL franchise to call their own.

“No relo, no move.” Four words that can seemingly alter the course of a city’s identity. With just one simple stroke of a pen, a sports fan’s favorite hometown team could be on the move; for good. The implications of these moves can prove colossal, as some professional sports franchises are the hallmark and cash cow for a city that may not have much beyond a sports team and the venue that team plays in. When this situation presents itself, municipalities must undertake a cost-benefit analysis and decide whether letting its prized sports team go is worth it, or whether city funds would be better spent in other municipal ventures. However, these situations could be avoided through good lawyering and contract drafting—a clause known as “relocation clause.”

This Essay will analyze the complexities surrounding the NFL and its policies and procedures regarding NFL franchises relocating to new cities. First, Section I of this Essay will dive into the evolution of the NFL Relocation Policy and how the rule has been legally challenged since its inception. Section II will delve into the history of NFL franchises that decided to relocate to other cities and the legal implications of those moves. Section III will analyze the most recent relocation and the legal implications from the city of St. Louis and the Los Angeles Rams legal battle. Lastly, Section IV will dive into the nuances of drafting a sports venue agreement and how these franchises can avoid having to defend themselves by crafting a strong “no relocation” clause.

## I. THE TRANSFORMATION OF RULE 4.3

The NFL does not make it easy for one of its precious franchises to relocate outside of its own city. Even with roadblocks in the way, the NFL has awarded its franchises exclusive territories across the country dating back as early as the 1930s.<sup>1</sup> The league wanted to create these exclusive territories to establish stability. Essentially, the NFL prevented owners of these teams from moving their franchise into the same city or surrounding area as another team. From that concern emerged Article IV, Section 3 of the NFL Constitution and Bylaws (Rule 4.3).<sup>2</sup> Prior to its amendment in 1978, the NFL required unanimous approval among its owners for a move into another team’s home territory, ultimately giving each owner an exclusive territory in which it could operate its franchise.<sup>3</sup>

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1. Jeffrey A. Mishkin, *Rex Sport – CEU UCH Executive On-Line Master in International Sport Law – U.S. Professional Sports Leagues*, 26 (2018), <https://docs.google.com/document/d/1oDR4TxTwUJVK4zLvUE0vP7uZtsq3bWhz/edit> [<https://perma.cc/KRZ8-PTSA>].

2. *Id.*

3. See Daniel B. Rubanowitz, *Who Said There’s No Place Like Home – Franchise Relocation in Professional Sports*, 10 LOY. L.A. ENT. L. REV. 163, 197 (1989).

Now, only three-fourths approval is required for such a move.<sup>4</sup> In essence, Rule 4.3 seeks to prevent a unilateral move by a franchise into another existing team's market.<sup>5</sup>

Rule 4.3 confirms that each team's primary obligation to the NFL and to all other teams in the league is to "advance the interests of the League in its home territory."<sup>6</sup> Ironically, it also confirms that no club has an "entitlement to relocate simply because it perceives an opportunity for enhanced club revenues in another location."<sup>7</sup> Relocation pursuant to Rule 4.3 may be available if a team's viability in its home territory is threatened by circumstances that cannot be remedied by diligent efforts of the club working, as appropriate, in conjunction with the NFL league office, or if "compelling league interests" warrant a franchise relocation.<sup>8</sup> In that vein, the NFL weighs a variety of factors when considering and evaluating a proposed transfer of a team's location. In presenting to the other NFL teams and the Commissioner, a franchise with the desire to relocate must show why such a move would be justified through a showing of various mandated factors. These factors include:

- (1) the extent to which the club has satisfied its obligation of effectively representing the NFL and serving the fans in its current community;
- (2) the extent to which fan loyalty to and support for the club has been demonstrated during the team's tenure in the current community;
- (3) the adequacy of the stadium in which the club played its home games in the previous season, the willingness of the stadium authority or the community to remedy any deficiencies in or to replace such facility;
- (4) the extent to which the club, directly or indirectly, received public financial support by means of any publicly financed playing facility, special tax treatment, or any other form of public financial support and the views of the stadium authority (if public) in the current community;
- (5) the club's financial performance and the club's financial prospects in the current community;
- (6) the degree to which the club has engaged in good faith negotiations with appropriate persons concerning terms and conditions under which the club would remain in its current home territory and afforded that community a reasonable amount of time to address different proposals;
- (7) the degree to which the owners or managers of the club have contributed to

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4. *Id.*

5. *Id.*

6. Policy and Procedures for Proposed Franchise Relocations, MINN. LEGIS. REFERENCE LIBR. (Sept. 2009), <https://www.lrl.mn.gov/webcontent/lrl/guides/FootballStadium/NFLFranchiseRelocationRules.pdf> [<https://perma.cc/WZG6-YYC3>].

