Miami-Dade County v. Miami Marlins, L.P. and Marlins TeamCo, LLC
Circuit Court for the 11th Judicial Circuit
and Miami-Dade County
Case No. 18-4718-CA-43

By Martin J. Greenberg

NSLI Conference

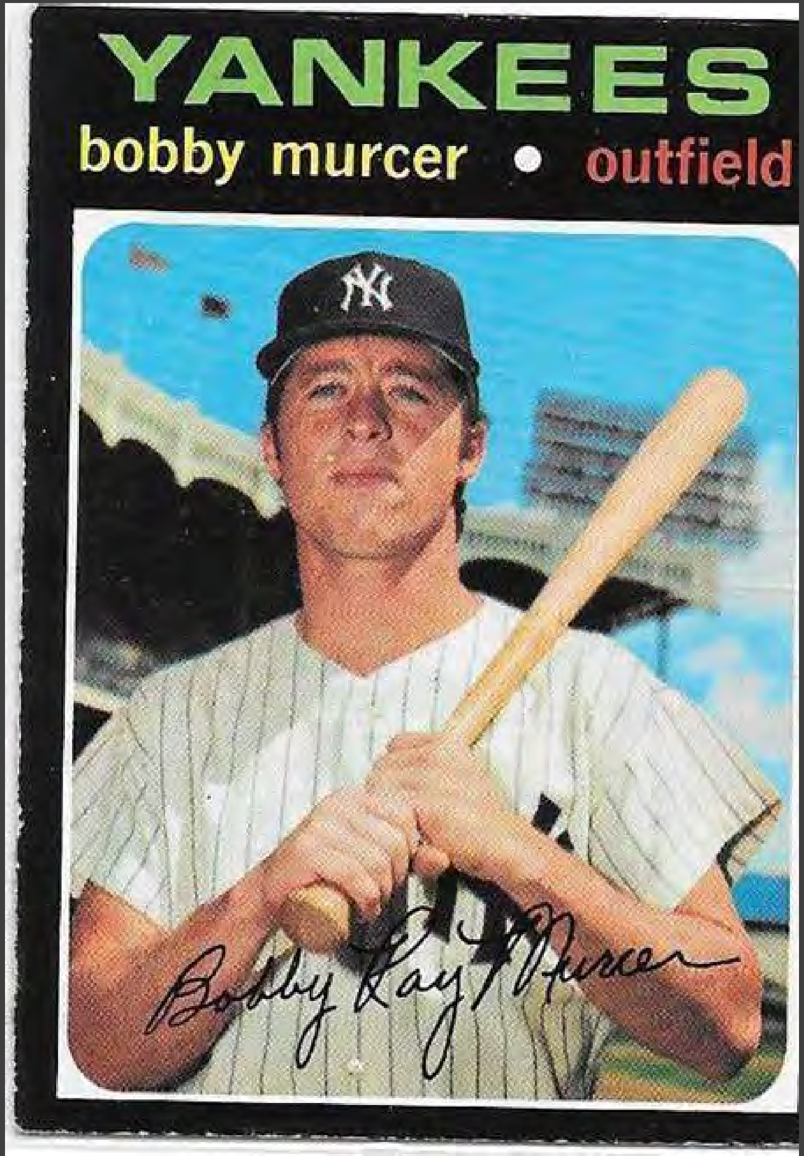
October 15, 2021

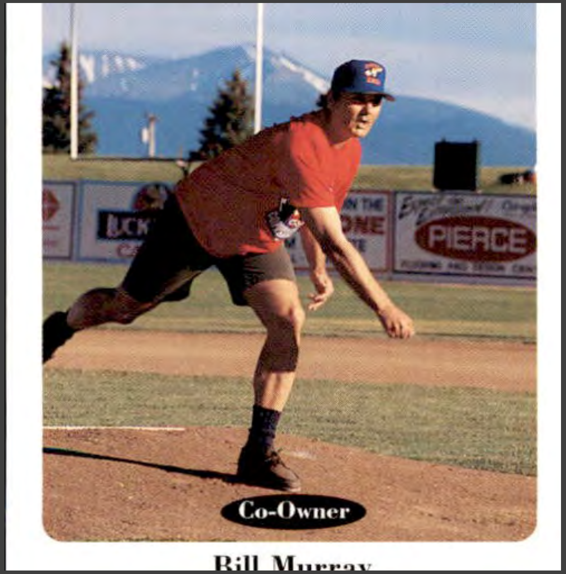
Who is Jeffrey Loria?

- Born in Manhattan, son of a lawyer, and grew up a Yankee fan.
- Graduated from Stuyvesant High, where he was an All-City second baseman.
- Went to Yale University, where he was an art history and a French major, graduating in 1962.
- Worked at Sears after school buying art for the Vincent Price Collection.
- Started his own business, Jeffrey H. Loria & Company, buying and dealing art at 24, specializing in 20th century masters.
- Loria wrote a book on collecting original art in the

1960s.

