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FROM THE SIDELINES TO THE COUCH:
A LOOK INTO THE IMPACT PROFESSIONAL SPORTS TEAM
RELOCATIONS HAVE ON SEASON TICKET HOLDERS
AND PSL OWNERS

“The goal wasn’t to stick it to fans. The goal was to keep politicians and sports team owners from sticking it to fans.”¹

I. INTRODUCTION: MEET GOLIATH; OVERVIEW OF NFL ECONOMICS

The National Football League (NFL) is considered a trade association, which is financed by its participating thirty-two teams.² To the advantage of all involved, television deals and fan attendance generate NFL revenue of over \$7 billion per year.³ If the NFL were a country, it would be one of the richest countries in the world.⁴ If the NFL were a private company, it would likely rank in America’s top fifty.⁵ Total revenue is split amongst each of the NFL franchises.⁶

1. Jemele Hill, *Personal Seat Licenses; Rising Ticket Prices Spell Doom*, ESPN (Aug. 4, 2008, 3:49 PM), <http://www.espn.com/espn/page2/story?page=hill/080801&sportCat=nfl> [<https://perma.cc/5LCC-MEQG>] (explaining concept of personal seat licenses (“PSLs”)).

2. See Duff Wilson, *N.F.L. Executives Hope to Keep Salaries Secret*, N.Y. TIMES (Aug. 11, 2008), <http://www.nytimes.com/2008/08/12/sports/football/12nfltax.html> [<https://perma.cc/U6JE-E7SG>] (explaining NFL’s argument that it is trade association and not charity).

3. See James Brady, *The NFL Brought in Enough to Pay for 10 Pluto Missions*, SBNATION (July 20, 2015), <http://www.sbnation.com/nfl/2015/7/20/9006401/nfl-teams-revenue-tv-deal-7-billion> [<https://perma.cc/GF3T-NKQT>] (discussing relevant impact of television deals on NFL). In 2011, the NFL extended its broadcast television packages by nine years with Fox, NBC, and CBS through the 2022 season. See also Kurt Badenhausen, *The NFL Signs TV Deals Worth \$27 Billion*, FORBES (Dec. 14, 2011), <https://www.forbes.com/sites/kurtbadenhausen/2011/12/14/the-nfl-signs-tv-deals-worth-26-billion/#6c33f22822b4> [<https://perma.cc/S2Q8-YLNF>]. These three networks, individually, pay approximately \$3 billion a year for the right to broadcast NFL games. *Id.* Each network is awarded three Super Bowls throughout the nine-year contract. *Id.* The NFL also has deals with NFL Network and DirectTV, each for \$1 billion. *Id.*

4. See Brady, *supra* note 3 (“[m]ore comparisons to help put \$7.24 billion in context: [m]ore than every Steven Spielberg movie ever at the box office”).

5. See *id.* (describing how massive NFL’s revenues are); see also *America’s Largest Private Companies*, FORBES (Jan. 21, 2017), <http://www.forbes.com/largest-private-companies/list/#tab:rank> [<https://perma.cc/NCV5-WAXE>] (ranking and listing data for America’s largest companies).

6. See Brady, *supra* note 3 (making comparisons and putting in perspective amount of money NFL earns in revenue).

According to FORBES, NFL teams make more than \$200 million annually *before* kickoff each season.⁷ Thanks to the league's current labor agreement and media deals, "NFL teams are worth \$1.04 billion on average or twice as much as the average MLB team and three times what NBA teams command."⁸ Last year's Super Bowl aired in 70% of households across America, reached an estimated 172-million-person audience, and ranked as the fifth most-watched television program in history.⁹ In other words, it pays to be a member of the league.¹⁰

One of the economic factors that allows the NFL to bring in such a large amount of revenue is the location of its teams.¹¹ Due to the "national nature of the product, live games being played throughout the country," geographic diversity is very important.¹² Ideally, it would be most profitable to have franchises mapped out throughout the country corresponding to where population bases are the largest.¹³

For example, it is not ideal that Los Angeles (hereinafter "L.A.") football fans will be forced to choose between rooting for either the Rams or the Chargers, their two hometown teams.¹⁴ Local individuals and communities that choose to support one organization will do so at the expense of showing a lack of support for the other.¹⁵ In the words of one sports consultant, "L.A. isn't a risky

7. See Badenhausen, *supra* note 3 ("That is more than \$200 million per team every year before one ticket, beer or jersey is sold.").

8. *Id.*; see also Kurt Badenhausen, *The NFL's Most Valuable Teams*, FORBES (Sept. 7, 2011), <https://www.forbes.com/sites/kurtbadenhausen/2011/09/07/the-nfls-most-valuable-teams/#3a8f54af3bdf> [<https://perma.cc/H5QG-5SBG>] (discussing worth of NFL teams in 2011).

9. See A.J. Perez, *Super Bowl LI Viewership Ranks Among Top Five*, USA TODAY (Feb. 6, 2017), <https://www.usatoday.com/story/sports/nfl/2017/02/06/super-bowl-li-falcons-patriots-tv-rating-fox/97546162/> [<https://perma.cc/EL9D-D4E6>] ("The New England Patriots' historic comeback victory over the Atlanta Falcons—with a major assist from Lady Gaga at halftime—delivered Fox one of the top-five most-watched Super Bowls with a viewership of 11.3 million.").

10. See *supra* notes 3–9 (recognizing multi-billion-dollar industry's earning capacity).

11. See *infra* notes 12–21 and accompanying text (discussing economic motivations of location of NFL teams).

12. See Franklin M. Fisher et al., *The Economics of Sports Leagues and the Relocation of Teams: The Case of the St. Louis Rams*, 10 MARQ. SPORTS L.J. 193, 206–07 (2000) (articulating NFL's interest in location of its teams).

13. See *id.* at 207 ("If all of the teams were to move to the Northeast, for example, fans outside the region would eventually lose interest.").

14. See *infra* notes 15–18 and accompanying text (questioning L.A.'s ability to support both Rams and Chargers).

15. See Nathan Fenno, *Can L.A. Support Two Teams? It's a Challenge*, L.A. TIMES (July 10, 2017), <http://www.latimes.com/sports/nfl/la-sp-la-two-nfl-teams->

market But it becomes a risky market when you add a second team.”¹⁶ The Rams and Chargers will need to fight for a piece of the pie that is revenue.¹⁷ Both organizations will have to share the professional football market, while also competing for attention with “professional baseball, basketball, hockey and soccer teams—in addition to USC and UCLA”¹⁸

In addition to geographic diversity, franchise stability and fan loyalty add a great deal of value to the NFL.¹⁹ Over the years, NFL teams and the cities in which they are based take on and share certain identities.²⁰ With time, rivalries between teams (and fans) develop, which is similarly important to franchise stability and benefit the league as a whole.²¹

It is for these reasons that the NFL as a trade association, the league’s thirty-two teams, and the cities, states, and local businesses that support them benefit from stable, long-term franchises.²² However, when a single franchise’s fan support decreases to an extent that economically frustrates its revenue, the owner’s interests begin to no longer align with the rest of the league.²³ Owners of NFL franchises desire relocation when, put simply, “citizens of one city will pay more for that franchise than the citizens in the incumbent city.”²⁴

20170114-story.html [https://perma.cc/KZ6F-ZBJB] (“The issue is attention, not population or money.”).

