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Maureen B. Collins
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The Lawyer Who Built Titletown: Gerald Clifford and the Green Bay Packers

**THE LAWYER WHO BUILT TITLEDOWN:
GERALD CLIFFORD AND THE GREEN BAY PACKERS**

By: *Maureen B. Collins*¹

DEDICATION

This article is dedicated to the memory of my grandfather, Gerald Clifford. Although I never had the opportunity to know him, his legacy looms large in my life. In so many ways, he influenced my decision to become a lawyer, and a lifelong Packers fan. In telling his story, I hope that my children will better understand that not all heroes wear capes and throw thunderbolts. Some wear fedoras and rumpled suits, have an encyclopedic knowledge of the rules of evidence, and a keen understanding of the human spirit.

INTRODUCTION

Why would thirty thousand people² clamor to buy stock with the full knowledge that there is not now and never will be the opportunity for financial gain? Why do otherwise sane adults gather in frigid conditions wearing blocks of plastic cheese on their heads?³ Why does a relatively small town in northeastern Wisconsin bear the name “Titledown”⁴ in reference to the many national titles its National Football League team has won? The answer to all three

¹ Maureen Collins is an associate professor of law at The John Marshall Law School. She extends her gratitude to Michael Eisnach for his inestimable research assistance, and to the law school for its support of her scholarly endeavors. She also wishes to thank her mother, Patricia Clifford Collins and her aunt, Colleen Clifford Barnett, daughters of Gerald Clifford, and her cousin, Andrew Barnett, for their assistance with this article. In addition, I am grateful to Professors Arthur Acevedo, Robert Gerber, Sandy Olken and Julie Spanbauer for their guidance and comments.

² THE GREEN BAY PACKERS STOCK OFFERING, <http://www.packersowner.com>, last visited Mar. 25, 2013. The Green Bay Packers offered its fifth ever sale of stock in late 2011. *Id.* The organization offered and sold 250,000 new shares of stock. *Id.* The shares were priced at \$250 each. *Id.* As a result of this most recent stock sale, the author is a current shareholder.

³ THE PACKER’S PRO SHOP, The Official Cheesehead Novelty Hat, http://www.packersproshop.com/Green-Bay-Packers-Hats/Novelty-Hats/Authentic-Cheesehead/sku_0903090001/f_listing_hats_novelty_hats__1_relevance_1/0e494c4ad4ed014f/, last visited Mar. 25, 2013.

⁴ THE GREEN BAY PACKERS, History, *Super Bowls and Championships*, <http://www.packers.com/history/super-bowls-and-championships.html>, last visited Mar. 25, 2013. The organization has won more national titles than any other team in the NFL – 13. *Id.* Five of those national titles represent Super Bowl victories, including Super Bowl I in 1967, II in 1968, XXXI in 1997, XXXII in 1998 and XLV in 2011. *Id.*

questions is the same: The Green Bay Packers. But perhaps the lesser known answer to those questions is Gerald Clifford, the attorney who developed and manipulated the unique corporate structure that has kept the Packers in the team's tiny hometown.⁵

Certainly, most Packer legends began on the field. They involved coaches with names like Lambeau⁶ and Lombardi⁷, and quarterbacks with names like Starr⁸, Favre⁹ and now Rogers.¹⁰ But the living legend of the NFL team that is owned by the people of the city in which it plays started in a lawyer's office in the Bellin Building¹¹ on Washington Street. Under the articles of incorporation, the team is owned by its shareholders, none of whom can own more than a small portion of the shares in the corporation.¹² The stock is not publicly traded, there is no "value" to the stock, and there are strict limitations on its transfer.¹³ Owning the stock entitles you to bragging rights and little else – other, of course, than a small piece of football history.

⁵ THE CITY OF GREEN BAY, WISCONSIN, Media Facts, www.greenbay.com/media/facts, last visited Mar. 25, 2013. Green Bay is located in northeastern Wisconsin. *Id.* It has a population of approximately 100,000 people, making it the third largest city in Wisconsin. *Id.* Apart from its football team, the town is best known for its paper and meat packing industries. *Id.*

⁶ THE GREEN BAY PACKERS, History, *All-Time Roster*, http://nfl.packers.com/history/all_time_roster/players/ (search coaches for "Lambeau"), last visited Mar. 25, 2013. Curly Lambeau coached the Packers from 1922 to 1950. *Id.*

⁷ *Id.* (search coaches for "Lombardi") Vince Lombardi coached the Packers from 1959 to 1968. *Id.*

⁸ *Id.* (search players for "Starr") Bart Starr was a Packers quarterback from 1956 to 1971. *Id.*

⁹ *Id.* (search players for "Favre") Brett Favre was a Packers quarterback from 1992 to 2007. *Id.*

¹⁰ *Id.* (search players for "Rodgers"). Aaron Rodgers has been the Packers starting quarterback since 2008. *Id.* In the 2011 season, Rodgers broke the record for the highest average quarterback rating, posting a 122.5 (158.3 is "perfect"). *Id.*

¹¹ THE PACKERS HERITAGE TRAIL, *Trail Sites*, <http://www.packersheritagetrail.com/TrailSites.aspx>, last visited Mar. 25, 2013.

¹² THE GREEN BAY PACKERS, Community, *Shareholders*, <http://www.packers.com/community/shareholders.html>, last visited Mar. 25, 2013 ("To protect against someone taking control of the team, the articles of incorporation prohibit any person from owning more than 200,000 shares.") *Id.*

¹³ THE GREEN BAY PACKERS, *Packers Stock Sale to Begin December 6*, <http://www.packers.com/news-and-events/article-1/Packers-Stock-Sale-to-Begin-December-6/2e8bc358-31bb-4acf-8ce7-c97c9f260af1>, last visited Mar. 25, 2013. "Anyone considering the purchase of Packers stock should not purchase the stock to make a profit or to receive a dividend or tax deduction or any other economic benefit. . . The Packers will have no obligation to repay the amount a buyer pays to purchase Packers stock." *Id.*

Law and legend are surprisingly entwined in the early history of the Green Bay Packers. Several of its most famous early players were lawyers.¹⁴ A number of the defining events in its early history read like exam questions from a Torts or Contract Law course.¹⁵ And Attorney Gerald Clifford played an essential role in guiding the team through its entry into the National Football League and assuring its place in football history.

In fact, Clifford may well have been the first “sports law” attorney. As remarked at his induction into the Packers Hall of Fame, “Clifford is the reason that the Packers are in Green Bay and that Green Bay is in the NFL.”¹⁶ His contributions to the Green Bay Packers were the result of his legal training, his loyalty to the team and to the town. He acted as the team attorney during the crucial years of the team's development, and is responsible for the unique articles of incorporation that have kept the team in Green Bay contrary to the financial logic of professional football. He tirelessly promoted the team throughout Wisconsin and Michigan in an effort to create a fan base for the team in its early years. He served on its Board of Directors for decades. He used his position on the Board to protect the Packers stock from privatization and emerged successful in a battle with beloved coach Curly Lambeau, keeping the team from moving to a warmer and more lucrative climate.

¹⁴ DENIS J. GULLIKSON & CARL HANSON, *BEFORE THEY WERE THE PACKERS: GREEN BAY'S TOWN TEAM DAYS 17* (Trails Books 2004) (listing T.P. Silverwood, an attorney, as a player for the team that would go on to become the Packers in the 1890's). *Id.*; LaVerne (Lavvie) Dilweg played in the late 1920s and early 1930s. *Id.* He later became a congressman and Clifford's law partner. JOHN MAXYMUK, *PACKERS BY THE NUMBERS: JERSEY NUMBERS AND THE PLAYERS WHO WORE THEM 94*, (McNaughton & Gunn 2003). Dilweg signed the Packers' Articles of Incorporation created in 1935 as a witness. *Id.* He was inducted into the Packers Hall of Fame in 1970. *THE GREEN BAY PACKERS HALL OF FAME, Hall of Famers*, LaVern Dilweg, <http://packershalloffame.com/players/lavern-dilweg/>, last visited Mar. 25, 2013. *See also* ERIC GOSKA, *GREEN BAY PACKERS: A MEASURE OF GREATNESS 345* (Krause Publications 2d ed. 2004) (noting Cluade Taugher's playing statistics for 1922). Taugher was Gerald Clifford's brother-in-law.

¹⁵ The unique articles of incorporation; the Willard Bent trial and the safe place statute.

¹⁶ Transcript of Hall of Fame Induction Speech for Gerald Clifford, 1991, (unpublished).

This article examines the historical origins of the corporate structure of the Green Bay Packers, the life of Gerald Clifford, the attorney responsible for the unique corporate structure of the Packers, and the impact the corporate structure has had on the development on one of the NFL's most storied teams. It also compares the structure of the Packers organization to that of the rest of the NFL teams and other professional sports organizations, and suggests how the not-for-profit stock ownership model could play a part in community development.

BACKGROUND

In order to understand the why the Packers are so unique, it is necessary to understand the city from which they sprang.

Green Bay, Wisconsin

Green Bay is the oldest city in the state of Wisconsin.¹⁷ Originally called "La Baye Verte," it was founded as a fur trading city by the French in 1634.¹⁸ Located in northeastern Wisconsin on the shores of Lake Michigan, it was settled by French, German, Irish, Dutch, Czech and Polish immigrants.¹⁹ By the turn of the century, the paper mills began to open. Within years, Green Bay became widely known for those mills as well as the meat packing industry that lent the team its name.

Now, Green Bay is Wisconsin's third largest city, behind Milwaukee and Madison.²⁰ Like the rest of the Midwestern manufacturing belt, today's Green Bay has been hard hit by the

¹⁷ GREATER GREEN BAY CONVENTION AND VISITORS BUREAU, Media Facts, <http://www.greenbay.com/media/facts/>, last visited Mar. 25, 2013.

¹⁸ THE GREEN BAY PACKERS, Community, *The City of Green Bay*, <http://www.packers.com/community/city-of-green-bay.html>, last visited Mar. 25, 2013.

¹⁹ *Id.*

²⁰ *Id.*

recession. The paper mills closed years ago, and downtown store fronts sit empty. In many ways, the Packers are now Green Bay's most well-known industry.

With a population of 100,000, Green Bay is by far the smallest market in professional sports. But despite its small market, Packers games have been sold out for decades. The stadium can seat roughly 70% of the city's population.²¹ The waiting list for season tickets is estimated to be forty years.²² It has been said that Green Bay exists in a "time warp. The team, the players, the stadium and the fans existing as part of one tight-knit community is a phenomenon that harkens back to the earliest days of professional sports, before TV and licensing agreements, free agents and salary caps. It's a journey back to a time when the local football team consisted of a bunch of guys with day jobs and a love or the game who enjoyed getting muddy and bloody on fall weekends."²³ Green Bay is football, and football is Green Bay.

The Origins of the Team: From Town Team to the NFL

Games bearing some resemblance to football as we know it began to be played between east coast colleges in the late 1860's and early 1870's.²⁴ The game's popularity spread, particularly among Ivy League colleges, although there are reports that the game had made its

²¹ See *id.* The population of Green Bay is 102,726. *Id.*; THE GREEN BAY PACKERS, Lambeau Field, Stadium History, *Hallowed Ground*, <http://www.packers.com/lambeau-field/stadium-info/history/index.html>, last visited Mar. 25, 2013. The seating capacity of Lambeau field is 73,142. *Id.*

²² Josh Sanburn, The Green and Gold, *Waiting, and Waiting, and Waiting...*, TIME MAGAZINE.COM, Feb. 4, 2011, http://www.time.com/time/specials/packages/article/0,28804,2046390_2046393_2046415,00.html, last visited Mar. 25, 2013.

²³ DON GULBRANDSEN, GREEN BAY PACKERS: THE COMPLETE ILLUSTRATED HISTORY 11 (Compendium Publishing 2007)

This is how the Packers started out, just like every other team in what became the National Football League. But for some reason, while all those other teams morphed into privately owned franchises (and toys for rich boys), Green Bay managed to keep its football team in the hands of its citizens-and the story of how that transpired is one of the most fascinating in pro sports.

Id.

²⁴ See THE PRO FOOTBALL HALL OF FAME, Football History, <http://www.profootballhof.com/history/general/chronology/1869-1939.aspx>, last visited Mar. 25, 2013. Most recognize the 1869 game between Rutgers and Princeton using a round ball as the first American football game. *Id.*

way west to Wisconsin as early as the 1880's.²⁵ Highly unregulated and without today's technologically advanced protective gear, the game was a dangerous undertaking. In response to nineteen fatalities resulting from the game in 1905, President and fan Theodore Roosevelt is reported to have considered banning the sport entirely.²⁶ As a response, sixty-two schools met in New York to form the National College Athletic Association and a series of rules began to take shape.²⁷ The creation of the NCAA began the modernization of the sport that would eventually lead to its professionalization²⁸.