- Columbia Business School graduate in 1968.
- Estimated Net Worth in 2021 of $550 Million.





Sports Entrepreneurial Acquisitions

- Loria bought the Oklahoma City 89'ers, a Triple A baseball franchise, in 1989 for a price estimated between $3.8 million-$4.6 million.
- The ownership group included Yankees great Bobby Murcer, actor Bill Murray, and Marvin Goldklang, New York Yankees 1 percent owner.
- Loria was considered a hands-on owner, from suggesting headlines to reporters, arguing with TV weathermen, and buying his team $2,000-$3,000 rings after winning a championship.
- Loria sold the team after a Triple A championship win for $8 million in 1993 to an investment group.

Failed Attempts to Buy into the Big Leagues

- Loria attempted to buy the Texas Rangers in the 1980’s.
- In 1994, Loria attempted to buy the Baltimore Orioles, losing out in a bankruptcy proceeding to Peter Angelos.
- Loria also made failed bids on the Montreal Expos and Kansas City Royals.

Montreal Expos Acquisition & Trouble That Followed

- Loria started negotiations for a stake in the Expos in 1998.
- The Expos were hit hard from the strike in 1994.
- Loria purchased a 24 percent share of the Expos for $12 million from Claude Brochu, a Seagram's executive, in 1999.
- Loria was named managing partner of the Expos in 1999.
- Loria called for the team to increase payroll and did so by increasing the payroll to $17.9 million, the lowest payroll in the National League.
- Doubled payroll for both the 2000 and 2001 seasons, with the 2000 payroll at $32.9 million, the second lowest in the National League.
- The Expos only won 67 games in 2000 and won 68 in 2001.
- Loria first demanded a new stadium for the club as Olympic Stadium…everything through Montreal stated they wouldn't build while money owed to Olympic Stadium
- Loria, in doubling the payroll, had to make a capital call from the other owners.
- Loria added $18 million of his own money to pay for the payroll.
    - When the other owners failed to answer the capital call for the raised payroll, Loria was allowed to use a clause in the partnership agreement to dilute the shares of the other owners.
    - This raised Loria's ownership stake to 94% .

Contraction and Expos Owner Suit: BMO v. Loria

- Loria in doubling the payroll had to make a capital call from the other owners. He added $18M, raised his ownership stake to 94%.
- In 2001, MLB owners voted 29-2 and decided to fold the Minnesota Twins and Montreal Expos franchise after the 2002 season.
- Loria was then sued by 14 of his former business partners in July of 2002.
- Contended that Loria and Major League Baseball plotted “to eliminate baseball in Montreal as well as reduce their holdings in the team.”
- “[A]lleg[ed] that the group lied to and defrauded the [limited]Expos partners, and that they committed mail fraud and wire fraud, and violated the Racketeer Influenced and Corrupt Organizations Act (RICO) in the process.”
- The limited partners sought an injunction to prevent the contraction of the Expos or their move to another city.
- “The suit alleges that when Loria, a New York art dealer, bought 24 percent of the Expos in 1999 and became managing partner, he lied to the minority owners and misled them about his intentions for the team. His misrepresentations, the companies say in the suit, let Loria gain 94 percent of the team through a series of cash calls that the companies were unable or unwilling to meet.”
- The suit went to arbitration with the arbitrator finding in favor of Loria. The case was dismissed in 2005.

The Marlins/Expos/Red Sox Shift

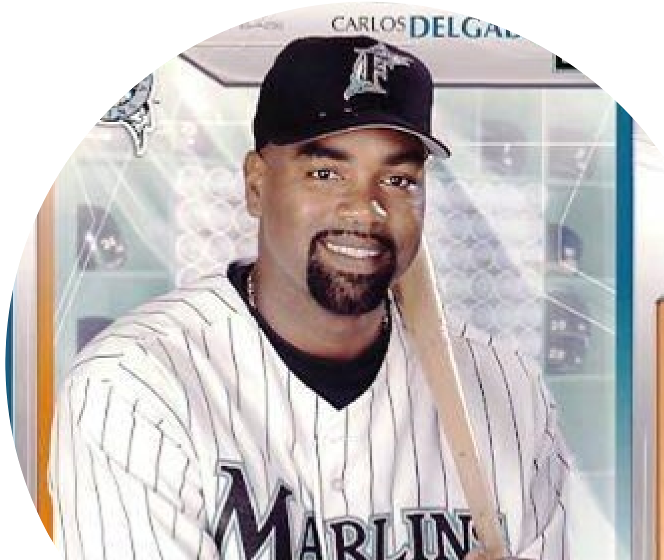
- Major League Baseball (MLB), Loria, and John Henry made a deal that would allow for Loria to exit Montreal and Henry to buy the Red Sox in late December 2001.
  - Loria bought the Marlins for $158.5 million from John Henry, with the deal being finalized in February 15, 2002.
    - Loria didn’t pay a cent of his own money in buying the Marlins
      - $120 million of the $158.5 million came from Loria selling the Expos sale to MLB.
    - The other $38.5 million came as a loan (interest free) from MLB.
      - $15 million was later forgiven interest fee by MLB..
    - Loria also took everything that wasn’t bolted down when he left, including “the entire Expos front office, computers, scouting reports, [and] injury reports.”
  - Henry bought the Red Sox, with a team of investors, for $700 million.
  - MLB bought the Expos for $120 million