16. *Id.* (quoting Victor Matheson, sports economist at College of Holy Cross).

17. *See id.* (“Frankly, I have meaningful doubts about L.A. supporting two teams with sellouts unless both become very successful on the field.”).

18. *Id.* (recognizing plethora of sports teams, both professional and scholastic, that compete for fans in L.A. area).

19. *See* Fisher et al., *supra* note 12, at 206–07 (“In generating and maintaining fan interest, the NFL also is necessarily committed to franchise stability and the fan loyalty that franchise stability encourages and rewards.”).

20. *See id.* at 207–08 (taking note of fact that, for example, Pittsburgh Steelers’ team name is based off its steel industry, San Francisco 49ers’ team name is based off 1849 gold rush, New England Patriots’ team name is based off patriotism, and Green Bay Packers’ team name is based off its meat packing industry).

21. *See id.* at 208 (understanding how rivalries benefit entire league and destroying rivalries hurts league).

22. *See supra* notes 11–21 and accompanying text (describing how NFL’s national product leads to revenue for league members).

23. *See* Fisher et al., *supra* note 12, at 208 (explaining externalities and free-riding in team relocation).

24. *Id.* at 210 (“[A] team considering relocating from City A to City B will be interested in the relative extent of fan interest in the two cities, the related question of the relative support it can expect from public authorities and private businesses, and, of course, in the relative terms on which it can acquire of lease stadium facilities.”).

However, the NFL and its owners *should* more fully consider the effect relocations have on the fans who have long supported their franchises *in tandem* with the relevant economics of its billion-dollar product.²⁵ If owners choose to think of their teams' fans only as consumers, and attempt to grow fan support synonymously with growing an ordinary business, there will be a serious lack of loyalty in the future if the franchise looks to relocate once again.²⁶ In an era full of technology that allows fans to choose which team to watch and support each week—through television packages, internet, and smartphone applications—loyalty is exceptionally relevant to continued market success.²⁷ Franchises that have succeeded in cultivating such undying loyalty are the ones that have sustained the largest amount of revenue for their teams and cities over the years.²⁸

Part II of this Article offers background into the economic motives, from both the perspective of the NFL and its owners, which foster team relocation.²⁹ Specifically, Part II(A) discusses the significance of aging and decrepit stadiums as well as the types of financing, or lack thereof, which contribute to team relocations and gave rise to the idea of Personal Seat Licenses (“PSLs”).³⁰ Part II(B) focuses on defining PSLs and offers several viewpoints regarding whether their institution is an effective, fair way for team owners to raise necessary capital.³¹ Subsequently, Part II(C) examines two different approaches courts have taken when forced to define the le-

25. See *infra* notes 26–28 and accompanying text (discussing importance of fan loyalty).

26. See *Which Team Should Los Angeles NFL Fans Root For?*, USA TODAY (Jan. 12, 2017), <http://ftw.usatoday.com/2017/01/chargers-rams-los-angeles-fans> [<https://perma.cc/5G64-MPQ5>] (“Loyalty won’t mean much when another city beckons in 10 years, and this whole dance is repeated.”).

27. See *id.* (noting that today geography has less to do with for whom teams’ fans choose to root). See also *infra* notes 39–82 and accompanying text (recognizing that often times teams forced to locate do so multiple times due to continued hardships).

28. See Brett Schrottenboer, *Winners and Losers of All the NFL Relocation*, USA TODAY (Mar. 28, 2017), <https://www.usatoday.com/story/sports/nfl/2017/03/28/las-vegas-raiders-relocation-los-angeles-rams-chargers/99721134/> [<https://perma.cc/LH2K-45AJ>] (“In the long run, it’s also not good for any business to turn its back on customers who supported it for decades.”).

29. See *infra* notes 34–90 and accompanying text (reasoning, throughout history of NFL, why owners have chosen to relocate their franchises).

30. See *infra* notes 34–90 and accompanying text (explaining how stadiums force owners to relocate).

31. See *infra* notes 98–118 and accompanying text (defining and sharing multiple views on right to renew season ticket packages).

gal interests associated with these licenses.³² Throughout Part III, this Article reasons that in an era where it is commonplace for professional sports teams to relocate—and fans have both financial and passionate interests in their teams—courts should favor the approach that recognizes a legitimate legal *expectancy interest* in season ticket packages and award damages in an attempt to deter such relocations.³³ Finally, Part IV summarizes these arguments and further advocates for judicial protection of PSL owners in the future.³⁴

II. BACKGROUND

A. Past Wins and Losses . . . and the NFL's Interference

Recall the NFL's precompetitive economic interest in having its teams spread out evenly across the country.³⁵ As with all professional sports leagues (or any league, for that matter), profits are maximized when each franchise has its own regional market full of its own avid fan base that inevitably contributes money, in one way or another, by supporting its team.³⁶ By way of illustration, “[i]f all of the teams were to move to the Northeast . . . fans outside that region would eventually lose interest.”³⁷ Tremendously, under that scenario, the league's billion-dollar television contracts and other shared streams of revenue would decrease significantly.³⁸

Conflict arises when one team—maybe after many consecutive losing seasons—is not making as much money as its league counterparts.³⁹ This leaves frustrated owners unsatisfied, which may lead to a decision to try and bring their team to a different, oftentimes

32. See *infra* notes 119–183 and accompanying text (comparing and contrasting idea of recognizing contractual or expectancy interests in right to renew season tickets).

33. See *infra* notes 184–276 and accompanying text (surveying decisions set forth from jurisdictions across country and diving deep into legal policy considerations inherent with courts finding expectancy interests in season tickets and PSLs).

34. See *infra* notes 277–286 and accompanying text.

35. See *supra* notes 11–18 and accompanying text (discussing importance of geographic diversity on national product as whole); *infra* notes 36–38 and accompanying text.

36. See Fisher et al., *supra* note 12, at 206–07 (explaining macroeconomics of how NFL profits).

37. See *id.* at 207 (providing example of why profits are maximized when teams have their own market).

38. See *id.* (“If NFL franchises were concentrated only in particular regions of the country, national networks would be far less interested in telecasting NFL games.”).