The Green Bay Packers team has its origins in the "town team" leagues that predated the National Football League. *The Green Bay Sunday Gazette* reported the town's first football game played at Washington Park in 1895.²⁹ The game was played by several dozen men using a roundish ball and garnered few spectators. Over the next ten to fifteen years, as the popularity of the college game grew and a pool of former college players was created, a series of "town teams" developed throughout the Midwest. These town teams hailed from places like Oconto, Ishpeming, Rhinelander, Decatur, Escanaba, Canton and Beloit.³⁰ They often had lyrical names

²⁵ See *id.* See also THE BENTLEY HISTORICAL LIBRARY, University of Michigan Athletics, <http://bentley.umich.edu/athdept/football/fbteam/1879fbt.htm>, last visited Mar. 25, 2013. On May 30, 1879, The University of Michigan played a Racine, Wisconsin team. *Id.* With 500 people in attendance, the University of Michigan prevailed. *Id.*; GULLIKSON & HANSON, *supra* note 14, at 7. Lawrence University in Appleton, Wisconsin is reputed to have been playing football as early as 1882. *Id.*; OLIVER KUECHLE & JIM MOTT, ON WISCONSIN: BADGER FOOTBALL (Strode Publishers 1977). Badger football at the University of Wisconsin is reported to have begun as early as 1883. *Id.*

²⁶ See John J. Miller, *How Teddy Roosevelt Saved Football*, THE WALL ST. J., Apr. 21, 2011, <http://online.wsj.com/article/SB10001424052748703712504576242431663682162.html>, last visited Mar. 25, 2013.

²⁷ *Id.* Most importantly, with regard to player safety, was legalizing the forward pass. *Id.* "Up to that point, quarterbacks couldn't toss the ball downfield." *Id.*

²⁸ See THE PRO FOOTBALL HALL OF FAME, History: Birth Of Pro Football, <http://www.profootballhof.com/history/general/birth.aspx>, last visited Mar. 25, 2013. On November 12, 1892, the Allegheny Athletic Association team defeated the team from the Pittsburgh Athletic Club. *Id.* One of the players, William (Pudge) Heffelfinger, was paid \$500 to participate in the game – removing it from the ranks of amateur competition. *Id.*

²⁹ See GULLIKSON & HANSON, *supra* note 14, at 5.

³⁰ *Id.*

like the Skidoos, the Flivvers, the Staleys,³¹ the Speed Boys and the Fairies.³² The teams' ability to play each other was enabled by the railway system, particularly the Chicago Northwestern Railway.³³ Gate take was minimal; players may have been paid by passing the hat, or from the proceeds of a bake sale or a community dance.³⁴ The town teams began to fade away as the idea of professional football teams began to take shape.

Enter Earl "Curly" Lambeau



Earl "Curly" Lambeau, the son of Belgian and French immigrants, grew up playing football.³⁶ The star player at Green Bay East High School attended the University of Wisconsin as a freshman.³⁷ As per UW athletic rules, though, Lambeau was not permitted to play varsity football.³⁸ That year, freshman football was cancelled as the result of an insufficient number of participants. So in the fall of 1918, Curly Lambeau left Wisconsin to work with famed coach Knute Rockne at Notre Dame.³⁹ Lambeau's time there would be short. Early in his second

³¹ See THE CHICAGO BEARS, Tradition, History by Decade, 1920s, <http://www.chicagobears.com/tradition/history-by-decades/highlights-1920s.html>, last visited Mar. 25, 2013. *Id.* Later to be known as the Packers' nemesis, the Chicago Bears. *Id.*

³² See GULLIKSON & HANSON, *supra* note 14.

³³ *Id.*

³⁴ *Id.* at 149.

³⁵ MILWAUKEE J.

³⁶ DAVID ZIMMERMAN, LAMBEAU: THE MAN BEHIND THE MYSTIQUE 31–33 (Eagle Books 2003).

³⁷ GULLIKSON & HANSON, *supra* note 14, at 37–39.

³⁸ *Id.*

³⁹ *Id.*

semester, he was diagnosed with an acute case of tonsillitis.⁴⁰ He was sent home to Green Bay for treatment and recovery. By the time he was well, it was too late to resume his course work at Notre Dame for the semester.⁴¹ While at home, he began working for the Indian Packing company, one of several meat packing companies located in Green Bay.⁴² Well paid⁴³ and courting his first wife Marguerite, Lambeau lost interest in returning to Notre Dame. But he did not lose interest in football.

Meet George “Cal” Calhoun



In 1919, George Calhoun was the sports editor for the *Green Bay Press Gazette*. A long-time football fan,⁴⁵ Calhoun had covered Curly Lambeau’s high school football exploits and the two men had common friends and interests. After a chance meeting, Calhoun and Lambeau began to work together to form a professional Green Bay football team. Calhoun convinced his

⁴⁰ JOHN B. TORINUS, *THE PACKER LEGEND: AN INSIDE LOOK: AN ACCOUNT OF THE GREEN BAY PACKERS* 13 (Larenmark Press 1983).

⁴¹ *Id.* at 13. See GULLIKSON & HANSON, *supra* note 14.

⁴² TORINUS, *supra* note 40, at 14.

⁴³ *Id.* at 13. He was earning the princely sum of \$250 per month. *Id.*

⁴⁴ MILWAUKEE J.

⁴⁵ TORINUS, *supra* note 40, at 21. Calhoun had himself been a collegiate athlete. *Id.* Juvenile arthritis had severely impacted the use of his hands, arms and legs. *Id.* He is often described as the quintessential sportswriter: gruff, cigar-chomping and a heart of gold. His former assistant at the *Green Bay Press Gazette*, John Torinus, says this about Calhoun: “Calhoun’s gruff exterior was an attempt on his part to keep people from feeling sorry from him. He adopted an outer crust of terrible temper to protect what on the outside was a very warm and emotional person. He spoke in streams of profanity, chewed and ate cigars instead of smoking them, and spit the juice into a brass spittoon always handy to his desk.” *Id.* at 21.

editor to run an advertisement in the *Press Gazette* to recruit players, and to provide coverage for the team's games.⁴⁶ Lambeau sought sponsorship from his employer, the Indian Packing Company.⁴⁷ He asked the company for \$500, the cost of uniforms⁴⁸, and the use of the company's athletic field.⁴⁹ Lambeau's choice of sponsors would give the team one of the most curious and the most enduring names in professional sports.⁵⁰ Lambeau and a group of prospective players gathered with Calhoun in the editorial offices of the *Press Gazette*. Lambeau would coach the team and Calhoun would serve as its publicity director: the Green Bay professional football team was born.

The Acme Packers and the APFA

The Green Bay team played for several seasons, with more success on the field than at the bank. In 1921, the Clair brothers, owners of the Acme Packing Company and successor to the Indian Packing Company,⁵¹ provided the funding for the team to be the first to purchase a franchise⁵² in the newly-formed American Professional Football Association, precursor to the

⁴⁶ GULBRANDSEN, *supra* note 23, at 15.

⁴⁷ *Id.*

⁴⁸ CHUCK CARLSON, GREEN BAY PACKERS: YESTERDAY & TODAY 11 (West Side Publishing 2009). The team uniforms were originally blue and gold, a tribute to Notre Dame. *Id.*

⁴⁹ ARCH WARD, THE GREEN BAY PACKERS 40 (Van Rees Press 1946). Legendary sportswriter Arch Ward describes the exchange with Indian Packing Company official Frank Peck like this:

“Yes, what is it Curly?” inquired the packing company executive.

“Mr. Peck, there is a place for a football team in Green Bay,” Lambeau replied. “And I think I can round it up. We’ll need uniforms to start with. I’ll get the players and make up the schedule. We won’t have to worry about that. There are enough towns around here to choose up sides with. It would be a great thing for Green Bay and for the company. Will you back us?”

Peck realized that his employee was serious, and it didn’t take him long to make a decision, either.

“OK, Curly,” he said, “we’ll support you up to \$500 for uniforms. From there on, it’s yours.”

Id.

⁵⁰ LARRY D. NAMES, THE HISTORY OF THE GREEN BAY PACKERS, BOOK ONE: THE LAMBEAU YEARS 81 (Angel Press of Wisconsin 1987). Curly Lambeau didn’t favor the Packers name. *Id.* Early nicknames included the “the Bays” and “the Bay Blues.” *Id.*

⁵¹ See THE GREEN BAY PACKERS, History, *Chronology*, <http://www.packers.com/history/chronology.html>, last visited Mar. 25, 2013.

⁵² *Id.*

NFL.⁵³ The town put up the money for materials for Lambeau's father to build a 2,000 seat bleachers and box seats, and a fence around Hagemeister Park for its first professional football games.⁵⁴ The Green Bay Football Club, Inc. continued to encounter success on the field, but ran afoul of the rules of the newly formed APFA when, in 1921, it hired college players under assumed names to play in its professional games. As a result, the league revoked the Packers' franchise.⁵⁵

Three Hundredths of an Inch of Rain and the Survival of the Team

Lambeau reapplied for, and got⁵⁶, his franchise back from the newly renamed National Football League. In its first stock offering, the Green Bay Football Club came up with \$1000 for the league deposit by selling stock, putting up 80 shares at \$100 each.⁵⁷ But stock sales and gate receipts weren't enough.

Barely able, and occasionally unable, to make the payroll for the team, the football team was over \$5,000 in debt in 1922. The team was required to meet guarantees for opposing teams who were reluctant to come to the league's smallest market to play when ticket sales were uncertain. Prior to the season, team management had taken out an insurance policy against losses in ticket sales suffered in case of inclement weather. There was some debate as to whether to hold the game and incur the costs associated with the guarantee or to forfeit, losing both the

⁵³ *Id.*

⁵⁴ *Id.*

⁵⁵ See NAMES, *supra* note 50, at 68. At the same time Green Bay was required to turn in its franchise, so was the Decatur Staleys, owned by George Halas. *Id.* Halas was immediately granted a franchise for a Chicago team, the Bears – the Packers' perpetual nemesis. *Id.* 68.

⁵⁶ WILLIAM POVLETICH, GREEN BAY PACKERS: TRIALS, TRIUMPHS AND TRADITION 22 (Wisconsin Historical Society Press, 2012). Restoring the Packer franchise was a lengthy and inexplicably complicated process. *Id.* There are some who speculate that George Halas played a hand in drawing out the length of time it took for the franchise to be restored (while his Staleys franchise was promptly restored) so that he would have an advantage in recruiting players for the upcoming season. *Id.*

⁵⁷ NAMES, *supra* note 50, at 79.

gate and the game. Watching the dismal weather, Lambeau and Calhoun conferred with League president Joe Carr and decided to proceed with the game, confident that the weather insurance would cover the loss in ticket sales. Although 1,500 fans turned out to see the game despite the inclement weather, the news was not as good when the Green Bay management turned in its insurance claim. When measured by the rain gauge at the official government weather station, the rainfall was three one-hundredths of an inch shy of the requirement to collect on the policy.

The finances were bleaker than the weather: it looked as if the club would have no choice but to fold. Bankruptcy, and loss of the organization's greatest asset – its franchise – was imminent. Calhoun wrote a letter to the public, published in the *Press-Gazette*, detailing the team's dire financial straits⁵⁸. But it was Nate Abrams⁵⁹, a personal friend of Lambeau's, not the public, who enabled the team to finish out the season.

Nate Abrams was a childhood friend of Curly Lambeau. He had played football with and against Lambeau as a young man.⁶⁰ He organized the Green Bay Whales, a town team, while Lambeau was away at college. George Calhoun of the *Press-Gazette* was the Whales' team manager.⁶¹ It was Abrams who helped Lambeau land the job at the Indian Packing Company.⁶² Abrams is one of the signatories on the original articles of incorporation for the 1921 Green Bay Football Club, Inc. Yet Abrams' name is barely mentioned in most accounts of Packers history, nor is there any suggestion that he ever claimed title to the franchise despite the fact that he appears to have provided the funds necessary to keep it from being surrendered. There are some

⁵⁸ *Id.* at 85–6.

⁵⁹ *See id.* at 86. Abrams is said to have seen the letter and loaned or given Lambeau \$3000 to relieve the team's immediate financial crisis. *Id.* Names reports that, at that time, Lambeau turned the franchise over to Abrams. *Id.* There is no official documentation of a transfer of the franchise from the corporation to Abrams or back from Abrams. *Id.*

⁶⁰ *Id.* at 33–35.