7. *Id.*

8. *Id.*

circumstances which might demonstrate need for such relocation; (8) whether any other member club is located in the community in which the club is currently located; (9) whether the club proposes to relocate to a community or region in which no other member club of the League is located and the demographics of the community to which the team proposes to move; (10) the degree to which the interests reflected in the League's collectively negotiated contracts and obligations (e.g., broadcast agreements) might be advanced or adversely affected by the proposed relocation; (11) the effect of the proposed relocation on NFL scheduling patterns, travel requirements, divisional alignments, rivalries, and fan and public perceptions of the NFL and its member clubs; and (12) whether the proposed relocation would adversely affect a current or anticipated League revenue or expense stream (e.g., network television) and if so, the extent to which the club proposing to transfer is prepared to remedy the adverse effect.<sup>9</sup>

These factors, while not exhaustive, are just the beginning of the task that an NFL franchise must undertake before even receiving due consideration for relocation. A tall order to say the least. However, this has not stopped many popular franchises from making the plunge to other cities, even if that means ruffling the feathers of the many hometown-faithful fans and the city officials who will not go quietly into the night.

## II. A CHECKERED PAST: THE HISTORY OF NFL RELOCATION

There has been a long history when it comes to a franchise packing up its bags and finding a new home. In addition to the NFL rules on relocation, teams wishing to relocate from their current city must also comply with antitrust laws. Federal courts are often called upon to intervene and determine whether preventing teams from playing games in the city in which it chooses without league consent would violate Section I of the Sherman Antitrust Act.

### A. *The Raiders Pave the Way*

One of the most notable, and groundbreaking examples of relocation in the NFL came in 1978, when the then owner of the Los Angeles Rams, Carroll Rosenbloom, decided to relocate the team to a new facility in Anaheim, California. This meant that the Los Angeles Coliseum, ran by the Los Angeles Coliseum Memorial Commission, (Coliseum) needed a new major tenant; and from there the officials of the Coliseum began the search for a new NFL franchise to occupy its stadium. Initially, they inquired with the then NFL commissioner, Pete Rozelle, as to whether

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9. *Id.*

the league would move an expansion franchise to Los Angeles. This request was met with a resounding “no,” causing them to pivot to their next plan of negotiating with existing NFL teams with the hopes that one might relocate to Los Angeles.<sup>10</sup>

The Coliseum ran into issues while trying to convince a franchise to move. The most major obstacle was aforementioned Rule 4.3. At the time, the Rule required unanimous approval of all the teams of the League whenever a team sought to relocate into the “home territory” of another team.<sup>11</sup> In the same Article IV, Section 1 defines a “home territory” as “the city in which [a] club is located and for which it holds a franchise and plays its home games, and includes the surrounding territory to the extent of 75 miles in every direction from the exterior corporate limits of such city. . . .”<sup>12</sup> And, in this case, the Coliseum was still the place the Rams called “home.” The Coliseum viewed Rule 4.3 as an unlawful restraint of trade in violation of Section 1 of the Sherman Antitrust Act, and brought suit challenging the rule in the United States District Court for the Central District of California.<sup>13</sup> To the Coliseum’s dislike, the District Court concluded that the Coliseum had no standing to sue due to the fact that no NFL team had committed to moving to Los Angeles.<sup>14</sup>