39. See *supra* note 24 and accompanying text (reasoning when and why team owners desire relocation).

larger, city market.⁴⁰ However, for the reasons described above, team relocations greatly frustrate the rest of the league and the city from which the team departs.⁴¹

A prime illustration of this type of economic conflict arose in 1978 when the NFL tried to prevent the Oakland Raiders from relocating to L.A.⁴² Importantly, Rule 4.3 of the NFL constitution required three-quarters of the league's teams to agree to an individual member's relocation.⁴³ When this rule was initially challenged in federal court, the "NFL argue[d] that territorial allocations are *inherent* in an agreement between joint ventures to produce a product."⁴⁴ The league contended that certain "[t]erritories foster fan loyalty which in turn promotes traditional rivalries between teams, each contributing to attendance at games and television viewing" throughout the country.⁴⁵

Disagreeing with the NFL, the Ninth Circuit proclaimed the rule did not protect the twenty-eight teams' owners who made up the trade association at the time.⁴⁶ The voting requirement did not discuss any standard, duration limit, or other factors besides fan loyalty and team rivalries.⁴⁷ Therefore, the court concluded that the NFL failed to meet its burden of proving that the Raiders' relocation to L.A. would harm the league in any significant way.⁴⁸ Follow-

40. See Fisher et al., *supra* note 12, at 206–07 (“When a team considers moving from A to B, it will not fully take into account the effect such a move has on the geographic diversity of the League.”).

41. See *supra* notes 35–38 and accompanying text (describing impact of relocations on fans, rivalries, cities, businesses, and most importantly, television deals).

42. See *supra* note 23 and accompanying text; see also L.A. Mem'l Coliseum Comm'n v. Nat'l Football League, 726 F.2d 1381 (9th Cir. 1984) (holding (1) NFL was not “single entity” for purposes of anti trust law; (2) evidence supported jury's determination that rule requiring three-fourth of members of teams to approve team move to new city was unreasonable restraint of trade).

43. See L.A. Mem'l Coliseum Comm'n, 726 F.2d at 1395 (discussing history and purpose of Rule 4.3 of Article IV of NFL constitution); NFL CONST. & BYLAWS art. IV, § 4.3 (1978).

44. See L.A. Mem'l Coliseum Comm'n, 726 F.2d at 1390 (emphasis in original) (stating “NFL's argument that Rule 4.3 is valid as a restraint ancillary to joint venture agreement”).

45. *Id.* at 1396; see also *supra* notes 11–21 and accompanying text (describing economics of NFL's national product).

46. See Sherman Antitrust Act, 15 U.S.C. § 1 (outlawing formation of “conspiracy[] in restraint of trade or commerce”). See *infra* notes 47–49 and accompanying text and related materials (summarizing Ninth Circuit's decision).

47. L.A. Mem'l Coliseum Comm'n, 726 F.2d at 1396 (recognizing rule protects owners' interests in their team but does not make sure concern is satisfied).

48. See *id.* at 1397 (“Los Angeles is a market large enough for the successful operation of two teams, there would be no scheduling difficulties, facilities at the L.A. Coliseum are more than adequate, and no loss of future television revenue was foreseen. Also, the NFL offered no evidence that its interest in maintaining re-

ing this decision, NFL commissioner, Pete Rozelle, established a list of factors “that owners should consider in deciding how to vote on a move.”⁴⁹ Interestingly, no new rules addressed the imposition or computation of the NFL’s relocation fee.⁵⁰

Following the lawsuit, Al Davis relocated his Raiders from Oakland to L.A. in 1982.⁵¹ However, after obtaining a “sweetheart stadium deal” to play in the Oakland-Alameda County Coliseum (“OACC”), his franchise returned to Oakland in 1995.⁵² One sports writer bluntly explained the economic impact on the rest of the league:

Just like that, the NFL found itself without representation in the second-largest U.S. media market, the entertainment capital of the world. It seemed Davis, whose successful antitrust suit against the NFL cleared the way for him to move to Los Angeles and cost the league \$50 million in the early 1980s, had once again left the NFL with a black eye.⁵³

A significant part of Davis’ decision was due to stadium financing, a factor that continues to be at the forefront of professional sports team relocations, and will be discussed in detail in Parts II(B) and III.⁵⁴ In short, however, the 1994 Northridge earthquake damaged the Los Angeles Memorial Coliseum (“L.A. Coliseum”) and the OACC provided Davis a \$31.9 million relocation loan, \$10 mil-

gional balance would be adversely affected by a move of a northern California Team to southern California.”).

49. *St. Louis Convention & Visitors Comm’n v. Nat’l Football League*, 154 F.3d 851, 855 n.4 (8th Cir. 1998) (deciding proper factors to be considered include adequacy of team’s current stadium, extent of demonstrated fan support, and extent owner has contributed to need for relocation).

50. *See id.* (“No guidelines have been promulgated on the imposition or computation of a relocation fee.”).

51. *See* Alex Marvez, *The Long Goodbye: 11 Most Painful NFL Relocations*, FOX SPORTS (Oct. 20, 2016), <http://www.foxsports.com/nfl/gallery/san-diego-chargers-st-louis-rams-oakland-raiders-los-angeles-nfl-teams-different-cities-122115> [<https://perma.cc/J2H2-X6ZH>] (discussing history of Rams).

52. *Id.* (“Davis then returned to the Bay Area after being given a sweetheart stadium deal by Alameda County officials.”).

53. *See* Austin Murphy & Michael Silver, *Just Move, Baby Al Davis Leaves L.A. to Return His Raiders to Oakland and, He Hopes, to Glory*, SPORTS ILLUSTRATED (July 3, 1995), <https://www.si.com/vault/1995/07/03/204434/just-move-baby-al-davis-left-la-to-return-his-raiders-to-oakland-and-he-hopes-to-glory> [<https://perma.cc/2G4X-3W2A>] (noting financial support and structural upgrade Davis received by returning to Oakland). Concededly, some members of the NFL family did indeed think the move back to Oakland was good for the NFL overall. *Id.*

54. *See id.* (discussing stadium financing); *see also infra* notes 98–118 & 184–276 (discussing at length season ticket contracts and personal seat licenses).

lion for a training facility, and \$85 million to renovate the stadium to return to Oakland.⁵⁵ After renovations, the OACC increased its number of luxury boxes to 175 (from which the Raiders retained 100% of the boxes' revenue); contrastingly, there were zero luxury boxes at the L.A. Coliseum.⁵⁶

Notwithstanding the excitement in the mid-1990s, Mark Davis, Al Davis' son, finalized plans on March 27, 2017, to bring NFL football to Las Vegas for the first time.⁵⁷ NFL owners approved the Raiders' eventual move from Oakland to the strip per a 31-1 vote.⁵⁸ Las Vegas provided public funds totaling \$750 million while Bank of America provided Mark Davis with a \$650 million loan.⁵⁹ The move marks the third NFL relocation current team owners approved over the course of a little over a year; however, unlike the Rams and Chargers, the Raiders will remain in Oakland until their new Las Vegas home is constructed.⁶⁰ It will be interesting to observe the dynamic between the team and the City of Oakland during the interim.⁶¹

If the past is any indication, however, relocations have shown to be quite painful for the city from which the team departed.⁶² For similar reasons that forced the Raiders to relocate multiple times—an inability to secure sufficient stadium funding—in 1996, Cleveland Browns owner, Art Modell, took his team to Baltimore.⁶³

55. See Murphy & Silver, *supra* note 53 (reasoning why Raiders moved back across town).

56. See *id.* (financing came from bond issues and from fans paying to \$4,000 apiece for ten-year “seat licenses”).

57. See Rich Campbell, *NFL Owners Approve Raiders' Move from Oakland to Las Vegas*, CHI. TRIB. (Mar. 27, 2017, 7:33 PM), <http://www.chicagotribune.com/sports/football/ct-raiders-move-to-las-vegas-approved-20170327-story.html> [<https://perma.cc/L9JR-XBHD>] (recognizing recent decisions of Rams, Chargers, and Raiders to relocate in past year or so).