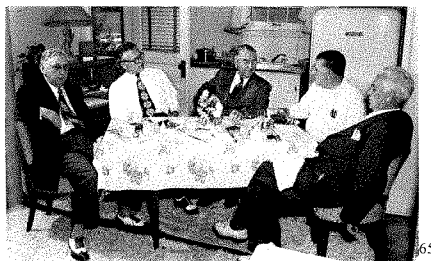
⁶¹ *Id.* at 33–45.

⁶² *Id.* at 33–35.

who say that he stepped back and let his friend Curly take all the glory.⁶³ Others suggest that because Abrams was Jewish in a tightly knit community that had few other non-Christians, he was destined not to be recognized for his contributions.⁶⁴

Through Abram's generosity, then, the team was able to make it to the next season, albeit barely. Calhoun and Lambeau had begun to rely on *Press-Gazette* business manager Andrew Turnbull for his advice on keeping the struggling team afloat. Turnbull and NFL president Joe Carr knew that there were significant financial hurdles to the team's success: the low ticket prices, the small stadium, and the relatively small size of the market overall. Turnbull contacted several prominent businessmen (later to be known as the Hungry Five) for help in raising the money to keep the team alive. Gerald Clifford was one of those men.

The Hungry Five



Oliver Kuechle, a sportswriter for the Milwaukee Journal, coined the name "Hungry Five" after a popular radio program of the late Twenties.⁶⁶ The Hungry Five name was considered a

⁶³ *Id.* at 86–87.

⁶⁴ *Id.* at 94.

⁶⁵ TORINUS, *supra* note 40, at 47. Left to right: A.B. Turnbull, Curly Lambeau, Emil Fischer, Bert Bell and Gerry Clifford. *Id.* Three of the "Hungry Five." *Id.*

⁶⁶ *See id.* at 99.

reference to the gentlemen's constant begging for funds to keep the team afloat.⁶⁷ Kuechle would say later, "If it is true that there would be no Green Bay Packers today except for Lambeau and his idea of a hometown football team, it is also true that there would be no Green Bay Packers except for the 'Hungry Five.' They were the men who formed the corporation that saved the Packers in 1923. They were the counselors in moments of crisis later. They were the men who dominated the Executive Committee and who unobtrusively filled the most important corporate offices."⁶⁸ The group that, with Lambeau, would comprise the Hungry Five, met for lunch, as they often did, in the Beaumont Hotel's Attic Room on the Monday after Thanksgiving in 1923. Turnbull was joined by his three friends, Leland H. Joannes, Dr. W. Webber Kelly, and Gerald F. Clifford.⁶⁹

A. Andrew Turnbull

Andrew Turnbull was born in London, Ontario, moved to Detroit at a young age, and began his newspaper career at the *Detroit News*.⁷⁰ He worked at a number of newspapers throughout the Midwest before coming to the *Green Bay Press Gazette* in 1915.⁷¹ He eventually served as the paper's Business Manager.⁷² He was the Green Bay Packers Corp.' first president, serving in the position until 1927.⁷³ He was on the Board of Directors and the Executive

⁶⁷ *Id.*

⁶⁸ MILWAUKEE J., June 7, 1965.

⁶⁹ See NAMES, *supra* note 50, at 99–100.

⁷⁰ See WARD, *supra* note 49, at 57.

⁷¹ *Id.*

⁷² *A Moment of Truth*, The Green Bay Press Gazette,

<http://www.greenbaypressgazette.com/ic/legacy/history/pressgazette/andthepackers3.shtml>, last visited Mar. 25, 2013.

⁷³ THE GREEN BAY PACKERS HALL OF FAME, ANDREW TURNBULL,

<http://packershalloffame.com/players/contributor-andrew-turnbull/>, last visited Mar. 25, 2013.

Committee until 1949.⁷⁴ His financial expertise and unflagging enthusiasm for the Packers led the fledgling team through many a crisis and resulted in the formation of the Hungry Five.

B. Leland Joannes

Lee Joannes' family owned the well-established Green Bay Grocery wholesaling business. His family donated the land on which the Packers played their first games.⁷⁵ He was the first secretary/treasurer of the organization in 1923. He served as its president from 1930-1947:⁷⁶ the second longest term of any president. He was reputed for his business acumen and his popularity with the players.⁷⁷ When the team was in bankruptcy and faced the loss of its franchise,⁷⁸ Joannes made a personal loan to help the team avoid the crisis, and was instrumental in guiding the organization through its reorganization.

C. Dr. William Webber Kelly

Dr. Kelly was born in Jamaica, educated in England and Belgium, and attended medical school at McGill University in Montreal, Quebec⁷⁹. He was president of the Wisconsin Board of Health, a visiting regent to the University of Wisconsin and served as a consulting psychiatrist to the Veterans Administration.⁸⁰ Dr. Kelly served as the team physician from its earliest years through 1949. He was Packers president in 1929 and an Executive Committee member from

⁷⁴ See THE GREEN BAY PACKERS HALL OF FAME, Gerald Francis Clifford, <http://geraldclifford.packershalloffame.com>, last visited Mar. 25, 2013.

⁷⁵ See WARD, *supra* note 49, at 60.

⁷⁶ THE GREEN BAY PACKERS HALL OF FAME, LEE JOANNES, <http://packershalloffame.com/players/lee-joannes/>, last visited Mar. 25, 2013.

⁷⁷ See WARD, *supra* note 49, at 60.

⁷⁸ THE GREEN BAY PACKERS HALL OF FAME, LEE JOANNES, <http://packershalloffame.com/players/lee-joannes/>, last visited Mar. 25, 2013.

⁷⁹ WARD, *supra* note 49, at 62.

⁸⁰ *Id.*

1923 to 1952. Dr. Kelly was considered a surrogate father by many Packers players and is an integral part of the most fascinating part of early Packers lore.

D. Gerald F. Clifford



⁸¹

Gerald “Gerry” Clifford was born in 1889 in Chilton, Wisconsin. His father, Jeremiah Clifford, worked for the Chicago, Milwaukee & St. Paul Railroad. Clifford spent much of his childhood in the upper peninsula of Michigan near Escanaba and Iron Mountain. After graduating from high school, Clifford traveled to Europe on a cattle boat,⁸² spending eighteen months traversing the continent and writing about his travels for the Escanaba paper. He returned to attend the University of Michigan where he received his law degree⁸³ from the U of M in 1912.⁸⁴ He began his practice in Green Bay, where his father had become a regional superintendent for the railroad.

Clifford's practice included both civil and criminal cases. In his criminal practice, he defended twenty-six murder cases, having no client convicted of the original charge. Clifford

⁸¹ THE GREEN BAY PACKERS HALL OF FAME, Gerald Francis Clifford, <http://geraldclifford.packershalloffame.com>, last visited Mar. 25, 2013.

⁸² Email Interview with Patricia Clifford Collins, Daughter of Gerald Clifford, (February 10, 2013) in Evanston, Ill.

⁸³ *Id.*

⁸⁴ THE WISCONSIN HISTORICAL SOCIETY, Dictionary of Wisconsin History, Gerald Francis Clifford, http://www.wisconsinhistory.org/dictionary/index.asp?action=view&term_id=2264&keyword=clifford, last visited Mar. 25, 2013.

appeared frequently before the Wisconsin Supreme Court.⁸⁵ He was reputed to be a fierce cross-examiner and was widely regarded as a force to be reckoned with in the courtroom.⁸⁶ In his civil practice, he often represented railroad and labor clients. He was considered to be an expert on the rules of evidence, with particular expertise in search and seizure warrants, an expertise no doubt honed through his work with tavern keepers accused of Prohibition violations.⁸⁷

Active in politics throughout his life, Clifford was well known in Green Bay as a liberal Democrat and fervent supporter of Franklin D. Roosevelt. He was a delegate to all four national conventions that nominated FDR and an outspoken advocate of the New Deal. He also served as a member of the Wisconsin State Central Committee and frequently spoke at state conventions and political gatherings. He was the unsuccessful Democratic Party nominee for Congress in 1934. He was particularly instrumental in bringing members of the Progressive Party, a third party which was a powerful force in Wisconsin politics from 1934-1946, into the Democratic fold.⁸⁸

Personally, Clifford was well known as an avid hunter and gardener.⁸⁹ He was the husband of Mae Heney, whose uncle, Michael Heney, built the Alaskan Railway system.⁹⁰ Like Mark Twain, he had the unusual opportunity to state that reports of his death were greatly

⁸⁵ Interview with Colleen Clifford Barnett, Daughter of Gerald Clifford (Dec. 23, 2013). *See generally*, THE WISCONSIN COURT SYSTEM, About the Court, *Court System Overview*, <http://www.wicourts.gov/courts/overview/overview.htm>, last visited Mar. 25, 2013. The Court of Appeals level of courts were created in 1978. *Id.* Thus, all appeals were handled by the Supreme Court. *Id.*

⁸⁶ Interview with Judge William Duffy (ret. federal judge) in Green Bay, WI. (Jan. 21, 2012).

⁸⁷ *Id.*

⁸⁸ *See* THE WISCONSIN HISTORICAL SOCIETY, On This Day in Wisconsin History, *May 19*, <http://www.wisconsinhistory.org/thisday/index.asp?day=19&month=5>, last visited Mar. 25, 2013. The Progressive Party played a dominant role in state politics given that it was a third party. It was comprised of farm and labor groups and represented what was then considered to be something of a "socialist" position. The party elected a number of its candidates to prominent positions, including governors and senators.

⁸⁹ GREEN BAY PRESS GAZETTE, Feb. 25, 1952 at 1.

⁹⁰ *See generally*, EDWARD A. HERRON, ALASKA'S RAILROAD BUILDER: MIKE HENEY, (Messner, 1960).

exaggerated when, hospitalized for a weakened heart brought on by an extended case of the hiccups, a local newspaper announced his death prematurely.⁹¹

Clifford acted as legal counsel to the Green Bay Packers from the time he drafted its articles of incorporation to his death in 1952. He served on the Board of Directors and was vice president of the organization for many years. In a less formal capacity, he traveled throughout Wisconsin and upper Michigan generating interest in the team and promoting ticket sales.⁹² In recognition of these efforts, he was elected to the Green Bay Packer Hall of Fame in 1991.⁹³

The Hungry Five Gets to Work

As its first order of business, the Hungry Five sought to reorganize the football club and raise funds to pay off existing debts. The group arranged to address the capacity crowd of 400⁹⁴ gathered at the Green Bay Elks Club on Cherry Street. The group, many of whom were businessmen, had come to listen to the Dempsey/Firpo boxing match. The gathering presented an opportunity to explain to the businessmen the civic advantages of keeping the team in Green Bay.

The crowd was told that the newly formed The Green Bay Football Corporation would be a not-for-profit organization.⁹⁵ The shareholders would elect a Board of Directors consisting of 15 stockholders. The Board would choose an Executive Committee who would manage the corporation and report to the Board of Directors. The Board of Directors would then report to the shareholders at large. Officers would serve without compensation. There would be no

⁹¹ Telephone Interview with Patricia Clifford Collins, Daughter of Gerald Clifford, in Evanston, Ill. (Dec. 23, 2012).

⁹² POVLETICH, *supra* note 56, at 22. "Gerald Clifford served as the team's primary ambassador, meeting with prominent business owners and fans throughout northeastern Wisconsin and Michigan's Upper Peninsula." *Id.*

⁹³ THE GREEN BAY PACKERS HALL OF FAME, Gerald Francis Clifford, <http://geraldclifford.packersshalloffame.com>, last visited Mar. 25, 2013.

⁹⁴ See WARD, *supra* note 49, at 58. *But see*, Names, *supra* note 50, 101, suggesting ulterior motives of the crowd.

⁹⁵ Names, *supra* note 50, 101.

“owner” of the team. Football decisions, with the exception of approval for contract decisions, would be left to Lambeau. In an effort to appeal to the many veterans in the crowd, the decision was made to donate all of the club’s profits to the local American Legion post.⁹⁶ In a decision that would have even greater impact down the road, if the franchise were to be sold, those profits too would go the Green Bay’s Sullivan American Legion post, thus removing any personal profit motive to sell the franchise.⁹⁷

Fifty leading businessmen put up \$100 each as a guarantee.⁹⁸ On August 14, 1923, the Articles of Incorporation were signed⁹⁹ and one thousand shares of stock were issued. The shares were sold for \$5 per share. Andrew Turnbull was named the first team President.

The Hungry Five had guided the team to surer financial footing, but all around the League teams were struggling with the fall out of economic uncertainty and a changing emphasis on franchise allocation. The NFL had shifted its sights from small city teams like Duluth and Rock Island and wanted to focus on franchises in big city markets. The annual failure rate for teams averaged between 35-40%.¹⁰⁰ The onset of the Great Depression only magnified the problems faced by the remaining teams.