Move to Miami

- Loria became owner of the Marlins February 12, 2002.
- In 2003, the Marlins won a World Series largely with players from the previous ownership in Loria's second full season.
- Proposed a plan for the building of a new stadium for $435 million which was denied.
- In 2005, the Marlins failed to enter into an agreement with state and local officials regarding the funding of a baseball specific stadium. The Marlins explored relocation options in the ensuing years from Las Vegas, San Antonio, and Portland.
- Loria, citing lack of stadium funding, held a fire sale of his roster in 2005 with several of his better players being traded.

2005 Marlins' Fire Sale trades

- Paul Lo Duca
- Carlos Delgado
- Mike Lowell
- Josh Beckett
- Guillermo Mota



Marlins: Public Funding

The Miami Hurricanes announced they were leaving the Orange Bowl site in 2007. Funding of a new stadium was finally agreed to in March of 2009 with the Florida Marlins to be renamed the Miami Marlins.

Groundbreaking took place on July 1, 2009. Today the stadium is called Loan Depot Park, formerly Marlins Park, and is located on 17 acres of the former Miami Hurricanes' Orange Bowl Stadium site in Little Havana, about two miles from downtown. The stadium opened for the 2012 season on April 4th. The total construction costs were $684K with 80% of the funding coming from the City and County. The capacity of the stadium is 36,742.

Loria claimed that he could not compete without the publicly funded stadium, but shortly after receiving the publicly funded stadium, Loria engaged in another roster fire sale trading many of the Marlins' best players.

Marlins Ball Park Story, Real Sports with Bryant Gumbel: https://www.youtube.com/watch?v=Zw8n1t9eJhY

Teardown

- After threats of relocation and a demand for public funding, Loria received the stadium of his dreams.
- Loria indicated that he could not compete without a state-of-the-art revenue producing stadium in order to maintain and keep top quality players.
- Subsequent to the 2012 season, Loria undertook another Fire Sale.
  - John Buck
  - Gaby Sanchez
  - Omar Infante
  - Jose Reyes
  - Hanley Ramirez
  - Emilio Bonifacio
  - Josh Johnson
  - Mark Buehrle
  - Anibal Sanchez

The Numbers are Less Than Spectacular.

- Loria's franchise history is less than admirable. Here is his win/loss record from 2008 until he sold the team in 2017:
- 2002, 79W, 83L
- 2003, 91W, 71L
- 2004, 83W, 79L
- 2005, 83W, 79L
- 2006, 78W, 84L
- 2007, 71W, 91L
- 2008, 84W, 77L
- 2009, 87W, 75L
- 2010, 80W, 82L
- 2011, 72W, 90L
- 2012, 69W, 93L
- 2013, 62W, 100L
- 2014, 77W, 85L
- 2015, 71W, 91L
- 2016, 79W, 82L
- 2017, 77W, 85L

- The Loria Marlins Franchise History (W/L) 2002-2017 (Wins: 1224, L: 1323, Winning Percentage of .481)
- Even though Loria received a mostly publicly funded stadium, his win/loss record, including the 2012 season to 2017, the year of sale (435W/536L, percentage of .444)

Marlin’s Agreements

As part of the construction of a new stadium, the Marlins entered into various agreements with the City of Miami and Miami-Dade County with respect to the leasehold of the new stadium. Of particular importance for purposes of this presentation is the Marlins’ Non-Relocation Agreement.

This Non-Relocation Agreement (this “Agreement”) is made and entered into as of this 15th day of April, 2009, by and among Miami-Dade County, a political subdivision of the State of Florida (the “County”), the City of Miami, a municipal corporation of the State of Florida (the “City”), and Florida Marlins, L.P., a Delaware limited partnership (the “Team”). The County, City and the Team shall be referred to herein collectively as the “Parties” and individually as a “Party.”

2. <u>Covenant to Play at Baseball Stadium.</u> Subject to Section 3 below, the Team covenants and agres that throughout the Non-Relocation Term:

(a) The Team shall maintain its principal place of business in the City;

(b) The Team shall maintain its MLB franchise in the City and use the Baseball Stadium as its home stadium; contraction of the Team by Major League Baseball shall be deemed a violation of this clause; the Team shall not volunteer for contraction or vote in favor of its contraction;

(c) The Team shall play all of its regular season and playoff (including World Series) MLB Home Games at the Baseball Stadium; and

(d) The Team shall not enter into any contract or agreement, or make any request or application to Major League Baseball, to (i) relocate its franchise outside of the City in violation of clause (b) above or (ii) play any regular season or playoff MLB Home Game in any location other than the Baseball Stadium in violation of clause (c) above, provided that the Team may take the actions otherwise prohibited in this subsection (d) during the last three (3) years of the Term of the Operating Agreement in connection with any proposed relocation or playing of MLB Home Games that would not occur until the conclusion of the Term. The Team shall notify the County and City promptly after entering into any such contract or agreement, or making any such request or application. The covenants by the Team under this Section 2 are collectively referred to in this Agreement as the “Non-Relocation Covenants” and any violation of any of such covenants is referred to as a “Non-Relocation Default.”