58. See *id.* (“[O]wners approved the move Monday, as expected, by a vote of 31-1 with only the Dolphins dissenting.”).

59. See *id.* (reporting deal). In finalizing its deal to move to Las Vegas, the Raiders rejected a \$1.3 billion deal from the City of Oakland. See Mike Florio, *Oakland Touts Last-Ditch Effort as Better than Vegas Offer*, NBC SPORTS (Mar. 24, 2017, 7:24 PM), <http://profootballtalk.nbcsports.com/2017/03/24/oakland-touts-last-ditch-effort-as-better-than-vegas-offer/> [<https://perma.cc/2T9K-YAHR>] (reporting offer made by city of Oakland to keep Raider in Oakland).

60. See Campbell, *supra* note 57 (“But the team won’t be moving for the 2017 season and maybe not for two years after that, creating a potentially awkward and negative dynamic between the team and many fans.”).

61. See *supra* notes 19–24 and accompanying text (discussing impact of relocations on fans that share identity with their cities’ teams).

62. See *infra* notes 63–77 and accompanying text (discussing Browns’ relocation from Cleveland to Baltimore).

63. See Marvez, *supra* note 51 (reflecting on NFL relocations throughout century).

The franchise succeeded under its new guise as the Baltimore Ravens; however, negotiations with the league forced Modell to allow new ownership in Cleveland to keep the Browns' name, and the economics involved (or lack thereof) are still contributing to the franchise's ongoing failure.⁶⁴ Since the team was revamped in 1999, the franchise has had only two winning seasons and has yet to win a playoff game.⁶⁵ Any fan that enjoys playing "fantasy football" would be quick to crack a joke about the franchise's quarterback situation over the last decade.⁶⁶

The Browns' relocation in 1996 illuminates the effects team relocations have on rivalries.⁶⁷ Until Modell chose to relocate in 1996, the Steelers and Browns epitomized the type of revenue-producing rivalry that benefited the sport.⁶⁸ Close in proximity, each franchise's passionate working-class fan base took on their respective city's identity.⁶⁹ Nowadays, while the rivalry between the Baltimore Ravens and Pittsburgh Steelers is flourishing, Cleveland's "Dawg Pound" watches its Browns get "banged up" every Football Sunday.⁷⁰

Other examples of relocations brought on by economically-frustrated times include the now-Arizona Cardinals, despite the fact

64. See *id.* (explaining how "new" Cleveland Browns are one of least successful professional sports teams and have not won playoff game since team was revamped by new ownership in 1999).

65. See Mike Wilkening, *Twenty Years Ago Thursday, the Browns Last Won a Playoff Game*, NBC SPORTS (Jan. 1, 2015, 10:08 PM), <http://profootballtalk.nbcsports.com/2015/01/01/twenty-years-ago-thursday-the-browns-last-won-a-playoff-game/> [<https://perma.cc/N7PG-W46L>] (recognizing shameful postseason record).

66. See Sam Gardner, *The Astonishingly Awful Record of Cleveland Browns Quarterbacks*, FOX SPORTS (Nov. 11, 2016, 2:33 PM), <http://www.foxsports.com/nfl/gallery/cleveland-browns-quarterbacks-history-johnny-manziel-cody-kessler-josh-mccown-111116> [<https://perma.cc/6H9C-3R3K>] (documenting records of Brian Hoyer, Jake Delhomme, Derek Anderson, Tim Couch, Trent Dilfer, Kelly Holcomb, Charlie Frye, Jeff Garcia, Colt McCoy, Brandon Weeden, Brady Quinn, and Johnny Manziel).

67. See *infra* notes 68–70 and accompanying text (reasoning why Browns lost their longstanding rivalry with Steelers to Ravens).

68. See James Hritz, *How Did the Rivalry Start Between the Pittsburgh Steelers and the Baltimore Ravens?*, QUORA (Oct. 20, 2011), <https://www.quora.com/How-did-the-rivalry-start-between-the-Pittsburgh-Steelers-and-the-Baltimore-Ravens> [<https://perma.cc/U7CQ-RH2B>] (noting when rivalry was most prestigious); see also *supra* note 21 and accompanying text (discussing how rivalries are important to franchise stability).

69. See Hritz, *supra* note 68 (noting fans took on their cities' identities).

70. See Jenny Vrentas, *Pure Hatred: An Oral History of the Steelers-Ravens Rivalry*, MMQB (Dec. 22, 2016), <http://mmqb.si.com/mmqb/2016/12/21/steelers-ravens-rivalry-oral-history#> [<https://perma.cc/AN4Y-7TQL>] (allowing athletes to share thoughts on rivalry).

they are the oldest continuously-run professional football team in the nation.⁷¹ Likewise, the Chargers debuted in L.A. in 1960 (for one season) before team owner, Barron Hilton, realized his team was unable to share a market with the Rams and moved his team to San Diego.⁷² Half a century later, owner Dean Spanos decided to take the opposite approach and move the Chargers back to L.A.⁷³ In 1963, the Kansas City Chiefs (then-Texans) were forced out of Texas due to the Cowboys' success.⁷⁴ After the Great Depression, the Lions moved from a small town in Ohio to industrialized Detroit.⁷⁵ Some may have forgotten that the Washington Redskins had a five-year run in Boston before returning to the country's capital due to financial failure.⁷⁶ Additionally, the Colts' decision to move from Baltimore to Indianapolis is yet another example of an owner choosing relocation after "declining attendance and ongoing squabbles with city leaders."⁷⁷

This brings us to the L.A. Rams.⁷⁸ Amongst the oldest franchises in the NFL, the team's history began in Cleveland in 1937.⁷⁹ By the 1940s, Dan Reeves, "a shrewd businessman and a master innovator," purchased the team and moved the franchise across the country to L.A. several years later.⁸⁰ Throughout the

71. See *History*, ARIZ. CARDINALS, <http://www.azcardinals.com/history/franchise.html> [<https://perma.cc/KQ2M-4NRD>] (last visited Aug. 21, 2017) (detailing modern era of relocations including from Chicago to St. Louis and from St. Louis to Arizona).