Soon after, the Oakland Raiders came into the fold. In 1978, the Oakland Raiders’ lease with the Oakland Coliseum expired. Due to poor facility conditions, Al Davis, who was the managing general partner of the Oakland Raiders franchise at the time, believed it was time for a change, and turned his attention to the Los Angeles Coliseum as a possible place to play the Raiders’ home games.<sup>15</sup> On March 1, 1980, Al Davis and the Los Angeles Coliseum signed a “memorandum of agreement” outlining the terms of the Raiders’ relocation to Los Angeles and announced its intentions to the NFL to move the team to Los Angeles.<sup>16</sup> However, once NFL team owners voted 22-0 to block the move, the Raiders joined as co-plaintiffs in the existing lawsuit filed by the Coliseum against the NFL, alleging that Rule 4.3 violated antitrust laws.<sup>17</sup>

After years of litigating and various appeals through the judicial system, the Ninth Circuit Court of Appeals determined that antitrust

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10. Mishkin, *supra* note 1, at 26.

11. *Id.*

12. *Id.* at 26–27.

13. *Id.*

14. *See* Los Angeles Memorial Coliseum Commission v. NFL, 468 F. Supp. 154, 155 (C.D. Cal. 1979)

15. Christopher David Ruiz Cameron, *The More Things Stay the Same, the More They Change: The Influence of Judge Harry Pregerson on Franchise Movement in Professional Team Sports*, 61 SANTA CLARA L. REV. 283, 288 (2020).

16. *Id.* at 289.

17. *Id.*

principles are “sufficiently flexible” to account for the NFL’s structure.<sup>18</sup> It held that the NFL was liable to the Coliseum and the Raiders, and enjoined the league from preventing the Raiders from relocating in Los Angeles.<sup>19</sup> This decision caused the NFL to amend Rule 4.3. Ultimately, the NFL and a voting member of each of the 28 NFL teams met and changed the rule to require only three-fourths approval by the members of the League before permitting a move into another team’s home territory.<sup>20</sup> From this point on, the NFL’s relocation game changed forever, equally for the better and for worse.

### B. *Other Teams Follow Suit*

The Raiders relocation and the subsequent change to the NFL Relocation Policy opened the floodgates for an NFL franchise to relocate to new territories. While some were clean and some were messy, many NFL franchises found new homes. The first came in 1984, when Baltimore Colts owner Bob Irsay decided to relocate the franchise in the wake of stadium issues, declining attendance at games, and an ongoing spat with city officials.<sup>21</sup> In dramatic fashion, one day after the Maryland state legislature began the process of trying to claim the Colts as part of an eminent domain action, Irsay hired fourteen Mayflower trucks to transport the team’s property to Indianapolis in the middle of the night.<sup>22</sup> This resulted in the NFL franchise that we see today—the Indianapolis Colts.

In 1988, the St. Louis Cardinals football team made the move to Phoenix in an attempt to jolt a franchise in competitive despair. Throughout the seasons prior to this move, the Cardinals played at Busch Stadium in front of crowds that displayed many empty seats. After political disagreements in St. Louis delayed a move to a new stadium, owner of the Cardinals, Bill Bidwill pitched a move to Phoenix.<sup>23</sup> Unlike other relocation plans, Bidwill notified the NFL of his plans to relocate the franchise well before the move took place. In fact, he kept the league informed over the course of four years about the team’s issues with fan and city support in St. Louis.<sup>24</sup> The inciting reason for the move to

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18. *See* Los Angeles Mem’l Coliseum Comm’n v. NFL, 726 F.2d 1381, 1381 (9th Cir. 1984).

19. *Id.*

20. *Id.* at 1385.

21. Alex Marvez, *The Long Goodbye: 11 Most Painful NFL relocations*, FOX SPORTS (Oct. 20, 2016), <https://www.foxsports.com/nfl/gallery/san-diego-chargers-st-louis-rams-oakland-raiders-los-angeles-nfl-teams-different-cities-122115> [<https://perma.cc/JKB7-3NNK>].

22. *Id.*

23. Associated Press, *Cardinals Seek Approval for Phoenix Move* (Jan. 16, 1988), <https://www.latimes.com/archives/la-xpm-1988-01-16-sp-9366-story.html> [<https://perma.cc/B8UZ-L7B9>].