The team’s finances may not have been rosy, but its football record was glorious. Curly Lambeau led the team to three consecutive championships in 1929, 1930 and 1931.¹⁰¹ Fans wanted to see the team, but the Depression meant that pocket money was scarce. Packers’

⁹⁶ *Id.*

⁹⁷ *See id.*

⁹⁸ *See id.* at 94–95.

⁹⁹ *See id.* at 97–98. The Articles of Incorporation for Green Bay Packers Inc. were signed by Leland Joannes, Andrew Turnbull and John A. Kittell. MAXYMUK, *supra* note 14, at 94. They were witnessed by George Calhoun and Curly Lambeau. *Id.* It appears that Kittell was the scrivener of the articles although, as an attorney actively involved in reorganizing the team, Clifford would most likely have had a hand in coming up with the legal structure.

¹⁰⁰ POVLETICH, *supra* note 56.

¹⁰¹ THE GREEN BAY PACKERS, History, *Super Bowls and Championships*, <http://www.packers.com/history/super-bowls-and-championships.html>, last visited Mar. 25, 2013.

revenue was dependent entirely on fan attendance. Then team President Lee Joannes moved to cut ticket prices to the cheapest in the league.¹⁰² The team's debts began to mount again.

From Bent to Bankruptcy

Clifford represented the team when more legal trouble befell the Packers – quite literally. During the second game of the 1931 season against the Brooklyn Dodgers, fan Willard J. Bent was injured in a fall from “temporary” grandstands at the stadium. The corporation submitted the claim for Bent's injuries to its liability insurance company, Southern Surety Corporation, only to be told that the corporation, like many others during the Great Depression, was in bankruptcy.¹⁰³ To add insult to injury, the company was a mutual insurance company in which the Football Corporation was an investor. Not only was Bent's claim refused, the bankruptcy judge assessed the Football Corporation \$2,500 to help pay the insurer's debts.¹⁰⁴

Unable to recover from the insurance company, Bent ultimately sued the Football Corporation for \$20,000. T.P. Silverwood, a Green Bay football legend, represented Bent in the litigation. The transcripts¹⁰⁵ of the original trial demonstrate Clifford's knowledge of evidentiary rules, his cross-examination skills, and his sense of humor.

At trial, Clifford argued several points. First, he argued that Wisconsin's “safe place” statute which held the Corporation to a higher standard of care was not applicable here because the bleachers from which Mr. Bent fell were not a permanent structure as required by the statute. As part of the demonstrative exhibits, Silverwood brought into the courtroom a small portion of something resembling the temporary bleachers. Clifford argued successfully that, in order to

¹⁰² POVLETICH, *supra* note 56.

¹⁰³ LARRY D. NAMES, THE HISTORY OF THE GREEN BAY PACKERS, BOOK TWO: THE LAMBEAU YEARS: PART TWO 32 (Angel Press of Wisconsin 1989).

¹⁰⁴ *Id.*

¹⁰⁵ Available at the University of Wisconsin-Green Bay Archives.

understand fully the structure from which Bent fell, the jurors needed to see the real thing. As a result, the judge ordered that an entire bleacher section be rebuilt for examination. When the exhibit would not fit in the courtroom itself, it was built on the courthouse lawn, making quite a spectacle of the trial.¹⁰⁶

Second, Clifford argued that the standard of care had been met because the bleachers had been duly inspected that very day by local building authorities and no problems had been identified. He brought in a series of experts to testify to the impact of meeting local safety standards on satisfying the duty of care.

Next, Clifford introduced evidence that Bent did not exercise his own duty of care by failing to look properly where he was placing his foot when he sat down. He argued that Bent was familiar with the bleachers, that he had chosen them over more stable seating in the permanent section of the stadium, that he had chosen the top seat, and that he had failed to look down to see where he was placing his foot when he fell.

Finally, witnesses were produced to testify to Bent's longstanding battle with alcohol. This served several purposes: to suggest that he was intoxicated at the time of the accident, and to reduce the damages to which he was entitled, the implication being that his future earnings were not likely to be considerable. The damages portion of the trial featured a number of witnesses who testified to Bent's checkered employment history.

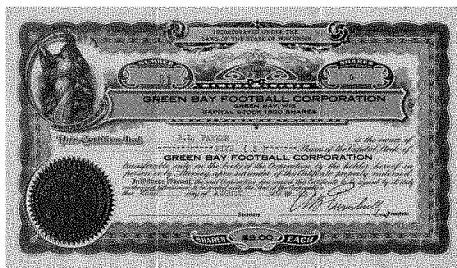
Clifford was anxious to introduce testimony regarding what was apparently Bent's advanced case of syphilis, thinking that it would not endear the plaintiff to the jury, and would also suggest that his earning ability was already impaired by factors unrelated to his fall. Clifford had no success finding a way to introduce the evidence into the direct examination until

¹⁰⁶ Bent v. Jonet, 252 N.W. 290 (WI 1934).

a chance conversation overheard between Johannes and Silverwood in the hallway gave him the opening he needed. Bent's doctor was forced to reveal Bent's syphilis on cross-examination.

Despite Clifford's skillful performance, the judge found for Bent and awarded him \$4,575.¹⁰⁷ The Wisconsin Safe Place statute was deemed applicable, and Bent was found to be 10% negligent. On appeal, the court affirmed the decision, finding that the temporary wooden bleachers were considered a "public building" within the terms of the Safe Place statute.¹⁰⁸ The court also affirmed the exclusion of the expert testimony from the building inspectors on the ground that there was no underlying building code which the bleachers were required to comply with.¹⁰⁹ Although the court acknowledged Bent's admission that he "paid no attention" when sitting on the bleacher, it was unwilling to change the allocation of negligence.¹¹⁰ In affirming the judgment, it affirmed the Packers' dire financial situation.

Reorganizing into the Green Bay Packers Inc.



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In order to prevent Bent from being able to access the team's greatest financial asset – its franchise certificate – Clifford petitioned for bankruptcy on behalf of the Corporation.¹¹² It was

¹⁰⁷ *Id.*

¹⁰⁸ *Id.*

¹⁰⁹ *Id.*

¹¹⁰ *Id.*

¹¹¹ THE GREEN BAY PACKERS, Community, *Shareholders*, <http://www.packers.com/community/shareholders.html>, last visited Mar. 25, 2013.

arranged for Hungry Five member and then-president Lee Joannes to make a private loan to the Corporation to pay off a certain portion of its bills.¹¹³ This maneuver made him the Corporation's largest creditor, even larger than Bent. Typically, the largest creditor is appointed receiver of a bankrupt organization.¹¹⁴ This was not feasible in this case because of the conflict of interest presented by Joannes' position with the Corporation.¹¹⁵ Instead, Frank Jonet, bookkeeper for the Acme Packing Company, a "friendly" receiver who had done accounting work for the Corporation, was appointed by Judge Henry Graass, the judge who had presided over the Bent trial. Things were reported to have gone on "more or less as before."¹¹⁶ According to some reports, Silverwood, Bent's attorney, never pressed the conflict of interest because everyone felt that it was in the best interest of all parties concerned to see that the team survived.¹¹⁷

The constant financial concerns posed a very real threat to Green Bay fans: that the franchise would be moved to a much larger and more lucrative venue in Milwaukee. By now, the team had succumbed to pressure from NFL league president Joe Carr to play a significant portion of its games in Milwaukee.¹¹⁸ If debts continued to mount while the receivership was still in place, it was likely that the court would order the Corporation to sell its only real asset: its National Football League franchise. An end to the receivership was conceived of in 1935.

¹¹² NAMES, *supra* note 103, at 34.

¹¹³ *Id.*

¹¹⁴ *Id.*

¹¹⁵ *Id.* at 35.

¹¹⁶ *Id.* at 34. Judge Henry Graass appointed Frank J. Jonet as receiver. *Id.* Jonet, a certified public accountant, was company bookkeeper for the Acme Packing Company. *Id.*

¹¹⁷ *Id.* at 35.

¹¹⁸ WARD, *supra* note 49, at 128–129. Season ticket holders were able to purchase blue or gold tickets (still the team's colors at the time) depending upon which city they would attend games in. Devoted fans bought both packages. The Packers played games in Milwaukee until 1994 but vestiges of the old system remain in the current system of "green" and "gold" packages for season ticket holders. See GREEN BAY PACKERS, History, *Chronology*, <http://www.packers.com/history/chronology.html#1990>, last visited Mar. 25, 2013.

Under Clifford's direction, the team was reorganized yet again, but its strongest component - public ownership - was maintained.

Clifford, Turnbull and the other members of the Hungry Five went yet again with hat in hand to the business community of Green Bay. The team needed at least \$10,000 to survive. The pitch was a simple one: what was good for the team was good for the town.¹¹⁹ The Association of Commerce Men agreed to help raise the money within a month's time by dividing the town up into neighborhood districts. By the end of the month, a reorganization meeting was held in the Brown County courthouse.¹²⁰

The Green Bay Football Corporation was dissolved and replaced by the Green Bay Packers, Inc. The new corporation was also a not-for-profit corporation. 600 shares of no par common stock were issued at \$25 share. Again, any profits made by the Corporation would be donated to the Sullivan Post of the American Legion.¹²¹ The Corporation would hold an annual meeting of stockholders on the Monday after the 4th of July each year at which the stockholders would elect a board of twenty directors. An Executive Committee of seven would be chosen from among the Board. As before, none of the board would receive a salary. Gerald Clifford and other members of the Hungry Five were among those chosen to be on the first Board of Directors of the new Green Bay Packers, Inc.¹²² Again, the team became a new legal entity and took on a new legal name, one which it retains to this day.

¹¹⁹ Interview with Judge William Duffy (ret. federal judge) in Green Bay, WI. (Jan. 21, 2012) ("It took a lot of courage to get in there and battle to keep the club here . . . [Clifford] had a lot of vision politically as far as the Packers were concerned.") *Id.*

¹²⁰ NAMES, *supra* note 103, at 75.

¹²¹ *Id.* at 76. Clifford pointed out at the meeting that the Football Corporation had donated \$4000 to the Sullivan Post and contributed \$39,000 toward the construction of City Stadium (prior to the Bent lawsuit). *Id.*

¹²² *Id.* at 77. The Board included: H.J. Bero, George W. Calhoun, Gerald F. Clifford, Fred L. Cobb, E.R. Fischer, Leland Joannes, Frank Jonet, Leslie J. Kelly, Dr. W.W. Kelly, Fred Leicht, Harvey Lhost, Charles Mathys, John Moffett, J.E. Paeps; C.A. Raasch, Arthur E. Schumacher, Ed Schuster, H.J. Stoltz, A.B. Turnbull, Frank Walker, L.G. Wood, and H.J. Wintgens. *Id.*

The Power Struggle

The Packers would not exist without Lambeau, but the Packers would not have remained in Green Bay without Clifford.¹²³ The team was Lambeau's dream, and he brought that dream to fruition through determination, skill and community support. He kept the team going through lean times, and brought six national championships home to Green Bay. He was an athlete, a legendary coach, and a larger than life personality. Eventually that personality proved a bit too large for a town like Green Bay.

Professional football offers two things: fortune and fame. Curly Lambeau was famous in Green Bay and beyond. But for thirty years, Curly Lambeau had coached a not-for-profit football team which, for many of those years, had scraped to make payroll. Despite a notable increase in his salary over the years, Lambeau was not and would never be paid in Green Bay what he could make elsewhere. Curly Lambeau decided that he wanted to make some changes to the Packers organization. He wanted to change the not-for-profit structure and he wanted to centralize his authority. Gerald Clifford opposed him vehemently on both points, setting up a clash between these two founding members of the Hungry Five.

Lambeau Goes Hollywood

The team and its coach had always been an integral part of the town itself. Players lived, worked and shopped there. Curly Lambeau had grown up and gone to school there. His wife, Marguerite, was a much-beloved local girl. But Lambeau, a "natty dresser,"¹²⁴ with a flamboyant personality, had divorced his first wife and begun to spend more and more time in Los Angeles. His personal life became a bit racy by Green Bay standards. He married several

¹²³ See THE GREEN BAY PACKERS HALL OF FAME, Gerald Francis Clifford, <http://geraldclifford.packershalloffame.com>, last visited Mar. 25, 2013.