72. See Brent Schrottenboer, *What We Know About Chargers' Move to Los Angeles*, USA TODAY (Mar. 28, 2017, 5:00 PM), <https://www.usatoday.com/story/sports/nfl/chargers/2017/01/12/chargers-los-angeles-move-san-diego-relocation/96505836/> [<https://perma.cc/XM3M-2LD4>] (noting successive owners came to opposite conclusions about team's ability to share market with Rams).

73. See *id.* (quoting Stanos, who stated that "Chargers are determined to fight for L.A. and we are excited to get started").

74. See Marvez, *supra* note 51 ("The Cowboys eventually gained the upper hand in popularity despite the Texans winning the AFL title in 1962, which prompted team owner Lamar Hunt to seek another home.").

75. See *id.* ("Detroit Radio magnate G.A. Richards bought the Spartans and rebranded the club as the Lions to play off the popularity of the Detroit Tigers baseball team.").

76. See *id.* (discussing decision by Redskins' owner, George Preston Marshall, to return to where franchise began).

77. See *id.* (illustrating why Colts' owner, Bob Irsay, began looking to relocate his team).

78. See *infra* notes 79–84 and accompanying text and related materials (discussing multiple relocations of Rams).

79. See *Los Angeles Rams Team History*, PRO FOOTBALL HALL OF FAME, <http://www.profootballhof.com/teams/los-angeles-rams/team-history/> [<https://perma.cc/EM8J-SGP9>] (last visited Jan. 22, 2017) (documenting history of L.A. Rams).

80. *Id.* (rehashing team's early years); see also *supra* note 23 and accompanying text.

1970s, the team experienced success under the direction of an effective head coach and seminal Hall-of-Famers.⁸¹ However, a lack of attendance forced the team to downsize into a smaller stadium in 1980.⁸² An opportunity then became available for the Rams in St. Louis when the Cardinals left for Arizona in 1998.⁸³

When the Cardinals left St. Louis for Arizona in the mid-1990s after the city refused to build a new football stadium, a devastated St. Louis conducted a referendum to decide whether the city should construct the St. Louis Convention and Visitors Center (“CVC”) to try to attract a potential NFL expansion team.⁸⁴ After the city was unable to attract an expansion team, a civic organization, Football at the New Stadium (“FANS”), assisted the CVC in luring in the Rams.⁸⁵ After the CVC and Rams reached a deal, the Rams notified the NFL.⁸⁶ However, the team owners vetoed the initial proposal.⁸⁷ Other owners took issue with the facts that: (1) the deal did not include a relocation fee, (2) that revenues from the sale of the Rams’ future PSLs would be shared, and (3) the proposal would not resolve issues pertaining to television payments.⁸⁸ After further negotiations, an agreement was reached whereby “[t]he Rams [] agreed to pay a \$29 million relocation fee,

81. See PRO FOOTBALL HALL OF FAME, *supra* note 79 (documenting era of George Allen, Merlin Olsen, and Deacon Jones).

82. See *infra* note 84 and accompanying text (describing reasons for St. Louis Rams’ relocation).

83. See Marvez, *supra* note 51 (describing reasons for St. Louis Rams’ relocation).

84. See Fisher et al., *supra* note 12, at 198 (stating why Cardinals relocated); see also *St. Louis Convention & Visitors Comm’n v. Nat’l Football League*, 154 F.3d 851, 852 (8th Cir. 1998) (stating efforts taken to relocate NFL team back to St. Louis).

85. See Fisher et al., *supra* note 12, at 198 (stating why Cardinals relocated); see also *St. Louis Convention*, 154 F.3d at 852–53 (“The new franchises were awarded to Jacksonville, Florida, and Charlotte, North Carolina.”). When St. Louis applied for an expansion team, two businessmen controlled the exclusive rights to the Trans World Dome. See *id.* at 854. Those that had a vote on whether St. Louis would receive an expansion team worried that those who controlled the lease were unrelated to the CVC. *Id.*

86. See *infra* note 88 and accompanying text (discussing how deal was reached before NFL was notified).

87. See, e.g., *L.A. Mem’l Coliseum Comm’n v. Nat’l Football League*, 726 F.2d 1381 (9th Cir. 1984) (acting as precursor to NFL’s non-exclusive factors when considering team’s relocation). Relevantly, there are no guidelines for computing relocation fees. *Id.*; see also *St. Louis Convention*, 154 F.3d at 854–55 (“While not expressed in the governing documents, the league claims the right to assess a relocation fee on any team seeking to move.”).

88. See *St. Louis Convention*, 154 F.3d at 855 (stating reasons Rams’ initial proposal was voted down). Importantly, up until this time, landlords were not involved in the NFL’s relocation process. *Id.* See generally *infra* notes 98–104 and accompanying text (defining PSLs and explaining conceptual framework).

to forego any share in the next two relocation fees levied by the league, to share \$17 million in [PSL] revenue with the NFL, and to indemnify the league for up to \$12.5 million of any extra expenses arising from the league's television contract."⁸⁹ The Rams officially relocated to St. Louis as of April 12, 1995.⁹⁰

Due to the fact that the CVC ended up contractually obligated to pay \$20 million of the relocation fee—and other issues that ensued from the lengthy negotiation process—it filed suit against the NFL and twenty-four of its teams in 1995.⁹¹ The CVC alleged the NFL violated Sections 1 and 2 of the Sherman Antitrust Act and interfered with its already-established contract with the Rams.⁹² Because the CVC and the Rams already had a contract, the CVC claimed Rule 4.3 “forced their hand” and obligated it to give into contractual demands it otherwise could have avoided.⁹³ However, the Eighth Circuit disagreed.⁹⁴ The Eighth Circuit held that the CVC failed to prove the essential elements required under Section 1 of the Sherman Antitrust Act or for tortious interference as required per Missouri law.⁹⁵ The CVC's lack of success reaffirmed the

89. *St. Louis Convention*, 154 F.3d at 855.

90. *See id.* (“While not expressed in the governing documents, the League claims the right to assess a relocation fee on any time seeking to move. At the time CVC was dealing with the Rams, the NFL had levied one previous relocation fee; the Cardinals had been assessed \$7.5 million for their move to Phoenix.”); *see also* NFL CONST. & BYLAWS art. IV, § 4.3 (1984).

91. *See St. Louis Convention*, 154 F.3d at 852 (providing background for suit); *see also infra* note 93 and accompanying text (discussing CVC's damages and claims).