24. *Id.*

Phoenix was the offer of nearly \$17 million annually in ticket and concession incentives to play at Sun Devil Stadium on the Arizona State University campus, with the option of moving into a proposed dome stadium built in downtown Phoenix.<sup>25</sup> In fact, one year prior to the move, Bidwill rejected a proposed 70,500 seat, open-air stadium in St. Louis County.<sup>26</sup> And, one week prior to the official announcement, St. Louis city officials came up with a proposal for a domed stadium in downtown St. Louis.<sup>27</sup> This last ditch effort was not enough, as the proposal to move to Phoenix was already well in motion, and subsequently approved by three-fourths of the NFL owners pursuant to Rule 4.3. Eventually, this move created the franchise that we see today—the Arizona Cardinals.

On January 17, 1995, the Los Angeles Rams announced that they would be departing Southern California after forty-nine years to move the franchise to St. Louis. At the time, the proposal to move to St. Louis was a package that included a new \$260 million 65,000 seat stadium and a \$15 million practice facility.<sup>28</sup> The new stadium was proposed to bring in \$25 million per year in profits, but the Rams ownership would have to pay the NFL \$20 million of the relocation fee up-front, as opposed to over a period of time.<sup>29</sup> Nonetheless, the St. Louis Rams were born.

The next move presents some irony. In 1995, thirteen years after abandoning the city of Oakland, Al Davis decided that it was time to return, and relocated the Raiders back to Oakland after receiving an offer he simply could not refuse from Alameda County officials.<sup>30</sup> The deal included a fifteen-year lease with the City of Oakland and a juicy \$85 million renovation to the Oakland Coliseum, including expansion from 54,000 seats to over 65,000, new locker rooms, and the addition of 121 luxury boxes to the stadium.<sup>31</sup> The key to facilitating this move was the prospect of the city issuing bonds to cover the costs for stadium renovations.<sup>32</sup> These bonds would be repaid through the sale of personal seat licenses, which provide a buyer the exclusive rights to purchase tickets in any given season.<sup>33</sup> At the time, these personal seat licenses

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25. *Id.*

26. *Id.*

27. *Id.*

28. Leonard Shapiro, *Rams Approved For St. Louis Move*, WASH. POST (Apr. 13, 1995), <https://www.washingtonpost.com/archive/sports/1995/04/13/rams-approved-for-st-louis-move/e2167293-a69f-431e-aaca-cb57ec13296c/> [https://perma.cc/9TF3-DRDP].

29. *Id.*

30. *Id.*

31. David Aldridge, *Davis Sings Letter To Move Raiders Back To Oakland*, WASH. POST (June 24, 1995), <https://www.washingtonpost.com/archive/sports/1995/06/24/davis-signs-letter-to-move-raiders-back-to-oakland/a98c9d07-4a86-4c17-84b6-0a3600b076da/> [https://perma.cc/N6GC-L9ZA].

32. *Id.*

33. *Id.*

were estimated to last over ten years and ranged in price from \$250 to \$4,000 for seats on the 50-yard line.<sup>34</sup> The City of Oakland's lack of financial responsibility is what ultimately made the move attractive, and what pushed it across the finish line prior to approval by twenty-three out of the thirty NFL owners.<sup>35</sup>

In 1996, when Cleveland Browns owner Art Modell could not secure the requisite funds to build a new stadium, he struck a "secret deal" with the City of Baltimore to house the "Baltimore Browns" football franchise.<sup>36</sup> However, after public backlash for the move, and a failing football team, Modell decided to leave the "Browns" name behind for new ownership and decided to name the new franchise the team that remains in Baltimore today—the Baltimore Ravens.

The next move came in 1997. It was known for quite some time that Bud Adams, the Houston Oilers owner, wanted to move the franchise away from Houston. In years past, he had repeatedly threatened to displace the team if public funds did not roll in to help finance stadium renovations. So, in 1997, when the mayor of Houston would not support building a new facility to replace the historic Astrodome, Adams reached an agreement with Nashville city officials to move the Oilers franchise to Tennessee.<sup>37</sup> The Tennessee Oilers played its first two seasons in various venues across Tennessee before going through a total rebrand and emerging as the current Tennessee Titans franchise.

All of these moves paved the way for other NFL franchises to make their plunge to relocate to other cities that would welcome them with open arms. While these moves are not always successful, history has shown that relocating can prove to be a lucrative business decision. No move is ever perfect, and some franchises must find out the hard way; even if that means footing a bill nearing \$1 billion amidst tremendous legal and public scrutiny.

