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## **A Roadmap for Suing the NFL: How San Diego Taxpayers Are Using St. Louis' Success as a Plan in Their Own Suit Over Relocation, and Will it Pay Off?**

**Allison Frisella\***

The NFL has been sued many times over a variety of issues concerning head injuries, wrongful terminations, and discrimination in recent years. Recently, many legal controversies against the NFL are connection to the relocation of NFL teams. In 2016 the NFL voted to allow the Rams Football Company ("the Rams") to relocate from St. Louis to Los Angeles.<sup>1</sup> In 2017, the NFL approved relocation of the Chargers Football Company ("the Chargers") from San Diego to join the Rams in Los Angeles, leaving the city without a team for the first time in almost 60 years.<sup>2</sup> Both cities were left angry over the abandonment by their teams and the loss of revenue that having an NFL team had brought to their regions.

In April 2017 the City of St. Louis, St. Louis County, and the St. Louis Regional Convention and Sports Complex Authority ("St. Louis") filed suit against the Rams, its owner Stan Kroenke ("Kroenke"), and all other 31 NFL teams.<sup>3</sup> The suit was successful in forcing an unprecedented settlement for \$790 million dollars from the NFL and Kroenke.<sup>4</sup>

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<sup>1</sup> Scooby Axson, *Report: Rams, Chargers to pay \$645 Million in Relocation Fees*, SPORTS ILLUSTRATED (July 13, 2017), <https://www.si.com/nfl/2017/07/13/rams-chargers-raiders-nfl-relocation-fees>.

<sup>2</sup> TuAnh Dam, *NFL Sued over Chargers' Relocation from San Diego*, AXIOS SPORTS (Jan. 25, 2022), <https://www.axios.com/nfl-sued-chargers-relocation-f28f7baa-e99e-4244-971e-3c23fc5b89d9.html>.

<sup>3</sup> Complaint at \*1–18, *St. Louis Reg'l Convention and Sports Complex Auth., ET. AL., Plaintiffs v. Nat'l Football League et al., and The Rams Football Co., LLC and E. Stanley Kroenke, Defs.*, (St. Louis City Cir. Ct. 2017) (No. 1722- CC00976).

<sup>4</sup> Joel Currier, *'We Just Slew the Dragon': Lawyers Analyze St. Louis' NFL Settlement*, STL TODAY (Jan. 16, 2022), [https://www.stltoday.com/business/local/we-just-slew-the-dragon-lawyers-analyze-st-louis-nfl-settlement/article\\_3d99a0d5-ddee-5357-8c75-05492bc293fc.html](https://www.stltoday.com/business/local/we-just-slew-the-dragon-lawyers-analyze-st-louis-nfl-settlement/article_3d99a0d5-ddee-5357-8c75-05492bc293fc.html).

The suit included a Breach of Contract claim alleging that the NFL and the Rams neglected to follow its own Relocation Policy (“the Policy”) stated in the League’s bylaws that provide specific steps that must be taken before the NFL will allow relocation.<sup>5</sup> The Policy, which includes a “Good Faith Clause” requires clubs to “work diligently and in good faith to obtain and maintain suitable stadium facilities in their home territory”.<sup>6</sup> St. Louis argued that the Rams and the NFL did follow the Policy by refusing to work with the City as the home territory.<sup>7</sup> The Suit alleged St. Louis put together a viable stadium option with financing measures already approved and the NFL and the Rams did not engage in good faith negotiations to consider the home stadium’s proposal and thus violated the Policy.<sup>8</sup> In addition to the Breach of Contract Claim, the suit also alleged an Unjust Enrichment Claim, a Tortious Interference with Business Expectancy Claim, and importantly, Fraudulent Misrepresentation Claims relating to actions and statements by League officials, Rams Owner Stan Kroenke, and other Rams officials which ensured a commitment to remaining in St. Louis while the plans to relocate were already manifested.<sup>9</sup> The Fraudulent Misrepresentation Claims provided the NFL fear of punitive damages in the billions if the trial resulted in a verdict in favor of the City.<sup>10</sup> These claims pressured the NFL, Kroenke and the Rams to come to a settlement agreement with St. Louis.