92. *See* 15 U.S.C. §§ 1–2 (preventing, through federal law, large businesses from monopolizing markets); *see also St. Louis Convention*, 154 F.3d at 852 (providing background for suit). A jury awarded judgment in favor of the NFL. *Id.* CVC appealed against the trial court's dismissal of its claims that the NFL violated the Sherman Act and tortiously interfered with its contract. *Id.* at 853. The NFL also cross-appealed and challenged the trial court's finding that “the league and the member teams do not amount to a single entity for antitrust purposes.” *Id.*

93. *St. Louis Convention*, 154 F.3d at 854 (agreeing Rams would pay CVC \$25,000 per game in addition to half of game day expenses for ability to keep all ticket revenue, 75% of first \$6 million advertising revenue and 90% after that, 100% of profits from concessions and amount of concessions from other events); *see also supra* note 44 and accompanying text (describing Rule 4.3). For tortious contract interference, the CVC sought damages in the amount of the relocation fee arguing it only accepted contractual term because of economic duress. *Id.* at 856.

94. *See St. Louis Convention*, 154 F.3d at 865 (entering judgment in favor of NFL).

95. *See id.* at 865 (citing *Rice v. Hodapp*, 919 S.W.2d 240, 245 (Mo. 1996)) (affirming district court's ruling). To prove tortious interference under Missouri law, a plaintiff must prove “(1) a contract or valid business expectancy; (2) defendant's knowledge of the contract or relationship; (3) a breach induced or caused by defendant's intentional interference; (4) the absence of justification; and (5) damages.” *Id.* (quoting *Rice*, 919 S.W.2d at 245).

power of the NFL and its freedom to conduct its affairs pursuant only to its constitution and bylaws.⁹⁶ This case is also a good illustration of the difficulties small-market teams face, especially those who are no strangers to relocation.⁹⁷

B. Enter the Money-Hungry Era of Personal Seat Licenses

One of the disputed terms of the Rams' initial relocation agreement regarded a share of revenues attributed to PSLs, a relatively new phenomenon at the time.⁹⁸ In response to the struggle many franchises had in securing stadium financing, PSLs were thought of as a way to privately raise capital (to attract professional sports teams) in city markets that otherwise would not be able to afford to renovate or construct new stadiums.⁹⁹ They began simply as "one-time fees for the right to buy season tickets."¹⁰⁰ In other words, they were viewed "akin to initiation fees" for season ticket holders because "[t]hey are owned by fans, not the team, provided that the seats are renewed each season."¹⁰¹ The founder of PSLs postulated that PSL sales would make license-owners feel like they are a part of the team.¹⁰² To many, it made sense that individuals who actually attended professional sporting events would pay an in-

96. *See id.* (stating CVC was unable to point to authority in support of its argument).

97. For a discussion of how small market teams, such as the Raiders, Browns, Cardinals, Chargers, Chiefs, Lions, Redskins, and Colts, had to relocate due to an inability to compete, difficulty producing revenue, failing to secure stadium financing, or a combination of the three, see *supra* notes 42–77 and accompanying text. In the modern era—which requires three-fourths of team owners to approve a team relocation—regardless of the type of struggles *individual* small market teams face, the NFL will always have final say on whether one of its members is able to relocate and will do its best to keep teams in cities that bring the most profit to the trade association as a whole. *See* NFL CONST. & BYLAWS, art. IV, § 3, *available at* http://www.nfl.com/static/content/public/static/html/careers/pdf/co_.pdf [<https://perma.cc/35WR-NC6A>]; *see also supra* notes 11–13 and related material (explaining why it is most profitable to NFL to have teams spread out across country in cities where populations are largest).

98. *See supra* notes 87–90 and accompanying text (discussing what angered NFL owners about Rams' relocation agreement).

99. *See generally* Hill, *supra* note 1 (explaining concept of PSLs).

100. Aaron Gordon, *The Creator of Personal Seat Licenses Hates Them as Much as You Do*, VICE SPORTS (Dec. 28, 2015, 9:48 AM), https://sports.vice.com/en_us/article/the-creator-of-personal-seat-licenses-hates-them-as-much-as-you-do [<https://perma.cc/DLW9-CS5F>] (recognizing that purpose behind PSLs no longer works as intended).

101. *See* Jeff Barker, *Owning a Ravens Seat Can Pay off Big Time*, BALT. SUN (June 25, 2009), http://articles.baltimoresun.com/2009-06-25/news/0906240127_1_ravens-psls-seat-licenses [<https://perma.cc/9S82-H5W8>] (comparing PSLs to investments).

102. *See* Gordon, *supra* note 100 ("It was simply about thanking the fans who pledged their own money to help support a new team or stadium.").

creased amount of money to do so.¹⁰³ With PSLs, cities bringing in professional sports teams or renovating already-existing stadiums would not necessarily have to raise taxes.¹⁰⁴ For example, when the Ravens moved to Baltimore from Cleveland in 1996, PSLs “recoup[ed] millions of dollars in relocation costs.”¹⁰⁵

In 2008, the New York Giants “publically announced that all season ticket holder subscriptions would be terminated unless the season ticket holder agreed to enter into a PSL contract for each seat with Giants Stadium LLC and/or Jets Stadium Development LLC.”¹⁰⁶ The contract gave the PSL holder the right to purchase season tickets for as long as the Giants play in the new stadium.¹⁰⁷ PSLs were sold for any amount between \$1,000 and \$25,000 per seat.¹⁰⁸

John Mara, the Giants President, was not enthusiastic about instituting PSLs, knowing there would be backlash from life-long fans and season ticket holders.¹⁰⁹ Mara acknowledged the concerns of these season ticket holders, but after weighing the pros and cons, explained that “our primary goal was to come up with the right amount of capital so we could complete the construction” of the new stadium.¹¹⁰ PSLs may have helped raise capital, but for others, it means we live in a “sports world that is no longer within reach of everyday people.”¹¹¹ In the words of one ESPN anchor, “[t]here is something wrong with fans’ being charged a fee for the right to buy season tickets. It’s like charging human beings for the right to chew before they even taste the food.”¹¹² Put bluntly, “on principle, PSLs suck.”¹¹³

103. See, e.g., Hill *supra* note 1 (explaining concept of PSLs).

104. See, e.g., *id.* (explaining concept of PSLs).

105. Barker, *supra* note 101 and accompanying text (“PSLs, which helped the Ravens recoup millions of dollars in relocation costs from their 1996 move from Cleveland, are now yielding windfalls for hundreds of season ticket holders who bought in early.”).

106. Estate of Oshinsky v. N.Y. Football Giants, Inc., 2011 WL 383880, at *1 (D.N.J. 2011).

107. See *id.* at *2 (discussing contractual rights of season ticket holder).

108. See *id.* at *1 (discussing price of singular PSL).

109. See Hill, *supra* note 1 (“Giants fans have let Mara hear about it, but he says there wasn’t much he could do.”).

110. *Id.* (quoting Mara).

111. *Id.* (explaining Giants decision to ultimately institute PSLs).

112. *Id.*

113. *Id.* (making comparisons to how PSLs take advantage of everyday sports fans).