### III. THE \$790 MILLION COST OF DOING BUSINESS

Enter the St. Louis Rams ownership group, led by billionaire Stan Kroenke, who dealt with a monstrous lawsuit in the wake of its relocation from St. Louis to Los Angeles in 2017. Prior to moving to Los Angeles, Kroenke decided to relocate the franchise outside of St. Louis and pointed to the poor condition of the Edward Jones Dome and lack of fan engagement from native St. Louisans as the main reasons for their

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34. *Id.*

35. *Id.*

36. Marvez, *supra* note 21.

37. *Id.*



departure.<sup>38</sup> As noted by the NFL’s history of relocation, this justification to move—poor facilities, stadium conditions, and fan support—is quite similar to other franchises’ decisions to leave their current city and fans. St. Louisans would staunchly beg to differ.

In April 2017, the City of St. Louis, St. Louis County, and the St. Louis Regional Convention and Sports Complex Authority (Plaintiffs), filed suit against Kroenke, the NFL, and the various owners of the thirty-two member institutions that make up the league (Defendants) collectively after the Rams relocated to sunny Los Angeles. In the petition, the Plaintiffs outlined the NFL Relocation Policy and noted that the NFL has acknowledged that it has an “obligation, which [it] take[s] very seriously” to do whatever it takes to keep NFL teams strong in their existing markets.<sup>39</sup> In arguing that they deserved to have their franchise stay in St. Louis, they stated, among other things, that the Plaintiffs made substantial investments in their stadium, paid expenses and interest on thirty-year bonds used to finance the construction of the stadium, paid twenty-five percent of the bond obligations, including millions in maintenance expenses, each incurred bond cost obligations of \$180 million, and lastly, each collected hotel taxes to service their obligations and paid these obligations out of general revenue funds.<sup>40</sup> The Plaintiffs also stated that they agreed to and installed a new playing surface and performed \$30 million in renovations.<sup>41</sup>

Moreover, the Plaintiffs alleged that they relied on various statements, spanning from 2012 through 2016, from Rams representatives and ownership, relating to the team’s intent to engage in good faith negotiations and to stay in St. Louis. Additionally, for purposes of the lawsuit, it bears importance to note that, unbeknownst to anyone, Kroenke purchased land in Inglewood, California in 2014.<sup>42</sup> However, upon the news surfacing at a Rams season ticket holder event, Kevin Demoff, Rams Chief Operating Officer and Executive Vice President of Football Operations, attempted to put any relocation rumors to bed, stating: “I promise you[,] Stan is looking at lots of pieces of land around the world right now and none of them are for football stadiums.”<sup>43</sup> Kroenke further added to this alleged rumor stating that “[w]e have yet to decide what we are going to do with the property but we will look at

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38. Katie Hoffecker, *Touchdown St. Louis: A Recap of the NFL and Rams Lawsuit*, ST. LOUIS U. L.J. (Nov. 27, 2021), <https://scholarship.law.slu.edu/cgi/viewcontent.cgi?article=1082&context=lawjournalonline> [<https://perma.cc/NS22-SQCJ>].

39. Brief for Petitioner at ¶ 21 *St. Louis Reg’l Convention & Sports Complex Auth. v. NFL*, (No. 1722-CC00976) Mo. Cir. Ct. 2017.

40. *Id.* at ¶ 22.

41. *Id.* at ¶ 23.

42. *Id.* at ¶ 26.

43. *Id.*

all options[.]”<sup>44</sup> During that same year at a fan forum, Demoff stated that there was a “one-in-a-million chance” the Rams would move.<sup>45</sup> These were just a few of many statements made by the Rams ownership group and representatives.

The Plaintiffs took these statements literally, and took drastic measures in reliance thereof. For example, in relying on these statements, the Plaintiffs took many actions to develop and finance a new stadium complex suitable for an NFL franchise. These measures included, but were not limited to: entering into option contracts concerning land in the development area, entering into an agreement concerning movement of railways and transmission lines within the development area, hiring consultants for engineering, environmental conditions, geotechnical conditions, sponsorship and naming rights opportunities, and bonding, applying for and conditionally receiving \$50 million in contribution tax credits, and passing an ordinance providing for assistance to the proposed stadium complex.<sup>46</sup> The list goes on.