As used in this Agreement, “Non-Relocation Term” means the period commencing with the Substantial Completion Date and ending on the termination of this Agreement pursuant to Section 5.5 of this Agreement.

Marlin’s Non-Relocation Agreement

5. Remedies

5.1 Non-Relocation Default. Upon the occurrence of a Non-Relocation default, each of the County and the City shall have the option to pursue any one or more of the remedies set forth in Section 5.2, Section 5.3 or Section 5.4, that may be applicable. Upon the occurrence of any other reach or misrepresentation in this Agreement by the Team, each of the County and the City shall have the option to pursue any one or more of the remedies set forth in Section 5.4.

Remedies for Default under Paragraph 5 include: Declaratory or Injunctive Relief (5.2), Liquidated Damages (5.3), Actual Damages (5.4), and Termination (5.5)

5.6 Cumulative Remedies. Except as expressly set forth in Section 5.2, Section 5.3, and Section 5.4, each right or remedy of the County and the City provided for herein shall be cumulative of and shall be in addition to every other right or remedy of the County and the City provided for in this Agreement, and the exercise (or the beginning of the exercise) by the County and the City of any one or more of the rights or remedies provided for in this Agreement, shall not preclude the simultaneous or later exercise by the County and the City of any or all other rights or remedies provided for in this Agreement or any other Stadium Agreement or hereafter existing at law or in equity, by statute or otherwise.

Marlin’s Non-Relocation Agreement

5.6 <u>Payment Upon Sale of Team.</u> [Profit Sharing]

Upon a sale to a third party of a “control interest” (defined as the sale of more than 50% of the voting, actual or beneficial interest in the Marlins franchise, occurring within the period commencing with the approval of the Stadium Agreements by the City Commission and the Board of County Commissioners and ending ten (10) years thereafter (not to exceed 72 months following Substantial Completion), whether through a sale of equity shares or partnership interests, a sale of substantially all of the Team’s assets or a merger, consolidation, joint venture or similar change of control transaction, to the extent proceeds are paid to the holders of equity securities of the Team and not contributed in the ordinary course of business to Team Affiliates involved in baseball related businesses) (other than following the death of the controlling owner), the Team shall or shall cause the seller to pay to the County and the City, to be split on a pro-rata basis (including the value of the City’s expenditures as required by the Construction Agreement, and the value of the City and the County’s respective expenditures associated with the Public Infrastructure) determined by each respective parties’ contribution to the Baseball Stadium, an amount equal to the following percentage of the Net Proceeds of the sale that are attributable to any increase in value of the franchise (pro-rated in the case of a sale of the control interest) (the “County/City Equity Payment”):

Marlins Non-Relocation Agreement [Profit Sharing]

Phase of Project	Year	Description of Time-Frame	Percentage
Construction Phase	Year 1	If sale occurs within 12 months of approval date of Stadium Agreements	70%
Construction Phase	Year 2	If sale occurs within 24 months of approval date of Stadium Agreements	60%
Construction Phase	Year 3	If sale occurs within 36 months of approval date of Stadium Agreements	50%
Construction Phase	Year 4	If sale occurs within 48 months of approval date of Stadium Agreements, or, prior to Substantial Completion of Stadium, whichever occurs first	30%
Operational Phase	Year 1	Sale occurs within 12 months of Substantial Completion	10.0%
Operational Phase	Year 2	Sale occurs within 24 months of Substantial Completion	7.5%
Operational Phase	Year 3	Sale occurs within 36 months of Substantial Completion	5.0%
Operational Phase	Year 4	Sale occurs within 48 months of Substantial Completion	5.0%
Operational Phase	Year 5	Sale occurs within 60 months of Substantial Completion	5.0%
Operational Phase	Year 6	Sale occurs within 72 months of Substantial Completion	5.0%

The increase in value shall be based on an assumed value shall be based on an assumed value of the franchise of $250,000,000 as of the date of the BSA [Baseball Stadium Agreement], which assumed value shall be increased to give effect to any additional debt incurred by, or equity capital contributions made to the Team, Stadium Developer or Operator, including the capital contributions made to, or the debt incurred by, the Stadium Developer or the Team pursuant to the Construction Administration Agreement (net of distributions to any such Team owners) and an imputed increase in value of 8% per annum from the date of the BSA. “Net Proceeds” shall mean the fair market value of all proceeds received from the sale plus any indebtedness for borrowed money of the Team or any Team Affiliate assumed by the buyer in the sale, less (x) the assumed value of the franchise determined under the preceding sentence, (y) all transaction-related expenses and taxes payable by the Team Affiliates and/or their direct and indirect owners to unaffiliated third parties solely as a result of the sale, and (z) any liabilities or obligations retained by the Team (in the case of a sale of the franchise) and/or its direct or indirect owners relating to the Marlins or its affiliated businesses.