Notwithstanding, “NFL teams are [now] building the most expensive stadiums in history.”¹¹⁴ More than half of the NFL’s teams are engaged in the practice of instituting PSLs to their respective season ticket holders.¹¹⁵ This includes the Minnesota Vikings and Atlanta Falcons, who recently constructed new facilities, costing \$1.061 billion and \$1.5 billion, respectively.¹¹⁶ In Atlanta, PSL prices vary from \$500 to \$45,000 in proportion to their location.¹¹⁷ Sales were slow in early 2016 but after reaching Super Bowl 50, sales increased tenfold.¹¹⁸

C. Contractual Interest or Expectancy Interest

Despite winning a Super Bowl in St. Louis, economic hardship forced the Rams to return to Los Angeles in 2015.¹¹⁹ When the team relocated, angry PSL owners sued the Rams in a consolidated

114. Aaron Gordon, *New PSLs Have Become Very Risky Investments*, FORBES (Sept. 5, 2012), <http://www.forbes.com/sites/danalexander/2012/09/05/nfl-psls-have-become-very-risky-investments/#5aef1e681244> [<https://perma.cc/H2D2-8EHC>] (referring to fact that new Giants stadium cost \$1.6 billion to construct while Cowboys AT&T stadium cost \$1.2 billion).

115. See Mike Ozanian, *Are NFL Personal Seat Licenses Good Investments?*, FORBES (Nov. 25, 2015), <http://www.forbes.com/sites/mikeozanian/2015/11/25/are-nfl-personal-seat-licenses-good-investments/#4fd6b5f636b1> [<https://perma.cc/8V7G-9PPP>] (contemplating PSLs as investment opportunities).

116. See *id.* (concluding some PSL investments have been good opportunities for fans while others have turned out poorly); see also Tim Tucker, *Mercedes-Benz Stadium Opening Is Pushed Back Again*, AJC (Apr. 18, 2017, 1:00 PM), <http://www.ajc.com/sports/football/mercedes-benz-stadium-opening-pushed-back-again/wLnfyURmUXYvGcj6iaROMM/> [<https://perma.cc/23HS-3ML4>] (reporting on construction of Falcons’ new \$1.5 billion stadium); *Wilfs Pledge \$19.5M More to Stadium*, ESPN (Mar. 26, 2015), http://www.espn.com/nfl/story/_/id/12566029/wilf-family-pledges-195-million-more-minnesota-vikings-stadium [<https://perma.cc/7L5U-WLDN>] (noting Wilf family pledged about \$52 million while \$498 million was public money).

117. See Darren Rovell, *Super Bowl LI Trip Boosting Ticket Sales for Falcons’ New Stadium*, ESPN (Jan. 27, 2017), http://www.espn.com/nfl/story/_/id/18566915/super-bowl-li-trip-boosting-sales-personal-seat-licences-atlanta-falcons-new-stadium [<https://perma.cc/74QR-K63W>] (stating PSL sales increased as Falcons advanced to Super Bowl in 2017).

118. See *id.* (quoting Steve Cannon, CEO of AMB Group, parent company of team owned by Arthur Blank) (“We closed down the Georgia Dome in style, and what our team has done has allowed us to take advantage of opening Mercedes-Benz Stadium.”). After advancing to the Super Bowl, the Falcons organization sold over 75% of its new stadium’s PSL (88% in lower lever, upper level sold out, 90% of suites). See *id.*

119. See Joe Nocera, *In Losing the Rams, St. Louis Wins*, N.Y. TIMES (Jan. 15, 2016), <https://www.nytimes.com/2016/01/16/sports/football/st-louis-should-be-glad-it-lost-the-rams.html> [<https://perma.cc/JE2X-QGX2>] (“Let’s not be coy about this: St. Louis, a city of fewer than 320,000 people, with a shrinking tax base, simply couldn’t afford to help finance the \$1 billion stadium that the Rams’ billionaire owner, E. Stanley Kroenke, was seeking.”). These financial concerns have existed since the Rams first moved from Los Angeles to St. Louis in 1995. See *id.*

class action.¹²⁰ In *McAllister v. St. Louis Rams*,¹²¹ the court found a strict *contractual* interest in each PSL owner's disputed right to renew season tickets following the move.¹²² On the contrary, the court in *In re I.D. Craig Service Corp.*,¹²³ represents a more judicially active approach, one that finds a distinct "expectancy interest" in a season ticket holder's right to renew their seats each season.¹²⁴ The following two subsections compare and contrast these holdings.¹²⁵

1. *Contractual Interest: McAllister v. St. Louis Rams*

Recall that in 1995, St. Louis fans were required to purchase PSLs "that entitled the PSL holder to buy one season ticket per year in a designated section of the stadium."¹²⁶ When the Rams declared they were moving back to L.A., PSL holders sued the Rams in three class actions that were consolidated into *McAllister*.¹²⁷ Two groups of plaintiffs (the "Envision and Arnold" Plaintiffs) argued for the right to purchase Rams season tickets in California.¹²⁸ The St. Louis Rams, LLC ("Rams" or "Defendant") moved for summary judgment alleging the "PSL Agreements between the team and the PSL holders are by their terms no longer in effect now that the team has moved to California."¹²⁹ Alternatively, the third group of plaintiffs (the "McAllister" Plaintiffs) argued for a refund by claiming Defendant terminated the contract, and thus, is in breach.¹³⁰

i. The Envision and Arnold Plaintiffs

The claims advanced by the Envision and Arnold Plaintiffs revolved around *two* separate PSL agreements.¹³¹ When the Rams

120. See generally *McAllister v. St. Louis Rams, LLC*, 209 F. Supp. 3d 1121, 1124–27 (E.D. Mo. 2016) ("Three season ticket holders brought separate actions, which were consolidated, against professional football team, seeking damages arising from football team's move to a new home venue in another state.").

121. 209 F. Supp. 3d 1121 (E.D. Mo. 2016).

122. See *id.* at 1129 (looking to agreements for contractual clarity).

123. 138 B.R. 490 (Bankr. W.D. Pa. 1992).

124. See generally *id.* (holding Steelers had created an expectancy interest in season ticket holders' renewal rights).

125. See *infra* notes 126–183 and accompanying text (discussing both approaches).

126. *McAllister v. St. Louis Rams, LLC*, 209 F. Supp. 3d 1121, 1123 (E.D. Mo. 2016) (giving background to suit regarding 46,000 PSLs that were sold to fans in St. Louis).

127. See *id.* at 1123 (differentiating claims against Rams organization).

128. See *id.* at 1124 (explaining Envision and Arnold Plaintiffs' claim).

129. *Id.* at 1125 (stating Defendant's argument).