¹²⁴ TORINUS, *supra* note 40, at 158.

more times¹²⁵, and developed a reputation for spending money with little regard for its source.¹²⁶ According to reports, the boys at the Corner Drugstore and the Monday morning quarterbacks began to say that Curly had “gone Hollywood.”¹²⁷ The Packers Executive Committee became increasingly frustrated with Lambeau’s spending. This frustration reached a head when Lambeau purchased Rockwood Lodge.

Lambeau was an innovator in developing the concept of the team training camp. He arranged for the Packers to practice in advance of the season at a local Catholic college. This worked well for a number of years as players were able to attend daily practices while living at home and, as was the case at the time, continue to work their off-season jobs. But in the late 1940’s, Lambeau convinced the Packers to purchase a former recreation center known as Rockwood Lodge from the Catholic diocese.¹²⁸ The initial cost of the Lodge was \$32,000, but an additional \$8,000 was spent on what many on the Executive Committee considered excessive redecorating costs.¹²⁹ The purchase became a sore point quite literally when it was discovered that the players’ shin splints and injured feet were the result of a shallow topsoil over solid bedrock on the Rockwood Lodge playing field. Players were unhappy because wives and families were not allowed to join them at the Lodge. The townspeople were similarly unhappy because they were accustomed to encountering the players on a daily basis. Rockwood Lodge may have been the straw that broke the camel’s back.

¹²⁵ *Id.* In 1935, Lambeau married a much younger Susan Johnston from Los Angeles. See GULLIKSON & HANSON, *supra* note 14, at 49. The marriage lasted less than a year and generated a great deal of local gossip. *Id.* In 1945, Lambeau married West Coast socialite Grace Carland and began spending most of the off-season in Los Angeles. *Id.*

¹²⁶ *Id.*

¹²⁷ *Id.* at 37.

¹²⁸ See LARRY D. NAMES, THE HISTORY OF THE GREEN BAY PACKERS, BOOK THREE: THE LAMBEAU YEARS 150–52, 168–69 (Angel Press of Wisconsin 1990).

¹²⁹ TORINUS, *supra* note 40, at 60. At one meeting, members of the Financial Committee threatened to resign over the decorating bills Lambeau presented for his Rockwood Lodge cottage. *Id.*

Corporate Changes to Balance the Power

Lambeau's concentration of power had been a matter of some concern to Packers board members, particularly Clifford, given the team's constant financial struggles¹³⁰ and rumors about Lambeau's loyalty to the team and to the town. In 1947, corporate changes were instituted that laid the groundwork for curtailing that power, and widened the rift between Lambeau and the Executive Committee.

In 1947, Lambeau fired Packers co-founder George Calhoun from his position as public relations director.¹³¹ Lambeau didn't tell Calhoun personally. Calhoun read that he had retired and been replaced as he manned the AP teletype wire at the *Press-Gazette*.¹³² Lambeau also fired Clifford friend and ally Dr. Kelly from his long held position as team physician.¹³³ Both men still held their positions on the Packer board. That same year, Lee Joannes, president of the Packers Corporation since 1930, stepped down, reportedly weary of the increasing conflict with Lambeau.¹³⁴

To address the issue, Clifford recommended that the board of directors be increased from 22 to 25 and the Executive Committee from 9 to 12. At its first meeting, the expanded Executive Committee created a new system of sub-committees – the first step in decentralizing Lambeau's power.¹³⁵ The Executive Committee also asked Lambeau to begin submitting weekly reports as

¹³⁰ See NAMES, *supra* note 128, at 150–52, 168–69. One financial obligation incurred by Lambeau was always a sore point between he and Clifford: Rockwood Lodge. *Id.* at 150–51. Lambeau insisted on acquiring the residential and practice facilities located twelve miles outside of town. *See id.* Players were required to live there, without their families, during training camp. *Id.* As a result, many felt that the town and the team became disconnected, and Clifford felt that the facility was an unnecessary financial burden. *Id.*

¹³¹ GULBRANDSEN, *supra* note 23, at 53.

¹³² *Id.*

¹³³ *Id.*

¹³⁴ *Id.*

¹³⁵ NAMES, *supra* note 128, at 64. Lambeau and President Fischer were a part of each of the sub-committees: Contracts and Publicity; Finance; Grounds; and Legal and League Affairs. *Id.*

vice-president and general manager of the team.¹³⁶ At the annual stockholders' meeting that year, two vice-presidents were authorized. Joannes was named to the additional vice-president position and local businessman Emil Fisher was named Packers president.¹³⁷ Lambeau's years of financial excess and unleashed power were coming to an end.

Leagues and Loyalty

1948 and 1949 were the worst seasons in team history. As a result, seats were sitting empty in the stadium and the team's finances were once again in peril.

Nonetheless, a longstanding battle for survival in the National Football League was drawing to a successful close.¹³⁸ A rival league, the All-America Conference, posed yet another threat to the Green Bay franchise. The AAC's Los Angeles Dons were said to be courting Curly Lambeau for the position of head coach.¹³⁹ Lambeau had spent increasing amounts of time on the West Coast over the years¹⁴⁰ and rumors swirled that he had an interest in relocating to a warm weather climate. Members of the Executive Committee, including Clifford, were angry with Lambeau over the purchase of Rockwood Lodge, the number of games being played in Milwaukee instead of Green Bay, and the decision to replace Kelly and Calhoun.¹⁴¹ With all of this in play, Lambeau's contract was up for renewal.

¹³⁶ TORINUS, *supra* note 40, 60. Lambeau had abruptly resigned as coach of the team in 1950. *Id.*

¹³⁷ GULBRANDSEN, *supra* note 23, at 59.

¹³⁸ NAMES, *supra* note 128, at 165. In mid-November 1949, then NFL commission Bert Bell stated: "I am most happy to hear that there is no foundation to this story that Green Bay may surrender its franchise" (quoting THE N.Y. DAILY NEWS). *Id.*

¹³⁹ *See id.* at 81–82. There is some suggestion that Lambeau accepted an offer for the coaching position, but was forced to rescind his acceptance when Clifford and Fischer threatened him with a breach of his newly-extended contract.

¹⁴⁰ *See id.* at 80–81, 142–45.

¹⁴¹ *See id.* at 170–71.

At the stockholder meeting in August of 1949, Andrew Turnbull resigned from his positions on the Executive Committee and the Board of Directors.¹⁴² Turnbull was replaced at both positions with wealthy attorney Victor McCormick, a well-known Lambeau supporter.¹⁴³ By November of that year, finances had gotten so tight that the team had to drop players from its roster and Lambeau was ordered to sell Rockwood Lodge.¹⁴⁴ In an effort to raise funds to continue the season, veteran Packer players put on an exhibition game on Thanksgiving Day, which raised nearly \$50,000 from an estimated 15,000 enthusiastic and loyal fans.¹⁴⁵

The Executive Committee, including Clifford, decided that in order to address long-term financial concerns, another stock sale would be necessary. A special sub-committee, chaired by McCormick, was created to set up the stock sale. Lambeau, a member of the committee, announced at its first meeting what many had suspected all along: Lambeau wanted to take the team private. He promoted a plan that would change the community ownership structure and convert the Packers into a for-profit corporation.¹⁴⁶ Lambeau announced that he knew of four investors willing to put up \$50,000 each for the Packers stock. It was an open secret that Victor McCormick was one of the intended investors. Clifford was one of many on the Board who were incensed by Lambeau's plan to make the team for-profit; a move that would certainly lead to the team's quick departure from Green Bay.

Lambeau's plan was not without its supporters, though. The Packers were yet again faced with the real threat of losing their franchise as the result of shaky finances. The recent merger of the rival All-America Football Conference into the NFL had added three additional

¹⁴² TORINUS, *supra* note 40, 63.

¹⁴³ *Id.*

¹⁴⁴ *Id.*

¹⁴⁵ *Id.*

¹⁴⁶ *See* NAMES, *supra* note 128, at 175.

teams to the NFL roster.¹⁴⁷ NFL commissioner Bert Bell was considering paring down the number of teams.¹⁴⁸ Given Green Bay's small market and its history of financial uncertainty, the Packers franchise was vulnerable. In light of all this, Lambeau's proposal was opportune.

Clifford and other members of the Executive Committee rallied hard to keep Lambeau's proposal from passing. Clifford threatened Lambeau on the steps of the courthouse, saying that he would bring charges based on financial improprieties with Lambeau's team expense accounts if he did not drop the proposal.¹⁴⁹ The proposal was certainly part of the discussion of Lambeau's future with the Packers.

The proposal and Lambeau's two-year contract renewal were discussed at a heated board meeting on November 21st at the Brown County Courthouse.¹⁵⁰ The meeting lasted five hours; the debate was "so rancorous that observers standing outside the courthouse could hear the directors shouting at one another behind closed doors."¹⁵¹ Clifford's efforts to call for a secret

¹⁴⁷ GULBRANDSEN, *supra* note 23, at 58.

¹⁴⁸ *Id.*

¹⁴⁹ NAMES, *supra* note 128, at 168

Jerry Clifford had heard a rumor that Lambeau and Vic McCormick and two other fellows whose names I can't recall right now were planning to take over the franchise from the corporation. Clifford stopped them on the courthouse steps and took Lambeau aside. He told Lambeau not to try taking the franchise back from the corporation. If he did, Clifford would make public Lambeau's abuse of his expense account and he would bring charges against Lambeau for malfeasance in office and misappropriating corporate assets. He promised Lambeau he wouldn't use the evidence to get him fired as head coach and general manager of the Packers. That's how Jerry Clifford stopped Curly Lambeau from taking back the franchise. (quoting John B. Torinus)

Id. See also DR. JAMES HURLEY, GREEN BAY: A CITY AND ITS TEAM 242 (Thomas Murphy Books, 2011)

Team attorney Gerry Clifford was so concerned that he accosted Lambeau as the two were exiting the courthouse and standing at the top of the steps. During this exchange, he threatened to expose Lambeau's abuse of his expense account and bring charges for financial malfeasance and misappropriating corporation assets if Lambeau continued in his bid to buy the team . . . A line in the sand had been drawn, and the implications for Lambeau were grave. Gerry Clifford's actions on the steps of the Brown County courthouse that evening may very well have saved the team from the same man who had nurtured [sic] it from its inception."

Id.

¹⁵⁰ See POVLETICH, *supra* note 56, at 77.

¹⁵¹ *Id.*

ballot on the renewal in a “rump session” were voted down.¹⁵² Ultimately, Lambeau’s contract was renewed and, although the vote was never announced, it was clear that Clifford, Dr. Kelly and George Calhoun had voted against it.¹⁵³ Newspaper reports identifying Clifford as the leader of the “anti-Lambeau faction” suggested that these three were likely to be ousted from the Board when the elections came around in the spring.¹⁵⁴

Lambeau claimed victory, announcing that he was pleased that there would now be “complete harmony in the organization.”¹⁵⁵ Dr. Kelly resigned from the Board a month later, saying that he strongly disagreed with the contract renewal. This left only two of the Hungry Five remaining: Lambeau and Clifford.

Although Lambeau’s contract was renewed, it was Clifford who had won the most important battle. The Packers would remain a not-for-profit corporation. The Board announced that the corporation would issue 20,000 new shares of stock at \$25 each in an effort to raise \$200,000. This, along with the \$50,000 that the fans had raised as part of the Thanksgiving Day drive,¹⁵⁶ would provide enough working capital to put the Packers back on sound footing. And the fans would remain the owners.

Lambeau Leaves Green Bay

Although the Board had voted to extend Lambeau’s contract, he had yet to receive it as of mid-January 1950. Both Lambeau and President Fischer publicly attributed it to holiday absences from town.¹⁵⁷ Some reports suggest that the Board was hoping Lambeau would move

¹⁵² See NAMES, *supra* note 128, at 168.

¹⁵³ *Id.* See also TORINUS, *supra* note 40, at 63.

¹⁵⁴ NAMES, *supra* note 128, at 168 (citing the MILWAUKEE J).

¹⁵⁵ *Id.*

¹⁵⁶ See *id.* (noting that 20,000 new shares would be issued for \$10 each, raising a total of \$200,000 for the organization).

¹⁵⁷ *Id.* at 172.

on. Others indicate that Fischer had given Lambeau a contract in late January, which Lambeau had rejected.¹⁵⁸

On January 2, 1950, Rockwood Lodge, the controversial training camp and the Packers largest financial asset, burned to the ground.¹⁵⁹ On February 1, 1950, after 31 years with the Green Bay Packers, Curly Lambeau quit to coach the Chicago Cardinals,¹⁶⁰ citing his differences with the Executive Committee as the reason for his departure.¹⁶¹ Clifford said “We’ve had two good breaks in Green Bay in the last two weeks. We lost Rockwood Lodge and we lost Lambeau. If he had stayed for two more years we would have gone completely busted.”¹⁶²

Clifford died in 1952, not long after his showdown with Lambeau. Clifford was inducted into the Green Bay Packer Hall of Fame in 1991 for “draft[ing] the articles of incorporation that created the Green Bay Packer Football Corp. Serving in a variety of positions,¹⁶³ including acting as the team’s first legal counsel and later as vice-president, Mr. Clifford has been credited as doing more to assure the team’s survival and growth during the 1930’s and 40’s than any other individual.”¹⁶⁴

¹⁵⁸ GULBRANDSEN, *supra* note 23, at 59.