The Team shall cause its independent accountants to provide the County and the City a reasonably detailed calculation of the County/City Equity Payment (on a combined basis) under this Section 6, including a detailed calculation showing the assumed value, Net Proceeds and any other calculation the Team used to determine the amount payable, as promptly as practicable following any applicable sale. If the County or City do not provide a notice of objection within thirty (30) days after receiving the accountant’s calculation, such calculation shall be final and binding and payment of any amount due shall be made not later than thirty (30) days after the expiration of such period. If the County or City does provide a notice of objection, it shall specify in reasonable detail the basis for its objections. The objecting Government Party and the Team shall then seek to resolve any disagreements between them within the succeeding period of sixty (60) days. If the objecting Government Party and the Team are unable to resolve the dispute within such sixty (60) day period, each of them shall have the right to commence arbitration in accordance with the Operating Agreement. If the arbitrator shall enter a final, non-appealable order requiring payment from the Team under this Section 6, the Team shall pay such amount within thirty (30) days thereafter.

Profit Sharing in Major League Sports

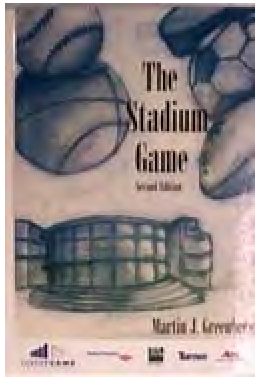
- The idea of profit sharing upon the sale of a team by virtue of a publicly funded stadium is not a new idea.
- Sometimes these clauses are referred to as a Windfall Clause.
- The Windfall Clause can be found in Section 23.2 of the Minnesota Vikings' Stadium Use Agreement, entitled "Team Payment to the State of Minnesota and City of Minneapolis upon Sale of the Team," and states that:

(a) Payment Amounts. If, after the Effective Date, the Team sells to one or more third party persons in a single transaction or a series of transactions (i) more than fifty percent (50%) of the outstanding equity in the Team, or (ii) more than fifty percent (50%) of the assets of the Team (each, a "Sale"), the Team shall pay to the State and the City, in amounts proportionate to the expenditures made by the State and from City taxes, an aggregate payment equal to a percentage of the amount received in the Sale by the selling owner or owners in excess of the purchase price of the Team paid by the selling owner or owners (such percentage of the excess above the purchase price of the Team, the "Premium"), as follows:

1. If the Sale occurs on or before May 14, 2022, the Premium shall be twenty-five percent (25%);
2. If the Sale occurs after May 14, 2022 and on or before May 14, 2027, the Premium shall be fifteen percent (15%);
3. If the Sale occurs after May 14, 2027 and on or before May 14, 2032, the Premium shall be ten percent (10%); and
4. If the Sale occurs after May 14, 2032, there shall be no Premium.

Windfall Clause Stadium Funding | Sport$Biz | Sports Law (greenberglawoffice.comhttps://www.greenberglawoffice.com/windfall-clause/)

Other Profit-Sharing Clauses - Here are some examples from The Stadium Game by Martin J. Greenberg (2000, Marquette University Press):



- The Colorado Rockies lease also requires an entrepreneurial sharing by the Lessor in the event of a sale of the franchise, including a specific payment to the District upon the sale of the franchise, or eighty (80%) percent of the interests in the Partnership, an amount equal to two (2%) percent of the net profit realized by the Partnership or the partners of the Partnership, not to exceed $2 million; provided that: (i) net profit will be computed after return of all partners' capital plus a five (5%) percent imputed return thereon; (ii) the sale of the franchise to any person or entity (or any affiliate thereof) who has been a partner in the Partnership for at least three (3) years prior to the subject sale will not activate the profit sharing provision; and (iii) individual sales of Partnership interests in the Partnership and sale of stock of the general partner of the Partnership will not trigger the profit sharing provision.

- The Denver Broncos new lease agreement with the Metropolitan Football Stadium District also has such a provision. Article 33 of the lease agreement states:

  "<u>Sale of Franchise</u>. PDB agrees that upon the sale of the franchise or 80% of the beneficial interest in the entity owning the franchise, to pay to the District as a one-time payment, an amount equal to the Sharing Amount with the funds to be used for youth activity programs. Sharing Amount means an amount equal to 2% of the net profit realized by PDB or the franchise or the persons or entities selling the interest. The Sharing Amount shall not be less that $1,000,000. Net profit means the gross proceeds of the sale less capital contributions to the franchise (or capital contributions of the person's selling interests, plus six percent imputed annual return on such capital contributions and less franchise debt if such debt is not assumed or paid by the purchasing entity. Individual sales of the franchise's beneficial interests will not trigger this profit-sharing provision if such sales do not, over a one-year period, result in the sale of eighty percent or more of the beneficial interests of the franchise to a person or entity or related persons or entities that have not been beneficial owners of interests of this franchise."