The Petition also stated that during this time period, instead of performing its primary obligation “to work diligently and in good faith to obtain and maintain suitable stadium facilities in their home territories, and to operate in a manner that maximizes fan support in their current home community,” as the NFL Relocation Policy mandates, the Rams franchise and Kroenke announced new plans for a stadium in Inglewood, California, moved Rams practices to California, and took other actions allegedly “inconsistent with the club’s obligations to Plaintiffs, the local community, and others.”<sup>47</sup>

Ultimately, the Plaintiffs’ petition alleged that the Rams and the NFL, through its member clubs, in addition to other breaches and violations of the NFL Relocation Policy:

- (1) failed to require the Rams to meet its “primary obligation . . . to advance the interests of the League in its home territory” including “maximizing fan support;”
- (2) allowed relocation when the Rams’ “viability in its home territory” was not “threatened;”
- (3) failed to require the Rams to “work diligently and in good faith to obtain and to maintain suitable facilities in their home territory;”
- (4) failed to provide the notice of relocation, statement of reasons, and accompanying material to the Rams Stadium Authority or home market in a timely fashion to allow Plaintiffs to respond adequately to the “proposed transfer;”
- (5) failed to have any notice of relocation published in newspapers of

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44. *Id.*

45. *Id.*

46. *See id.* at ¶ 30.

47. *Id.*

general circulation; and (6) failed to require the Rams to address “specifically” “each of the factors” identified in the Relocation Policy.<sup>48</sup>

In spite of everything that transpired, relocation to Los Angeles from St. Louis received the requisite three-fourths votes required by the NFL Relocation Policy.

In lieu of these factual assertions, the Plaintiffs’ asserted five legal grounds for liability against the St. Louis Rams and the NFL. There was one count for breach of contract against all Defendants, one count for unjust enrichment against all Defendants, one count for fraudulent misrepresentation against the Rams and Stan Kroenke, one count for fraudulent misrepresentation against all Defendants, and lastly one count for tortious interference with business expectancy against all Defendants, with the exception of the Rams.

#### A. *The Aftermath of Filing*

After the lawsuit was filed, the Defendants did what they could to spurn any sort of legal liability. First, Kroenke and the Rams filed motions to compel arbitration pursuant to a relocation agreement between the City of St. Louis and the Rams, which would have been a favorable legal venue for the Defendants.<sup>49</sup> However, the St. Louis Circuit Court denied the motion and noted that the dispute had nothing to do with the relocation agreement, but rather, had everything to do with the NFL Relocation Policy.<sup>50</sup> The Circuit Court also noted that the City of St. Louis and the County were third-party beneficiaries to the NFL Relocation Policy, ultimately dispelling any necessity for arbitration under the relocation agreement. Then, in September 2021, the Defendants’ motion for summary judgment was denied, meaning that the case was one step closer to trial in front of a jury.<sup>51</sup>

As trial loomed nearer, Kroenke decided to offer a \$100 million settlement to the Plaintiffs, which shockingly was rejected, but proved to be worthwhile for St. Louisans.<sup>52</sup> In November 2021, just two months

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48. *Id.* at ¶ 34.

49. Hoffecker, *supra* note 38, at 3.

50. *St. Louis Reg’l Convention & Sports Complex Auth. v. NFL*, No. 1722-CC00976, at 2–3 (Mo. Cir. Ct. Dec. 27, 2017).

51. Corey Miller, *Judge denies Rams’ motion for summary judgement in St. Louis Lawsuit*, KSDK (Sept. 14, 2021), <https://www.ksdk.com/article/sports/nfl/rams/rams-st-louis-lawsuit-summary-judgement-denied-nfl/63-24093fb6-7562-42f2-8318-f4f7e7ae1b52> [<https://perma.cc/3DUN-RJ3G>].