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<sup>5</sup>Complaint at. 36–38, *St. Louis Reg’l Convention and Sports Complex Auth., ET. AL., Plaintiffs v. Nat’l Football League et al., and The Rams Football Co., LLC and E. Stanley Kroenke, Defs.*, (St. Louis City Cir. Ct. 2017) (No. 1722- CC00976).

<sup>6</sup> *Id.*

<sup>7</sup> *Id.*

<sup>8</sup> *Id.* at 37.

<sup>9</sup>*Id.* at 36–51.

<sup>10</sup> Mike Florio, *NFL Braces for Billion Dollar Exposure in St. Louis*, Oct. 27, 2021, NBC SPORTS (Nov. 5, 2021), <https://profootballtalk.nbcsports.com/2021/10/27/nfl-braces-for-billion-dollar-exposure-in-st-louis-litigation/>.

The city of San Diego, however, was restricted from filing suit due to an agreement City Officials had made with the Chargers in 2004.<sup>11</sup> In the agreement, San Diego granted to release any legal jeopardy if the Chargers relocated after the 2008 season.<sup>12</sup> Taxpayers, however, were not satisfied with the City's inability to hold the NFL and the team accountable for the relocation and took matters into their own hands filing suit and even including the City as a defendant for the purpose of damages.

In January 2022, former San Diego City Attorney Michael Aguirre and former San Diego Chief Deputy City Attorney Maria Severson filed a suit on behalf of a San Diego taxpayer against the city of San Diego, the Chargers, owner Dean Spanos, and every NFL team.<sup>13</sup> A second almost identical suit was brought by another taxpayer who was a five year season ticket holder of the Chargers only a month later.<sup>14</sup> Both Taxpayer lawsuits used the recent successes of the Rams suit in forcing a settlement as a "roadmap" for the suit by the Taxpayers by choosing to file the same claims that St. Louis did. Both of the complaints filed included almost identical claims of Breach of Contract relating to the Relocation Policy, Unjust Enrichment, and Fraudulent Misrepresentation Claims, which were determined following St. Louis' suit.<sup>15</sup>

The Breach of Contract claims that both Taxpayer suits brought have a focus on the Good Faith Clause of the Policy that required the team to work with the home city. The Taxpayers argued San Diego spent millions

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<sup>11</sup> Bryce Miller, *Roll of Dice in 2004 Left San Diego Unable to Sue Chargers for Painful Exit*, THE SAN DIEGO UNION-TRIBUNE (Dec. 10, 2021), <https://www.sandiegouniontribune.com/sports/sports-columnists/story/2021-12-10/chargers-nfl-relocation-los-angeles-st-louis-settlement-nfl-rams>.

<sup>12</sup> *Id.*

<sup>13</sup> Jeff McDonald, *Second Taxpayer Lawsuit Filed Against Chargers, NFL in Wake of Team's Move to Los Angeles*, THE SAN DIEGO UNION-TRIBUNE (Mar. 6, 2022), <https://www.sandiegouniontribune.com/news/watchdog/story/2022-03-06/second-taxpayer-lawsuit-filed-against-chargers-nfl-in-wake-of-move-to-los-angeles>.

<sup>14</sup> *Id.*

<sup>15</sup> *Id.*

of dollars in public money to come up with a stadium proposal when the Chargers and the NFL did not in any way engage in good faith negotiations.<sup>16</sup> This was identical to the argument made by St. Louis stating that more than \$17 million was spent on their stadium proposal only for the NFL and the Rams not to consider it in good faith.<sup>17</sup> The Unjust Enrichment Claims of both Taxpayer suits argued the value of the team was increased by moving to Los Angeles, and as a result all NFL owners benefitted, which was the same argument St. Louis made.<sup>18</sup> The Taxpayer suits also focused their Fraudulent Misrepresentation Claims on statements made by Chargers Owner Dean Spanos in 2006 on his commitment to San Diego and League Commissioner Roger Goodell's statement on behalf of the NFL in 2015 claiming the League "want[s] all of our franchises to stay in their current markets".<sup>19</sup> Similarly, St. Louis' Fraudulent Misrepresentation Claim against the NFL used this exact same statement made by Roger Goodell.<sup>20</sup> The Taxpayer suits saw the successful settlement agreement that St. Louis forced and used the complaint as a roadmap when drafting their claims in hopes of having a similar return.