- The Seattle Mariners also have a clause dealing with the sale of the franchise. Section 16.2 of the lease agreement states:

  "<u>Profit Sharing on Sale of Club.</u> Upon sale of the Club (or eighty percent (80%) or more of the beneficial interests in the Club) during the Term, the Club shall pay to the PFD an amount equal to twenty (20%) of the Net Profit realized by the Club or the selling partners or beneficial owners of the Club, as the case may be, not to exceed $20 million. "Net Profit" shall be the gross proceeds of the sale less (i) capital contributions (or capital contributions of partners selling their beneficial interests) to the Club (net of any distributions made by the Club to the selling partners), (ii) an eight percent (8%) imputed annual return on such net capital contribution(s), compounded annually from the date that each such contribution was made, (Iii) the principal balance then outstanding under all Club debt not assumed or paid by the purchasing entity, and (iv) all costs of sale. The sale of the Club (or eighty percent (80%) or more beneficial interests in the Club) to any Person (or any affiliate thereof) which is a partner or a stockholder of a partner on the date of this Agreement or who has been a partner or a stockholder of a partner in the Club for at least two (2) years prior to the subject sale will not trigger this profit-sharing provision. Individual sales of interests in the Club and sales of stock of the general partner of the Club will not trigger this profit-sharing provision, provided such sales do not result in the sale or a series of sales over a two (2) year period of eighty percent (80%) or more of the beneficial interests in the Club to a Person or related Persons that have not been a partner or partners in the Club for at least two (2) years prior to the initial sale, or as of the date of this Agreement, of any beneficial interest to such Person(s). Nothing in this Article 16.2 shall be interpreted as limiting the Club's obligations or the PFD's rights set forth in Article 16. 1."

Sale of the Marlins

- Purchased by Loria in 2002 for $158.5M, Sold 2017 for $1.2B.
- New owners included: Bruce Sherman (co-founder of Private Capital Management, Naples, Florida, 46%); 2. David Ott, Co-founder Viking Global, 10%); 3. Doug Kimmelman (Energy Capital Partners, Senior Partner, 8%); Jaime Montealegre (Signet Group Founder, 7%); John Troiano (Beakman Management Group, 5%); Derek Jeter (4%); Michael Rogers (4%); and Michael Jordan (0.5%).
- When the Marlins were sold in 2017, the profit-sharing provision of the Non-Relocation Agreement became an issue that resulted in a lawsuit wherein the City of Miami and Miami-Dade County sought economic recovery from the Marlins with respect to the profit-sharing clause.

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COMPLAINT

Plaintiff Miami-Dade County (the "County") sues Defendants Miami Marlins, L.P. (the former owners of the Miami Marlins) and Marlins TeamCo, LLC (the new owner of the Miami Marlins) (collectively, the "Marlins" or "Defendants"). This action arises from the Marlins' refusal to pay the County and the City of Miami (the "City") the 5% equity participation (the "Equity Payment") that the Marlins promised to pay upon a sale of the Major League Baseball franchise known as the Miami Marlins (the "Team"). The sale occurred in October 2017. [Pursuant to an Assignment and Assumption Agreement, Marlins TeamCo has contractually assumed the obligations of the Loria Marlins under the Non-Relocation Agreement.] Despite purchasing the Team for $158.5 Million and selling it for $1.2 ***Billion***, the Marlins recently provided the County with a vague valuation schedule contending that no proceeds are available to satisfy the Equity Payment obligation. The Marlins also failed to provided the "detailed calculation" from "independent accountants" that they were contractually obligated to provide, leaving the County unable to determine whether and how the Marlins improperly inflated deductions and other expenses to claim an Equity Payment obligation of $0, despite a ***757%*** increase in the Team's market price.

The County brings this action for violations of the False Claims Act and the Florida Deceptive and Unfair Trade Practices Act, and for breach of contract, breach of the implied covenant of good faith and fair dealing, and declaratory and injunctive relief.

Jeffrey Loris Wont Share Profits from Marlins Sale with Miami-Dade County: https://www.youtube.com/watch?v=N_QHTbDObhY

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<u>Factual Allegations</u>

10. Prior to 2009, the Loria Marlins publicly threated that, if they did not receive public funding for the construction of a new stadium, they would relocate the Team outside of the County.

11. During this period, the Loria Marlins also maintained that they were not profitable and, thus, could not fund the construction of a new stadium without public funding.

12. In exchange or the promises to keep the Team in the County for a specified period of time, and to make the Equity Payment to the County if the Loria Marlins sold the Team within a specified period of time, the County agreed to provide, among other things, approximately $389 Million toward the construction of the Stadium (including the public infrastructure), while the City agreed to provide, among other things, approximately $25 Million and the land for the stadium. Those promises were memorialized in a series of agreements – including the Non-Relocation Agreement – between the Loria Marlins, its affiliated entities, the City, and the County.