52. *See* John Breech, *Rams Owner Stan Kroenke Offered \$100 Million to Settle Relocation Lawsuit with St. Louis*, *Per Report*, CBS (Nov. 11, 2021), <https://www.cbssports.com/nfl/news/rams-owner-stan-kroenke-offered-100-million-to-settle-relocation-lawsuit-with-st-louis-per-report> [<https://perma.cc/84PV-97TX>].

before the case was set for trial, the NFL, Kroenke and the Plaintiffs reached a whopping \$790 million settlement agreement, which was reached in mediation, ending the four-and-a-half-year-old legal battle between the parties.<sup>53</sup>

The Rams and City of St. Louis suit will certainly set an example for what teams and their owners should or should not do in the event they plan on relocating their franchise to a new city. So, how can this be avoided in the future? The answer is simple: savvy contract drafting.

#### IV. RELOCATION CONTRACT DRAFTING 101

It is no longer a mystery that NFL teams are often potentially seeking to move from their current city. As noted, sports teams wishing to relocate are subject to league constitutions and bylaws, which can prevent a team from moving to a new facility within the same market. In order to bulk up their protection, cities have inserted “no relocation, no move” clauses, otherwise known as “no relo/no move” provisions, in their stadium leases. Or, they have drafted ancillary “relocation agreements,” that protect a city in the event an NFL franchise wishes to pack its bags and get out of town earlier than anticipated. These clauses or agreements provide massive advantages to a city by imposing mammoth-sized financial penalties on the team in the event the team wishes to leave its current city in advance of the expiration of the current lease term.<sup>54</sup> Additionally, some cities have gone the route of providing a right of first refusal before a team attempts to move or relocate.<sup>55</sup>

When drafting a stadium lease agreement, the term of the agreement is very important. This will set the parameters on how long a team will be locked into their stadium. This is also important because it will provide a timeline for when a city may want to head back to the table to negotiate new terms and subsequently prevent any chance of relocation. In doing so, a city should seek to keep the team in the current stadium for perpetuity, or at least for the duration of the agreed upon term. In that capacity, the city would be wise to seek injunctive relief should the team attempt to move during the term, and, should also seek plenty of prior notice of the team’s intent to relocate or move out of the city.<sup>56</sup> Similarly, cities should also attempt to include language into their relocation clauses such as “irreparable harm” in the event that a team threatens to leave the stadium prior to the expiration of the lease term.<sup>57</sup>

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53. *Id.*

54. PETER A. CARFAGNA, NEGOTIATING AND DRAFTING SPORTS VENUE AGREEMENTS, 30 (2d ed. 2016).

55. *Id.*

56. *Id.*

57. *Id.*

For example, the Buffalo Bills, the County of Erie, and the Erie Stadium Corporation, located in New York, have the model relocation agreement that is incorporated into the 2013 Stadium Lease between the Erie County Stadium Corporation and the Buffalo Bills (Stadium Lease). The Relocation Agreement carefully provides three “Non-Relocation Convents” and incorporates the ten-year Stadium Lease Term, defining it as the “Non-Relocation Term.”<sup>58</sup> It also provides and defines a “Non-Relocation Default” as a “breach by the Bills of any of the terms, covenants, or agreements” of the Non-Relocation Covenants.<sup>59</sup> The lawyers behind this relocation did a masterful job, as evidenced by the beautifully drafted provision whereby the Bills agree during the Non-Relocation Term to: (1) not apply to the NFL or even seek approval to relocate the team; (2) attempt to move the team; or (3) even entertain any offer or proposal to relocate the Team to a location that is not the Bills stadium.<sup>60</sup> The Non-Relocation Agreement also entitles the city to relief in the form of equitable remedies if the team does breach these promises. The Bills Relocation Agreement explicitly provides that the parties acknowledge and agree that “equitable relief by way of decree of specific performance or an injunction (such as prohibitory injunction barring the Bills from relocating or playing the games in a facility other than the Stadium or a mandatory injunction requiring the Bills to play the Games at the Stadium) is the *only* appropriate remedy for the enforcement of this Agreement notwithstanding the provisions for liquidated damages.”<sup>61</sup> In contrast to monetary damages that a party may receive, equitable relief is typically granted when monetary compensation cannot adequately and properly resolve the wrongdoing suffered by a non-breaching party.<sup>62</sup> By including this provision, the parties are already agreeing at the outset what potential remedies would be, avoiding the mess of having to litigate the matter in court. While it sounds one sided in favor of the city, it also helps the team in terms of knowing from the outset what trouble lies ahead of it even *ponders* relocation.