¹⁵⁹ See POVLETICH, *supra* note 56, at 7. The investigation showed no wrongdoing. *Id.* The cause was attributed to faulty wiring in the attic. *Id.* The Packers received a \$50,000 insurance settlement, which was timely. *Id.* Few were saddened by the loss. *Id.*

¹⁶⁰ TORINUS, *supra* note 40, at 69. Lambeau coached the Cardinals for two seasons before moving to the Washington Redskins for another two seasons, after which he retired from professional football. GULBRANDSEN, *supra* note 23, at 60. Curly Lambeau died of a heart attack at age 67 near his home in Door County, Wisconsin. THE GREEN BAY PACKERS HALL OF FAME, CURLY LAMBEAU, <http://packershalloffame.com/players/curly-lambeau/> (last visited Mar. 25, 2013). The football legend is remembered by Packers fans as they approach the stadium in Green Bay that bears his name and features a statue of him next to one of the other legendary Packers coach Vince Lombardi. *Id.*

¹⁶¹ NAMES, *supra* note 128, at 172. Lambeau said that the Executive Committee had become “obsolete and unworkable.” *Id.* He claimed that “[n]o group of twelve men can get together once a week during the football season, for an hour and half, including lunch, and run a professional football team. That can’t be done.” *Id.*

¹⁶² ZIMMERMAN, *supra* note 36, at 204.

¹⁶³ THE GREEN BAY PACKERS HALL OF FAME, *supra* note 81.

¹⁶⁴ *Id.*

The Packers Today



Today, the Packers are governed by a board of forty-three directors with a seven-member Executive Committee.¹⁶⁵ With over a hundred thousand owners, and over 4.7 million shares of outstanding stock,¹⁶⁶ the Packers remain the only professional football team in Wisconsin. Lambeau Field, so named in 1965, seats 73,142 ardent fans. The wait for Packers season tickets is about thirty years long.¹⁶⁷ The team is widely regarded as one of the most popular sports teams in the nation. That popularity was boosted by a Super Bowl win in 2010.¹⁶⁸ The team leads the league in sales of merchandise.¹⁶⁹ The team has finally achieved its long sought after stability and even success. There is no one man or family who pockets the profits, nor is there any evidence of the lingering threat to move the franchise to a larger market, despite the fact that Green Bay remains the smallest market by a wide margin.¹⁷⁰ Given this success, why haven't more teams adopted the not-for-profit corporate structure?

¹⁶⁵ See *Executive Committee and Board of Directors*, THE GREEN BAY PACKERS, <http://www.packers.com/team/executive-committee.html>, last visited Mar. 25, 2013.

¹⁶⁶ *Shareholder History & Financial History*, THE GREEN BAY PACKERS, <http://prod.static.packers.clubs.nfl.com/assets/docs/2012shareholder-history.pdf> (last visited Mar. 25, 2013).

¹⁶⁷ *Frequently Asked Questions, Tickets*, THE GREEN BAY PACKERS, FAN ZONE, <http://www.packers.com/fan-zone/faq.html> (last visited Mar. 25, 2013) ("The season ticket waiting list has more than 81,000 names. The Packers tell fans adding their names that the average wait is 30 years.") *Id.*

¹⁶⁸ *Super Bowls and Championships*, THE GREEN BAY PACKERS, HISTORY, <http://www.packers.com/history/super-bowls-and-championships.html> (last visited Mar. 25, 2013.)

¹⁶⁹ http://www.forbes.com/lists/2011/30/nfl-valuations-11_Green-Bay-Packers_30281

¹⁷⁰ *Green Bay Packers CEO Talks NFL and Economic Survival*, NIGHTLY BUSINESS REPORT, <http://www.nbr.com/beyond-the-scoreboard/green-bay-packers-ceo-talks-nfl-and-economic-survival-20120110> (last visited Mar. 25, 2013) (noting Green Bay is the NFL's smallest market). *Id.*

NFL Ownership

The National Football League rules now effectively prohibit any other professional football team from adopting the Packers not-for-profit community ownership model. Although the Packers were grandfathered into the League, these rules now prohibit any city, or any franchise, from utilizing such an organizational structure. Like the Packers, a remarkable number of NFL teams are still owned by some member of the same “family” who started them in the early days of the league. As the chart below indicates, the NFL is a family business. Many of the teams have been family-owned since the beginning of the league with very little turnover in ownership. All the names historically associated with the NFL are there: Rooney, Mara, Halas, Brown and Bidwell.

Team Name	Owner(s)	Structure	Owned Since
Arizona Cardinals	Bill Bidwill	Single Owner	1972 (owner had previous minority share previous to this date) ¹⁷¹
Atlanta Falcons	Arthur Blank	Ownership Group	2004 ¹⁷²
Baltimore Ravens	Steve Bisciotti	Ownership Group	2004 (owner had previous minority share previous to this date) ¹⁷³

¹⁷¹ See *Franchise*, THE ARIZONA CARDINALS, HISTORY, <http://www.azcardinals.com/history/franchise.html> (last visited Mar. 25, 2013). Bill Bidwill Sr. has owned the Arizona Cardinals since 1972. *Id.* From 1962 to 1972 Bidwill was a part-owner with his brother, Charles Jr. *Id.* Their father, Charles Bidwill Sr. owned the franchise from 1932 until his death in 1947. *Id.* Charles Sr.’s mother, Violet and a business partner then ran the franchise until Violet’s death in 1962 when Bill Sr. and Charles Jr. inherited the franchise. *Id.* Bill Sr. has now ceded most of the day to day operations of the franchise to his sons Bill Jr. and Michael. *Id.* at TEAM, STAFF.

¹⁷² THE ATLANTA FALCONS 2011 MEDIA GUIDE 329 (2011); Associated Press, *Falcons Add Brian J. Barker as Partner*, http://espn.go.com/nfl/story/_id/7459740/atlanta-falcons-add-brian-j-barker-new-limited-partner (last visited Mar. 25, 2013). Arthur Blank is a co-founder of The Home Depot and presently owns 90% of the Atlanta Falcons. Other individuals own the remaining 10%. Associated Press, *Falcons Add Brian J. Barker as Partner*, http://espn.go.com/nfl/story/_id/7459740/atlanta-falcons-add-brian-j-barker-new-limited-partner, last visited Mar. 25, 2013. Blank first acquired an ownership share of the Falcons in 2002. THE ATLANTA FALCONS 2011 MEDIA GUIDE 315 (2011). Blank bought the franchise from previous ownership group. *Id.* at 329. Rankin Smith acquired the team in 1965 and paid \$8.5 million to the NFL for the franchise—a record at the time. *Id.* at 308; *Rankin Smith, 72, the Owner of the Falcons*, THE N.Y. TIMES, OBITUARIES, available at <http://www.nytimes.com/1997/10/27/sports/rankin-smith-72-the-owner-of-the-falcons.html> (last visited Mar. 25, 2013). Smith owed the team until his death in 1997. THE ATLANTA FALCONS 2011 MEDIA GUIDE 308 (2011). His shares were passed to his five children who sold them to Blank in 2002. *Id.* at 329.

¹⁷³ *Baltimore Football History*, THE BALTIMORE RAVENS, TEAM, HISTORY, <http://www.baltimoreravens.com/team/history/baltimore-football-history.html> (last visited Mar. 25, 2013). Bisciotti

	Ralph Wilson	Single Owner	1960 (team's inception) ¹⁷⁴
	Jerry Richardson	Ownership Group	1993 (team's inception) ¹⁷⁵
	Virginia Halas McCaskey	Ownership Group	1983 (heir of original owner) ¹⁷⁶
	Mike Brown	Single Owner	1991 (heir of original owner) ¹⁷⁷
	Jimmy Haslam	Ownership Group	2012 ¹⁷⁸
	Jerry Jones	Single Owner	1989 ¹⁷⁹
	Pat Bowlen	Ownership Group	1984 ¹⁸⁰
	William Clay Ford Sr.	Single Owner	1963 ¹⁸¹
	Green Bay Packers, Inc.	501(c)(3)	1923 ¹⁸²
	Robert C. McNair	Ownership Group	2002 (team's inception) ¹⁸³
	Jim Irsay	Single Owner	1997 ¹⁸⁴

bought 49% of the franchise from Art Modell the original owner of franchise (1961-1995—Cleveland Browns, 1996-Present—Baltimore Ravens) in 2000. *Id.* In 2004, he bought the remaining 51%. *Id.*

¹⁷⁴ *Hall of Fame*, THE BUFFALO BILLS HISTORY, <http://www.history.buffalobills.com/Hall+of+Fame> (last visited Mar. 25, 2013). Ralph Wilson was inducted into the Pro Football Hall of Fame in 2009. *Id.*

¹⁷⁵ Greg Jones, *Richardson is Optimistic About Panthers' Future*, THE CHARLOTTE SPORTS EXAMINER, available at <http://www.examiner.com/sports-in-charlotte/panthers-richardson-morrison-will-aid-hurney-finding-coach> (last visited Mar. 25, 2013). Richardson owns 48% of the franchise. *Id.* 14 individuals own the other 52%. *Id.*

¹⁷⁶ *Heirs and Bears; As Icons of NFL old school, McCaskey Family Quietly Goes About its Business*, FOX SPORTS, <http://msn.foxsports.com/nfl/story/Heirs-and-Bears-As-icons-of-NFL-old-school-McCaskey-family-quietly-goes-about-its-business-48758244> (last visited Mar. 25, 2013). McCaskey controls 80% of the franchise, along with her children and grandchildren. *Id.* She inherited her share of the team from her father, George Halas, who was the original owners of the franchise. Patrick Ryan, executive chairman of AON and Andrew McKenna an AON director own 15% of the franchise. *Id.*

¹⁷⁷ The Associated Press, *Brown Family Increase Bengals Control*, ESPN.COM, http://espn.go.com/nfl/story/_id/7384279/mike-brown-brown-family-increases-control-cincinnati-bengals (last visited Mar. 25, 2013). Brown inherited the team from his father, a co-founder and owner of the team. *Id.*

¹⁷⁸ Adam Scheffer, *Sources: Browns Sold for Over \$1B*, ESPN.COM, http://espn.go.com/nfl/story/_id/8225861/andy-lerner-sells-cleveland-browns-more-1b-sources-say (last visited Mar. 25, 2013). Haslam purchased the organization from Randy Lerner, who inherited the franchise upon the death of his father, the original owner who died four years to the day after being awarded the franchise by the NFL. *Id.* Haslam has acquired 70% of the organization and is its majority shareholder. He has reportedly agreed to purchase the remaining 30%, which would make him the sole owner of the franchise. *Id.*

¹⁷⁹ *Jerry Jones, Owner/President/General Manager*, THE DALLAS COWBOYS, TEAM, PLAYERS & STAFF, http://www.dallascowboys.com/team/team_biosCoachExec.cfm?newName=Jerry_Jones (last visited Mar. 25, 2013). All three of Jerry Jones' children work in the front office of the organization. *Id.*

¹⁸⁰ James Paton, *Clock Runs Out for Ex-Broncos Owner*, THE ROCKY MOUNTAIN NEWS, Oct. 2, 2008, available at <http://www.rockymountainnews.com/news/2008/oct/02/ex-broncos-owner-denied-chance-buy-back-team/> (last visited Mar. 25, 2013). The previous owner sued Bowlen when he offered John Elway a 10% share in 2001 for violating the right of first refusal clause in the deal agreement in 1984. *Id.* Bowlen lost at the trial court, but prevailed on appeal. *Id.* Elway now owns 10% of the organization. *Id.*

¹⁸¹ *William Clay Ford, Sr., Owner and Chairman*, THE DETROIT LIONS, TEAM, ADMINISTRATION, <http://www.detroitlions.com/team/staff/william-clay-ford-sr/10a3ab6b-bd2f4967-ab7b-7d0e1916508c> (last visited Mar. 25, 2013).