13. The parties executed the Non-Relocation Agreement in April 2009 in connection with other agreements spelling out the terms of the entire transaction between the Loria Marlins, the County, and the City.

14. The Non-Relocation Agreement provides, in relevant part, that:

Upon the sale to a third party…the Team shall or shall cause the seller to pay to the County and the City, to be split on a pro-rate basis … an amount equal to the following percentage of the Net Proceeds of the sale that are attributable to any increase in value of the franchise … (the “County/City Equity Payment”)…Non-Relocation Agreement § 6 (the “Equity Payment Clause”).

Factual Allegations, continued

15. The Loria Marlins sold the Team in "Year 6" of the "Operational Phase." Thus, based on the Equity Payment Clause table, the Marlins owe an Equity Payment of 5%.

16. The responsibility for making the Equity Payment rests with the ***Team's owner*** (i.e., the new owner, Marlins TeamCo). Marlins TeamCo, thus, had the option of either making the Equity Payment itself, or of causing the Loria Marlins to make the Equity Payment. *See* Equity Payment Clause ("Upon a sale…, the Team shall or shall cause the seller [meaning the Loria Marlins] to pay to the County and the City … the 'County/City Equity Payment.'").

17. The Equity Payment Clause also obligated the ***Team's owner*** (i.e., the new owner, Marlins TeamCo) to provide the County, "as promptly as practicable" following a sale, with a "***detailed calculation***" performed by "***independent accountants***" showing the Equity Payment that is contractually owed:

The ***Team*** shall cause its ***independent accountants*** to provide the County and City a reasonably detailed calculation of the County/City Equity Payment (on a combined basis) under this Section 6, ***including a detailed calculation showing the assumed value, Net Proceeds and any other calculations the Team used to determine the amount payable, as promptly as practicable following any applicable sale.***
Id. (Emphasis added).

18. On February 1, 2018, the County received a vague, conclusory, and unsubstantiated valuation that the 5% Equity Payment on the $1.2 Billion sale was $0 (the "False Valuation"). A copy of the False Valuation and its accompanying notes is attached hereto as Exhibit C.

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Factual Allegations, continued

19. Although the Equity Payment Clause expressly required that a detailed calculation be performed by "independent accountants," the accountants who prepared the calculations underlying the False Valuation expressly disclaimed any responsibility for ensuring that the calculation complies with the terms of the Equity Payment Clause. The False Valuation instead makes clear that the Loria Marlins directed the accountants to consider only the Loria Marlins' specific assertions regarding compliance with the Equity Payment Clause. As the accountants' disclaimer notes:

We have examined management of [the Loria Marlins'] assertion that [the Loria Marlins] complied with the requirements listed in [the Equity Payment Clause]. [The Loria Marlins'] ***management is responsible for its assertion.*** Our responsibility is to express an opinion on management's assertion about [the Loria Marlins'] compliance with the specified requirements based on our examination . . . . Our examination does not provide a legal determination on [the Loria Marlins'] compliance with the specific requirements.
False Valuation at 1 (emphases added).

20. The False Valuation also failed to include the "detailed calculation" that was required to explain how the Marlins arrived at an Equity Payment amount of $0. For example, the False Valuation badly claims deductions from the fair market value of all proceeds received from the sale of, among other things:

a) "Incremental debt" of approximately $279 Million;
b) $35 Million in "Contributions";
c) a "Financial advisor fee" paid to Tallwood Associates, Inc. of nearly $30 million, which purports to be a "transaction-related expense" based on an equity participation agreement apparently entered into in 2000 and clarified and restated in 2010, ***after*** the Loria Marlins entered into the Non-Relocation Agreement with the County;
d) "Partners' income tax on sale" of almost $300 million; and
e) an increase in assumed value of the franchise of nearly $375 Million.

Grant Thornton Conclusion

Miami Marlins, L.P.

NON-RELOCATION AGREEMENT CALCULATION SCHEDULE

Contract price	$ 1,200,000,000
Net contractual price adjustments	(21,213,645)
Escrow per Transaction	(50,000,000)
Gross proceeds	1,128,786,355
Less Agreement adjustments:	
Assumed value of franchise	939,046,530
Transaction expenses	33,372,635
Partners' income tax on sale	297,428,783
Total Agreement adjustments	1,269,847,948
Net Proceeds/(detriment)	$ (141,061,593)
Percentage of Net Proceeds due to County and City	5%
Total owed to County and City	$ -

Miami Marlins, L.P. – Notes to Schedule – Continued

Note C - Assume Franchise Value

The Partnership calculated the assumed franchise value based on the terms of the Agreement. The base franchise value ("assumed value") provided for by the Agreement was established at $250,000,000 as of the effective date of the Baseball Stadium Agreement (March 3, 2008). The assumed value has been increased to give effect to any additional debt incurred by, or equity capital contributions made to the Partnership and its affiliates. Additionally, the Agreement provides for an imputed increase in value of 8% per annum from the date of the Baseball Stadium Agreement for the calculated assumed value.