While San Diego used St. Louis' claims as a roadmap, it does not necessarily guarantee that there will be the same outcome for the San Diego Taxpayers. The Taxpayers have procedural issues resulting from filing the claims five years after the Chargers left when in California the statute of limitations is four years, even though both suits claim that

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<sup>16</sup> Complaint at 26–29, *Ruth Hendricks v. National Football League et. al.*, (Superior Ct. Cal. 2022).

<sup>17</sup> Complaint at 36–38, *St. Louis Reg'l Convention and Sports Complex Auth., ET. AL., Plaintiffs v. Nat'l Football League et al., and The Rams Football Co., LLC and E. Stanley Kroenke, Defs.*, (St. Louis City Cir. Ct. 2017) (No. 1722- CC00976).

<sup>18</sup> Complaint at 26–29, *Ruth Hendricks v. National Football League et. al.*, (Superior Ct. Cal. 2022); Complaint at 36–38, *St. Louis Reg'l Convention and Sports Complex Auth., ET. AL., Plaintiffs v. Nat'l Football League et. al., and The Rams Football Co., LLC and E. Stanley Kroenke, Defs.*, (St. Louis City Cir. Ct. 2017) (No. 1722- CC00976).

<sup>19</sup> Complaint at 33–34, *Ruth Hendricks v. National Football League Et. AL.*, (Superior Ct. Cal. 2022).

<sup>20</sup> Complaint at 46–47, *St. Louis Reg'l Convention and Sports Complex Auth., ET. AL., Plaintiffs v. Nat'l Football League et. al., and The Rams Football Co., LLC and E. Stanley Kroenke, Defs.*, (St. Louis City Cir. Ct. 2017) (No. 1722- CC00976).

important information was just discovered in December in 2021.<sup>21</sup> Also, much of St. Louis' success rested on the Breach of Contract claim, which was given weight because of the viable stadium plan, with funding pre-approved by the city, that had been disregarded without good faith negotiation by the NFL.<sup>22</sup> San Diego did not have funding approved for their stadium proposal because it failed as a ballot measure, which greatly hurts their claim in both lawsuits.<sup>23</sup> Also, for St. Louis' Fraudulent Misrepresentation claims against Stan Kroenke, St. Louis had statements made by him that directly contradicted his behind-the-scenes actions of purchasing land for the stadium in Los Angeles.<sup>24</sup> The Taxpayers only have statements by Dean Spanos from 2006 claiming of their commitment to remain in San Diego, and a quote from an article stating that Spanos made up his mind to move then, rather than the concrete evidence St. Louis had of Kroenke purchasing land and taking steps for the relocation. Regardless of whether the Taxpayers are successful in their suits against the NFL, the League should still be fearful of the roadmap that was created by the St. Louis suit and how this will influence every relocation in the future.<sup>25</sup>

Edited by Alex Beezley

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<sup>21</sup> McDonald, *supra* note 13.

<sup>22</sup> Juliette Fairley, *Second Lawsuit Lodged Against NFL over San Diego Chargers Relocation to LA*, S. CAL. RECORD (Mar. 18, 2022), <https://socalrecord.com/stories/622150223-second-lawsuit-lodged-against-nfl-over-san-diego-chargers-relocation-to-la>.

<sup>23</sup> *Id.*

<sup>24</sup> Complaint at 41–45, St. Louis Reg'l Convention and Sports Complex Auth., ET. AL., Plaintiffs v. Nat'l Football League et al., and The Rams Football Co., LLC and E. Stanley Kroenke, Defs., (St. Louis City Cir. Ct. 2017) (No. 1722- CC00976).

<sup>25</sup> *Currier*, *supra* note 4.