¹⁸² The Associated Press, *Yikes! Obama Now a Part Owner of the Packers*, THE CHICAGO SUN-TIMES, Aug. 12, 2011, available at <http://www.suntimes.com/news/metro/7036540-418/yikes-obama-now-a-part-owner-of-the-packers.html> (last visited Mar. 25, 2013). President Obama was gifted shares of the organization at the White House reception for the Super Bowl XLV champions. *Id.*

¹⁸³ The Associated Press, *Ex-Oiler Childless Among Texans' Minority Owners*, THE LUBBOCK AVALANCHE-J., July 7, 2001, available at http://lubbockonline.com/stories/070701/pro_070701102.shtml. Bob McNair owns 70% of the franchise with group of minority investors owning the remaining 30%. *Id.*

	Wayne Weaver	Ownership Group	1993 (team's inception) ¹⁸⁵
	Clark Hunt	Ownership Group	2006 (heir of original owner) ¹⁸⁶
	Stephan M. Ross	Ownership Group	2008 ¹⁸⁷
	Zygi Wilf	Ownership Group	2005 ¹⁸⁸
	Robert Kraft	Single Owner	1994 ¹⁸⁹
	Tom Benson	Ownership Group	1985 ¹⁹⁰
	John Mara & Steve Tisch	Ownership Group	2005 (heirs of the original owners) ¹⁹¹
	Robert Wood Johnson IV	Single Owner	2000 ¹⁹²
	Al Davis	Ownership Group	1976 (owner had previous minority share previous to this date) ¹⁹³
	Jeffrey Lurie	Single Owner	1994
	Dan Rooney	Single Owner	1988 (heir of original owner) ¹⁹⁴

¹⁸⁴ *RetroIndy: Jim Irsay, Owner of the Indianapolis Colts, 1997-Jan. 16, 2011*, THE INDIANAPOLIS STAR, available at <http://www.indystar.com/article/99999999/NEWS06/90701052/StarFiles-Jim-Irsay> (last visited Mar. 25, 2013). Irsay's father bought the team when he was 12 years old. *Id.* When his father died in 1997 he had a legal battle with his stepmother for ownership of the franchise. *Id.* He prevailed. *Id.*

¹⁸⁵ Gene Frenette, *Behind the Scenes: Teal Brain Trust, Wayne Weaver Isn't the Only One Who Owns a Piece of the Jaguars*, Oct. 17, 2004, available at http://jacksonville.com/tu-online/stories/101704/jag_16934681.shtml (last visited Mar. 25, 2013). Weaver holds 70% with 8 others holding the remaining 30% of shares. *Id.*

¹⁸⁶ The Associated Press, *Clark Hunt Says He'll Run Chiefs Like His Father Did*, ESPN.COM, Dec. 31, 2006, <http://sports.espn.go.com/nfl/news/story?id=2715831> (last visited Mar. 25, 2013). Clark Hunt is the original owner's son and now represents the Hunt family and its shares. *Id.* He is also chairman of the board. *Id.*

¹⁸⁷ The Associated Press, *Anthony Joins Star-Studded Ownership*, ESPN.COM, July 22, 2009, <http://sports.espn.go.com/nfl/news/story?id=4344721> (last visited Mar. 25, 2013). Ownership group includes a host of celebrities and athletes. *Id.*

¹⁸⁸ Pat Borzi, *Vikings; Owner Makes a Name for Himself*, THE N.Y. TIMES, Aug. 19, 2005, available at <http://www.nytimes.com/2005/08/19/sports/football/19vikings.html> (last visited Mar. 25, 2013). There are 5 other minority owners. *Id.*

¹⁸⁹ *The Patriot Way, The History of the New England Patriots*, THE NEW ENGLAND PATRIOTS, TEAM, HISTORY, <http://www.patriots.com/team/history/full-history.html> (last visited Mar. 25, 2013). Robert Kraft became the sole owner in 1994. *Id.*

¹⁹⁰ Elizabeth R. Mullener, *Rita Benson LeBlanc is Climbing to the Top of the Saints Roster with Hard Work, Not Just Pedigree*, NOLA.COM BY THE TIMES-PICAYUNE, July 26, 2009, available at http://www.nola.com/news/index.ssf/2009/07/rita_benson_leblanc_is_climbin.html (last visited Mar. 25, 2013). The ownership group includes the majority owner's granddaughter. *Id.* She has been named as Tom Benson's (current owner) successor. *Id.*

¹⁹¹ Judy Battista, *Thee Football Families, Linked by Philosophies*, THE N.Y. TIMES, Feb. 4, 2012, available at <http://www.nytimes.com/2012/02/05/sports/football/three-football-families-linked-by-philosophies.html> (last visited Mar. 25, 2013). Mara and Tisch each own 50% of the franchise. *Id.* John is the third generation Mara to own the Giants. *Id.* His grandfather, Tim, founded the Giants. *Id.* Tisch is also an heir of an original owner. *Id.*

¹⁹² Richard Sandomir, *The Jets Fill One Opening: New Owner at \$635 Million*, THE N.Y. TIMES, Jan. 12, 2000, available at <http://www.nytimes.com/2000/01/12/sports/the-jets-fill-one-opening-new-owner-at-635-million.html?ref=leonhess> (last visited Mar. 25, 2013). Robert Wood Johnson IV Outbid Cablevision's Chairman and paid \$635 million for the franchise. *Id.* That is the third highest amount ever paid for a sports franchise and the highest in New York. *Id.*

¹⁹³ Eric Young, *Davis Sells Minority Stake in Raiders for \$150M*, THE SAN FRANCISCO BUSINESS TIMES, Nov. 19, 2007, available at <http://www.bizjournals.com/sanfrancisco/stories/2007/11/19/daily6.html> (last visited Mar. 25, 2013). Davis sold a minority interest in the franchise in 2007, apparently about 20%. *Id.*

	Alex Spanos	Ownership Group	1984 (owner had previous minority share previous to this date) ¹⁹⁵
	Jed York	Single Owner	2009 (owner had previous minority share previous to this date) ¹⁹⁶
	Paul Allen	Single Owner	1997 ¹⁹⁷
	Stan Kroenke	Single Owner	2010 (owner had previous minority share previous to this date) ¹⁹⁸
	Malcolm Glazer	Single Owner	1995 ¹⁹⁹
	Bud Adams	Single Owner	1960 (team's inception) ²⁰⁰
	Dan Snyder	Ownership Group	1999 ²⁰¹

¹⁹⁴ Robert Dvorchak, NFL Approves New Ownership Structure for Steelers, *The Pittsburgh Post-Gazette*, Dec. 18, 2008, available at <http://www.post-gazette.com/stories/local/breaking/nfl-approves-sale-of-steelers-shares-to-dan-rooney-and-son-625778/> (last visited Mar. 25, 2013). In 2008 the Rooney family restructured the organization. *Id.* Each of the five Rooney's own 16% of the franchise. *Id.* The McGinley family owns the remaining 20%. *Id.*

¹⁹⁵ The Associated Press, Chargers Stake off the Market, *ESPN.com*, June 10, 2011, <http://sports.espn.go.com/nfl/news/story?id=6649477> (last visited Mar. 25, 2013). Alex Spanos is the majority owner and at one point pursued a possible sale of a minority stake, up to 36%, of the franchise. *Id.* Spanos may own close to 97% of the franchise; prominent San Diego restaurateur and former Charger, George Pernicano, owns 3%. See Jay Paris, Minority Owner Pernicano is a Link to Bolts' Past, *The North County Times*, Oct. 20, 2005, available at <http://www.utsandiego.com/news/2005/Oct/30/minority-owner-pernicano-is-a-link-to-bolts-past/all/> (last visited Mar. 25, 2013).

¹⁹⁶ The Associated Press, 49ers, Giants Renew Playoff Rivalry for NFC Crown, *Wall St. J.*, Jan. 21, 2012, available at <http://online.wsj.com/article/AP99645fe10e83467390ea74aee7aaf464.html> (last visited Mar. 25, 2013). York is the nephew of former owner Ed DeBartolo. *Id.* See also Sam Farmer, Eddie DeBartolo Keeps a Close Eye on 49ers, From Far Away, *The Los Angeles Times*, Jan. 13, 2012, available at <http://articles.latimes.com/2012/jan/13/sports/la-sp-farmer-nfl-playoffs-20120114> (last visited Mar. 25, 2013).

¹⁹⁷ The Associated Press, Allen Battling Lymphoma, *ESPN.com*, Nov. 17, 2009, <http://sports.espn.go.com/espn/news/story?id=4661907> (last visited Mar. 25, 2013). Allen also owns the Portland Trailblazers. *Id.* NFL rules prohibit team owners from either outright ownership or a majority share of another sports team outside its home market if they play in the same city as another NFL team. See Constitution and Bylaws of the National Football League, Rev. 2006, Art. IV (unpublished) (on file with author). Portland does not have an NFL team.

¹⁹⁸ Benjamin Hochman, Josh Kroenke Building a Legacy on his Own, *The Denver Post*, April 17, 2011, available at http://www.denverpost.com/nuggets/ci_17865859 (last visited Mar. 25, 2013). Kroenke used to own the Denver Nuggets (NBA) and the Colorado Avalanche (NHL). *Id.* He avoided the NFL ownership rule cited in n.197 by transferring the Colorado teams to his son Josh. *Id.*; *supra* note 197.

¹⁹⁹ *Buccaneers Sold to Glazer*, *The N.Y. Times*, Jan. 17, 1995, available at <http://www.nytimes.com/1995/01/17/sports/buccaneers-sold-to-glazer.html?src=pm> (last visited Mar. 25, 2013). Glazer bought the franchise when the previous owner died. *Id.* It was the most ever paid for a sports franchise at the time (in excess of \$185 million). *Id.* He also owns a controlling interest in the Manchester United soccer team. Roundup: League chief plans Glazer meeting, *The N.Y. Times*, May 18, 2005, available at <http://www.nytimes.com/2005/05/17/sports/17iht-world.html> (last visited Mar. 25, 2013).

²⁰⁰ See Jeff Z. Klein, A City's Hockey Identity Distilled Into One Man, *The N.Y. Times*, Dec. 30, 2011, available at <http://www.nytimes.com/2011/12/31/sports/hockey/philadelphias-hockey-identity-boils-down-to-ed-snyder.html?pagewanted=all> (last visited Mar. 25, 2013). Adams is the senior owner in the NFL. *Id.* The Oilers (now Titans) were admitted to the NFL months before Ralph Wilson's Buffalo Bills. History: 1959-1969, The Tennessee Titans, Team, History, <http://www.titansonline.com/team/history/history-1959-1969.html> (last visited Mar. 25, 2013).

²⁰¹ Richard Sandomir, Pro Football; N.F.L. Approves \$800 Million Purchase of Redskins, *The N.Y. Times*, May 26, 1999, available at <http://www.nytimes.com/1999/05/26/sports/pro-football-nfl-approves-800-million-purchase-of->

But the ownership rules in the NFL are more restrictive than in any other major professional sports league. Under the rules, one family must own a total of a 30% share of the team.²⁰² The rules have been relaxed in recent years so that the only 10% of that family share must be owned by a single controlling owner and the remaining 20% must be owned by other family members.²⁰³ In order to take advantage of the relaxed rules, families are required to have a succession plan in place.²⁰⁴ This “relaxation[] recognizes both the increased value of the franchises and the increasing age and family divisions among the original owners.”²⁰⁵ Even with this relaxation, the NFL still maintains an interest in fostering family ownership of franchises, and in preventing syndicates from joining the ranks of owners. Arguably, it is in the interest of the League to have a single voice representing each team,²⁰⁶ and a single deep pocket in place if the team requires financial assistance.²⁰⁷

The Packers model has prohibited the franchise from being sold or relocated to a more lucrative market. Under the contractual agreements requiring profit-sharing among teams from

redskins.html (last visited Mar. 25, 2013). Synder bought the team in 1999 when the previous owner died. *Id.* The ownership group includes Fred Drasner, Mort Zuckerman. *Id.*

²⁰² 2004 Resolution FC-1A to the National Football League Constitution, reprinted in the Constitution and Bylaws of the National Football League in Art. III § 3.2(B)(3) (“rules governing aggregation of a Principal Owner’s ownership interest with those of immediate family members for the purposes of determining whether such Principal Owner holds at least a 30% beneficial interest.”) (unpublished) (on file with author). *Id.*

²⁰³ Daniel Kaplan, *NFL Pares Ownership Rule*, STREET & SMITH’S SPORTS BUSINESS JOURNAL, Oct. 26, 2009, <http://www.sportsbusinessdaily.com/Journal/Issues/2009/10/20091026/This-Weeks-News/NFL-Pares-Ownership-Rule.aspx> (last visited Mar. 25, 2013). Previously, 30% of a team had to be owned by the controlling member. *Id.* “The league revised the rule in 2004 to allow the lead owner, or general partner, to own as little as 20 percent of the team, but with his or her family needing to own at least another 10 percent, such that the total family ownership would be at 30 percent.” *Id.* Presently, however, a lead owner must only control a mere 10%. *Id.*

²⁰⁴ *Id.*

²⁰⁵ *Id.*

²⁰⁶ *See id.* Would a single owner have helped the Packers to challenge the highly questionable call made by substitute referees during the strike during the game against the Seattle Seahawks? Many fans have asked this very question.