Another drafting option in lieu of all equitable remedies, is the inclusion of a “liquidated damages” provision that is either tied to a “no relo, no move” clause or one that is placed in a relocation agreement. Liquidated damages are a specified and predetermined amount that a party must pay to the other party in the event they breach the agreed upon

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58. Buffalo Bills Non-Relocation Agreement, ERIE CTY. N.Y. <https://www2.erie.gov/exec/sites/www2.erie.gov.exec/files/uploads/Buffalo%20Bills%20Non-Relocation%20Agreement.pdf> at Article 1 [hereinafter *Non-Relocation Agreement*].

59. *Id.*

60. *Id.* at Article 3(b).

61. *Id.* at Article 5(a) (emphasis added).

62. See Tobin O’Connor & Ewing, *Equitable versus Legal Remedies in a Breach of Contract Case* (Sept. 27, 2018), <https://www.tobinoconnor.com/equitable-versus-legal-remedies-in-a-breach-of-contract-case/> [https://perma.cc/E2E2-ELBM].

contract.<sup>63</sup> In this situation, the city would be wise to include exorbitant liquidated damages to essentially deter any possibility of the team leaving early or even contemplating leaving the city prior the expiration of the lease term.<sup>64</sup> However, the team will desire flexibility to relocate on its own terms, and would likely, and wisely, offer to pay liquidated damages at a *reasonable* price in order to free itself from its applicable lease.<sup>65</sup> In the negotiating phase, the city would be wise to have a liquidated damages provision that decreases in cost over time as the lease approaches the end of its term.<sup>66</sup> This effectively makes relocation for a team only enticing towards the very end of the lease expiration with the knowledge that if it leaves early, the cost of doing so will be very high. At the end of the day, a liquidated damages provision meshed in with a “no relocation, no move” provision will provide a city with an option to choose whether to pigeon hole a franchise to stay in the current stadium or to accept a hefty payout for allowing them to leave.<sup>67</sup>

Using the Bills’ Stadium Lease masterclass as an example again, the Relocation Agreement explicitly states that if a court does not grant the equitable relief that was initially contemplated, then “the payment by the Bills of liquidated damages is the next appropriate remedy.”<sup>68</sup> It then provides that “in the event of a Non-Relocation Default, and the failure of any court to grant the equitable relief” described in the Agreement, the Bills must pay \$400 million in liquidated damages to the County and the Erie County Sports Commission.<sup>69</sup> As such, in this instance, the Bills now know the cost of attempting to relocate from Buffalo, without the likelihood of having to engage in a messy legal battle like many NFL predecessors have gone through over the last fifty years.

## CONCLUSION

NFL teams and the owners will continue to move around like nomads, continuously searching for the next big move and the NFL relocation conundrum will likely continue to evolve as the years come and go. Whether teams and their owners continue to follow their predecessors’ paths remains to be seen, but it is likely that the Rams will not be the last NFL franchise to face difficulties associated with relocation. The visions of grandeur for something seemingly bigger and better are always going

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63. See Christine Mathias, *What is a Liquidated Damages Provision*, Nolo (last visited Mar. 17, 2022), <https://www.nolo.com/legal-encyclopedia/when-are-liquidated-damage-provisions-enforceable.html> [<https://perma.cc/V53B-ERDP>].

64. Carfagna, *supra* note 50, at 31.

65. *Id.*

66. *Id.*

67. *Id.*

68. See *Non-Relocation Agreement*, *supra* note 58.

69. *Id.*

to be present, especially with deep pocketed owners who can afford to continuously take large risks. It will take a collective effort between the NFL, its teams, and municipalities to come together and find equitable solutions to keep their names out of headlines and their teams in one singular location. For now, savvy contract drafting and reasonable negotiating in stadium lease agreements are a great start to setting clear parameters and guidelines as to what will happen if a team attempts to leave a city prior to the expiration of its agreed upon term. Until then, not doing so is only going to harm one subset of people: the loyal, diehard, football fanatics.