Base amount per Agreement	$250,000,000
Contributions	35,000,000
Incremental debt	279,244,251
Imputed increase at 8%	374,802,279
Total assumed franchise value	$939,046,530

Note D - Transaction expenses

The Partnership, the other Team Affiliates and their direct and indirect owners incurred the following transaction-related expenses to unaffiliated third parties solely as a result of the Transaction:

Financial advisor fee	$29,988,850
Legal fees	2,449,961
Accounting fees	700,272
Filing fees	93,552
Total transaction costs	$33,372,625

The financial advisor fee is an amount due to Tallwood Associates, Inc. (or its assignee), an unaffiliated third party, and is calculated based on an agreement executed on January 1, 2000 and clarified and restated on September 21, 2010 between Tallwood Associates, Inc. and the general partner of the Partnership. Pursuant to that agreement, upon the consummation of a sale of the Team, an amount equal to five percent (5%) of the net profits (as defined in the agreement) received by the general partner and its affiliates is due to Tallwood Associates, Inc. (or its assignee). The financial advisor fee would increase upon release of the Escrow funds to the Partnership.

The Partnership will incur additional Transaction expenses that have not been included in the accompanying non-relocation agreement calculation schedule.

Profit Sharing

- Discourages flipping or rapid turnover of a team based upon its increased value in moving into a government funded stadium
- Incorporates the concept of we pay/we share
- Municipal franchise fee – the cost to either obtain through expansion or relocate an existing franchise is a costly venture.
- A government's quid pro quo for having a franchise is providing a home for it and the government should pay for it.

Ultimate settlement

- The Marlins current and former owners settled with the City and County
- The City received $562,800 in the settlement
- The County received $3.6 million in the settlement

Sports Pork

- Billionaire owners are profiting off fans by having local taxpayers foot all or most of the bill for stadiums.
- Under the threat of relocation
- Socializing the cost and privatizing the profits.
- Unproven local economic impact
- Unnecessary privilege rather than a necessity
- Billionaire owners or consortiums can pay
- Privatization is not impossible

New Stadium Increases Cash Flow and Capitalized Value of Franchises

- New and enhanced revenues: naming rights, concessions, PSLs, sponsorships, parking, enhanced seating, commercial opportunities, food, merchandise
- Technology-Technical platforms
- Real Estate – sports.comm
- Forbes valuation: Raiders, Chargers and Rams
- Enhanced media rights and opportunities
- Limited availability of teams

MIAMI MARLINS ATTENDANCE DATA – GAME AVERAGE

Year	Stadium	Game Average/ League Average
2002	Pro Player Stadium	10,038/28,007
2003	Pro Player Stadium	16,290/27,831
2004	Pro Player Stadium	22,091/30,061
2005	Dolphins Stadium	22,792/30,599
2006	Dolphin Stadium	14,384/31,307
2007	Dolphin Stadium	16,919/32,696
2008	Dolphin Stadium	16,688/32,369
2009	Dolphin Stadium	18,770/30,213
2010	Dolphin Stadium	18,826/30,066
2011	Dolphin Stadium	18,772/30,239

Year	Stadium	Game Average/ League Average
2012	Marlins Park	27,400/30,806
2013	Marlins Park	19,584/30,451
2014	Marlins Park	21,386/30,346
2015	Marlins Park	21,633/30,366
2016	Marlins Park	21,141/30,131
2017	Marlins Park	20,395/29,906

Miami Marlins Franchise Value History

Year	Estimated Value/Rank
2002	$137M/28th
2003	$136M/29th
2004	$172M/25th
2005	$206M
2006	$226M/28th
2007	$244M/30th
2008	$256M/30th
2009	$277M/30th
2010	$317M/27th
2011	$360M/24th
2012	$450M/21st

Year	Estimated Value/Rank
2013	$520M/25th
2014	$500M/27th
2015	$650M/29th
2016	$675M/29th
2017	$940M/25th
2018	$1B/29th
2019	$1B/30th
2020	$980M/30th
2021	$990M/30th

Marlins Opening Day Salaries

Year	Salary	Major League Rank
2002	$41,979,917	25th
2003	$45,050,000	25th
2004	$42,143,042	25th
2005	$60,408,834	19th
2006	$14,998,500	30th
2007	$30,507,000	29th
2008	$21,811,500	30th
2009	$36,834,000	30th
2010	$47,429,719	26th

Year	Salary	Major League Rank
2011	$57,695,000	24th
2012	$118,078,000	7th
2013	$39,621,900	29th
2014	$46,440,400	29th
2015	$67,479,000	30th
2016	$84,647,500	26th

The Question

- Should professional sports franchises share profits from the sale of the franchise with a governmental unit, when and if a franchise receives a publicly funded stadium as a quid pro quo for public funding?