²⁰⁷ *Id.* But see Brian Solomon, *Baseball Bandit: Frank McCourt Escapes Dodgers with \$860 Million Profit*, FORBES.COM, Mar. 28, 2012, <http://www.forbes.com/sites/briansolomon/2012/03/28/baseball-bandit-frank-mccourt-escapes-dodgers-with-860-million-profit/> (last visited Mar. 25, 2013). The divorce of Frank McCourt, the former owner of the Los Angeles Dodgers, resulted in the team being temporarily owned by Major League Baseball when Mr. McCourt declared the team bankrupt during his divorce proceeding. *See id.*

profitable broadcasting contracts and gate receipts, the Packers contribute little. The structure is nothing but a thorn in the side of the NFL, one its ownership percentage requirements are not likely to permit in the future. Moreover, the existing NFL rules expressly prohibit ownership by a not-for-profit, religious or governmental organization.²⁰⁸ The NFL has virtually guaranteed that we will not see another community-owned professional team.

Other major professional sports leagues provide similar prohibitions against community or not-for-profit ownership, even if they are not as strict as the NFL. As a result, there is no other professional sports team in the United States that utilizes the Packers model. It is used on a small scale in several other countries, however. Three Canadian Football League teams²⁰⁹ are owned this way: in Edmonton, Saskatchewan and Winnipeg. Several European soccer clubs are reported to operate on a similar model.²¹⁰ At least one minor baseball league – Wisconsin's own Timber Rattler's—has a not-for-profit stock ownership structure identical to the Packers.²¹¹

This mandated limited ownership structure puts professional sports franchises, something akin to a public trust, in the hands of single families. Yet, these same families often seek public funds to support their private ventures in the form of financial incentives,²¹² and funds to build or

²⁰⁸ Constitution and Bylaws of the National Football League, Rev. 2006, Art. III § 3.2(A) (unpublished) (on file with author). *Id.*

²⁰⁹ See, e.g., The Edmonton Eskimos, Saskatchewan Roughriders, and The Winnipeg Blue Bombers (providing examples of publicly owned football teams). Terry Jones, *Edmonton Eskimos President and CEO Len Rhodes Opens Up in Exclusive Terry Jones Interview*, EDMONTON SUN, Nov. 23, 2012, available at <http://www.edmontonsun.com/2012/11/24/edmonton-eskimos-president-and-ceo-len-rhodes-opens-up-in-exclusive-terry-jones-interview> (last visited Mar. 25, 2013); Reuters, *Roughriders Get Chance to Amend Grey Cup Gaffe*, FOXNEWS.COM, Nov. 26, 2010, <http://www.foxnews.com/sports/2010/11/26/saskatchewan-roughriders-chance-amend-grey-cup-gaffe/> (last visited Mar. 25, 2013); Don Marks, *Community-Owned Works, Cal Proved*, THE WINNIPEG SUN, Feb. 19, 2012, available at <http://www.winnipegsun.com/2012/02/19/community-owned-works-cal-proved> (last visited Mar. 25, 2013).

²¹⁰ See Brian R. Cheffins, *Playing the Stock Market: "Going Public" and Professional Team Sports*, 24 J. CORP. L. 641, 643–46 (1999).

²¹¹ Vic Gold, *A Look At The Four Redskins Owners*, WASHINGTONIAN MAGAZINE, Nov. 1, 2007, available at <http://www.washingtonian.com/articles/people/a-look-at-the-four-redskins-owners/> (last visited Mar. 25, 2013).

²¹² See, e.g., Michael Buteau, *New Falcons Football Stadium Plans Approved by Atlanta Authority*, BLOOMBERG, Dec. 10, 2012, available at <http://www.bloomberg.com/news/2012-12-10/new-falcons-football-stadium-plans->

renovate arenas or stadiums.²¹³ Essential community assets which, as owners often preach to legislatures and fans, bring so much coincidental benefit to surrounding businesses and serve an important public relations function for cities like Cleveland and Detroit, are in the control of the very, very few. While these strict ownership rules may have made sense in the formative years of professional sports, are they really necessary in light of the significant economic changes in a globalized sports market?

Granted, the NFL's restriction on public ownership has survived challenges on anti-trust grounds.²¹⁴ But many of the harms cited by the NFL in objecting to forms of public ownership – splintered team control, commercialization of the sport, or unfair competitive advantage²¹⁵ – have either already happened, as in the case of commercialization, are addressed by existing means, as the unfair competitive advantage is addressed by the salary cap and revenue sharing, or can be accomplished by other means, as the Packers model suggests with team control.

So is there a place for the Packers model in today's NFL? Modifying existing NFL rules to embrace the Packers model created with such foresight many years ago would permit the reemergence of the concept of “town teams,” albeit on a much larger scale. It would eliminate

approved-by-atlanta-authority.html (last visited Mar. 25, 2013) (detailing how the City of Atlanta will pay for about \$300 million of the Atlanta Falcons new football stadium).

²¹³ But see, *The Rosemont Cubs*, THE CHICAGO TRIBUNE, Mar. 20, 2013, available at http://articles.chicagotribune.com/2013-03-20/news/ct-edit-wrigley-20130320_1_rooftop-owners-chicago-cubs-rosemont-mayor-brad-stephens (last visited Mar. 25, 2013) (noting that the Cubs' owners, the Ricketts family, is not seeking public funds for any of the \$500 million cost to renovate its stadium. However, the City of Chicago is blocking the team's efforts).

²¹⁴ *Sullivan v. NFL*, 34 F.3d 1091 (1st Cir. 1994). Former New England Patriots owner, William H. Sullivan, sued the NFL on antitrust grounds for restricting team owners from selling shares of the member organizations to the public. *Id.* at 1095. Sullivan hoped to sell 49% of the Patriots in an effort to raise capital for a financially struggling team. *Id.* Due to the NFL's restriction on a public stock offering, Sullivan was forced to sell the team, which caused great instability for the club for six years. *Id.* In 1988, Sullivan sold the team to Victor Kiam, who resold the team four years later to James Orthwein. *See id.* at 1096. Just two years later, in 1994, Orthwein sold the Patriots to the current owner, Robert Kraft. *See Robert Kraft, Chairman and CEO, THE NEW ENGLAND PATRIOTS, TEAM, FRONT OFFICE*, <http://www.patriots.com/team/staff/robert-kraft/e4af13f7-fe19-430c-9485-e3fe17042ca6> (last visited Mar. 25, 2013); *see also* Lynn Reynolds Hartel, *Community-Based Ownership of a National Football League Franchise: The Answer to Relocation and Taxpayer Financing of NFL Teams*, 18 LOY. L.A. ENT. L.J. 589 (1998).

²¹⁵ Hartel, *supra* note 214, at 612.

franchise hopping from city to city and financial blackmail by owners who threaten to leave a community without a beloved franchise if its demands for a stadium or tax benefits are not met.²¹⁶ It would not only allow for, but also encourage, a community's investment in a community asset, and there is green and gold evidence that this model can succeed.

Community Ownership Today

As a pragmatist, though, I will not hold my breath in ardent hope for change in the NFL any time soon when there is so very much money at stake and such an entrenched structure. But if the Timber Rattler's can do it, then why can't other minor league clubs in other sports? Or in less "developed" sports that are still finding a foothold or still creating "professional" models? Soccer springs to mind, followed by volleyball and lacrosse. And women's leagues in more traditional sports like basketball that are still developing an audience. It seems that these types of organizations would be a perfect breeding ground for a community buy in – both literally and figuratively. It is unlikely that such strict "ownership" regulation is in place to prevent it, and equally likely that any form of community-based financing would be welcome. The same types of communities that welcomed "town teams" in the early days of football as a means of inviting community entertainment and involvement would seem to be a perfect petri dish for this model.

Perhaps, though, there is an even more useful place for the adoption of this model – a broader stage for the not-for-profit publicly held corporate concept outside the field of professional sports. In a 1995 report for the Wisconsin Policy Research Institute,²¹⁷ Dr. Daniel

²¹⁶ See generally, *id.* (regarding additional discussion on how and why the Packers model could be employed).

²¹⁷ WISCONSIN PUBLIC POLICY RESEARCH INSTITUTE REPORT, THE GREEN BAY PACKERS: AMERICA'S ONLY NOT-FOR-PROFIT MAJOR-LEAGUE SPORTS FRANCHISE, Nov. 1995 Vol. 8, No. 9. Dr. Alesch suggested that the model would be particularly useful for creating or enhancing assets that would have the opportunity to be self-supporting. *Id.* It might also be used to preserve a natural amenity from destruction or development. *Id.* He specifically mentioned Sturbridge Village in Massachusetts and Mystic Seaport in Connecticut as two candidates for this type of ownership. *Id.*

Alesch examined the many benefits the Packers brought to the Green Bay community. Upon doing so, he suggested that the same not-for-profit publicly held corporate structure could just as easily be applied to community assets in other educational and recreational realms.²¹⁸ Anyone who has ever listened to a membership pledge drive for public radio can easily see why having a community invested in a project can lead to a positive result in terms of investment. Anyone who has ever run a not-for-profit corporation can tell you that relief from having to report and pay earnings and dividends can allow important community assets to function.

One concern that community assets like a museum or an orchestra might face is that the purchase of stock in the corporation is just that- a purchase. As a result, there is no tax deduction for a "donation" to a charitable entity for the stock purchase price. In exchange, though, "owners" have a vested interest in the asset and, as a stockholder, a voice in the management of the asset. The trade off of a tax deduction for participation in management may not be desirable in every instance. An investor/donor may be more interested in one than the other. The Packers notwithstanding, it seems likely that an established and beloved community asset in a smaller city or town may be the most likely candidate to follow the community ownership model.

While laws vary by state, most require that a not-for-profit serve a particular public²¹⁹ or mutual²²⁰ benefit. Formalities and fiduciary standards may be similar to for-profit corporations, but not-for-profits rarely issue stock because their assets may not inure to the benefit of a private individual, nor may they be distributed to an individual upon dissolution.²²¹ The Packers are able to offer stock even though organized as a not-for-profit because they are scrupulously

²¹⁸ *Id.*

²¹⁹ *See e.g.*, Wis. Stat. Ann. § 181.0302(15) (West 2013). Typically a charitable purpose. *Id.*

²²⁰ *See id.*

²²¹ 26 C.F.R. § 150(c)3-1(c)(2).

careful about identifying the fact that the stock has no monetary value,²²² both in stock offering documents and on the face of the stock certificates themselves²²³. The trading restrictions²²⁴ help to ensure that they are not traded for financial gain in violation of the not-for-profit restrictions.

The unique corporate structure of the Green Bay Packers has allowed the team to survive and eventually flourish into an essential part of the city's history and its economy. The structure can serve as a model to other communities seeking to protect their own unique assets at a time when municipal government budgets can no longer be counted on, and large private donors have become increasingly scarce.

CONCLUSION

Gerald Clifford was a pioneer in the field we now refer to as sports law. He used his legal talent, his commitment to the people of Green Bay and his love for the Packers to help build an enduring, if quiet legacy. His understanding of the law helped to keep the Packers in Green Bay against all odds. His community leadership helped to organize the support the team needed to persevere. His willingness to advocate on behalf of the team, and to devote his services to a cause in which he so strongly believed, serves as a model for all lawyers, be they Packers fans or not.

The community ownership structure he advocated saved the Green Bay Packers and presents the potential to preserve community assets both in and outside of the athletic environment. Clifford's career demonstrates that, through skill, knowledge, creativity and passion, an attorney's work can impact a team, a town and a sport for decades to come.

²²² See Hartel, *supra* note 214, at 593–95.

²²³ See, e.g., TORINUS, *supra* note 40, at 19, 70; GREEN BAY PACKERS, SHAREHOLDER HISTORY, at 538–39, available at <http://prod.static.packers.clubs.nfl.com/assets/docs/2012shareholder-history.pdf> (last visited Mar. 25, 2013).

²²⁴ See GREEN BAY PACKERS, SHAREHOLDER HISTORY, at 539, available at <http://prod.static.packers.clubs.nfl.com/assets/docs/2012shareholder-history.pdf> (last visited Mar. 25, 2013).