130. See *id.* at 1127 (explaining McAllister Plaintiffs' claims).

131. See *id.* at 1123 (giving background to suit regarding 46,000 PSLs that were sold to fans in St. Louis).

first moved from L.A. to St. Louis, FANS, Inc. issued PSLs to finance the stadium (“FANS Agreement”).¹³² Later, additional PSL Agreements were “sold directly by the Rams using an *almost* identical contract (‘Rams’ Agreement).”¹³³ The district court found the dissimilar provisions of utmost importance.¹³⁴

The FANS Agreement allowed the holder “to purchase Season Tickets(s) to Licensee’s seats for all games at the Stadium until March 1, 2025.”¹³⁵ Second, the FANS Agreement included a “Best Efforts” provision that stated in part, “[i]f the RAMS play any of their [NFL] games other than at the Stadium . . . Licensor will use its best efforts to assure Licensee the right to purchase . . . tickets for seats in the stadium where the transferred games are played.”¹³⁶ Third, the “Representations of Licensee” provision forced the Licensee to acknowledge that the holder “represents, warrants and/or acknowledges . . . Licensee is acquiring the [PSL] solely for the right to purchase Season Ticket(s) to NFL Games played in the Stadium.”¹³⁷ Fourth, under “Additional Terms,” the FANS Agreement clearly articulated, “Licensee acknowledges that this Agreement remains valid only as long as NFL football is played at the Stadium by the RAMS, up to a maximum of thirty (30) years.”¹³⁸ The provision went on to state that “Licensee acknowledges that Licensee has no claim against the RAMS with respect to the [PSL agreement] and/or its termination whatsoever. Licensee understands and acknowledges the possibility that the RAMS may not play its games in the Stadium or St. Louis for the entire term contemplated by this License.”¹³⁹

Given these contractual provisions, it is important to begin scrutinizing this decision with the premise that contract law governs PSLs, which are really just licensing agreements.¹⁴⁰ The court recognized “the cardinal rule in the interpretation of a contract is to

132. *See id.* at 1125; *see also supra* note 89 and accompanying text (relating to initial financing).

133. *See McAllister*, 209 F. Supp. 3d at 1124 (emphasis added) (introducing difference between two PSL Agreements at issue).

134. *See id.* at 1125 (basing contractual interpretations on minor drafting discrepancies); *see also infra* notes 135–159 and accompanying text.

135. *McAllister*, 209 F. Supp. 3d at 1124 (alteration in original) (quoting FANS Agreement).

136. *Id.* (alteration in original) (quoting FANS Agreement).

137. *Id.* (alteration in original) (quoting FANS Agreement).

138. *Id.* (quoting FANS Agreement).

139. *Id.* (quoting FANS Agreement).

140. *See id.* at 1125 (citing *Monsanto Co. v. Garst Seed Co.*, 241 S.W.3d 401, 406 (Mo. App. 2007)) (“The Agreements in question are license agreements, which are contracts governed by the general principles of contract law.”).

ascertain the intention of the parties and to give effect to that intention.”¹⁴¹ The Envision and Arnold Plaintiffs interpreted the PSL’s “Best Efforts” provision as giving them a chance to purchase season tickets at the Rams future L.A. venue.¹⁴² The Rams, as one might expect, maintained that since the team was no longer playing games in St. Louis, the contract became null and void.¹⁴³ According to the Envision and Arnold Plaintiffs, however, it was not that simple.¹⁴⁴ They interpreted “transferred games” as found in the “Best Efforts” provision to mean games played at “any venue to which the Rams transfer their home games – including a permanent change of home games, such as relocating to California.”¹⁴⁵

As such, the court was obligated to interpret the definition of “transferred games” as intended by the parties.¹⁴⁶ In an effort to remain practical, the court sided with the Rams and interpreted “transferred games” to mean home games played at nearby facilities while the Rams were located in St. Louis.¹⁴⁷ Ultimately, this meant the FANS Agreement was terminated upon the team’s relocation and the claims advanced by the Envision and Arnold Plaintiffs pertaining to the FANS Agreement were rendered without merit.¹⁴⁸

In contrast, the court determined “[t]he Rams Agreement . . . is different [from the FANS Agreement] and require[d] further discussion.”¹⁴⁹ Critical to its analysis was the fact that the FANS Agreement’s “Additional Terms” provision was not identical to the “Additional Terms” provision of the Rams Agreement.¹⁵⁰ The Rams Agreement did not include the following sentences: “Licensee acknowledges that this Agreement remains valid only as long as NFL Football is played at the stadium by the RAMS, up to a maxi-

141. *Id.* (quoting *J.E. Hathman, Inc. v. Sigma Alpha Epsilon Club*, 491 S.W.2d 261, 264 (Mo. 1973) (*en banc*)).

142. *See id.* (“‘Best Efforts’ provision of the Agreements entitles them to the opportunity to buy tickets for games—‘transferred games’—to be played at the new Rams stadium that will be built in California.”).

143. *See id.* (introducing Defendant’s interpretation of “Additional Terms” provision).

144. *See id.* (using “Best Efforts” provision to counter Defendant’s argument).

145. *Id.* (countering Defendant’s argument).

146. *See id.* (settling matter as contract dispute).

147. *See id.* at 1126 (interpreting “Best Efforts” provision as meaning: if games could not be played at home stadium due to natural disaster and Rams transferred home games to local university, PSL holder’s would have access to those games).

148. *See id.* (entering judgment on pleadings to Rams).

149. *Id.* (noting that FANS Agreement includes language omitted from Rams Agreement).

150. *See id.* at 1126–27 (specifying contractual language of each agreement’s “Additional Terms” provision).

num of thirty (30) years. Licensee acknowledges that Licensee has no claim against the RAMS with respect to the [PSL Agreement] and/or its termination whatsoever.”¹⁵¹ This meant that “the validity of the Rams Agreement [was] not contingent on the Rams playing football” in their stadium in St. Louis.¹⁵² Likewise, “the Agreement remains in effect until 2025, and, regardless of where the Rams play their home games, they are required to use ‘Best Efforts’ to allow PSL holders the right to purchase ‘tickets for seats in the stadium where the transferred games are played.’”¹⁵³

ii. The McAllister Plaintiffs

Instead of seeking PSLs in L.A., the McAllister Plaintiffs simply alleged that as PSL owners, they were entitled to a refund because the Rams did, in fact, terminate the PSL agreements.¹⁵⁴ The termination clauses in both the FANS and Rams Agreements “are substantively identical” and state in part the “Licensor hereby expressly reserves . . . [t]he right to terminate this Agreement and refund part of or all of the Licensee’s deposit [under several circumstances].”¹⁵⁵ The Rams argued the contract was terminated and this clause “expired” when the Rams permanently decided to no longer play in St. Louis.¹⁵⁶ The McAllister Plaintiffs argued, and more importantly the court found, once the contracts expired the expressed contractual terms entitled the plaintiffs to a refund of their “deposit.”¹⁵⁷

In sum, for Federal Judge Limbaugh of the Eastern District of Missouri, the case was merely a matter of contract law.¹⁵⁸ Interest-

151. *Id.* at 1126 (quoting FANS Agreement).

152. *Id.* at 1127 (meaning that under Rams Agreement, Rams are required to use best efforts to secure PSL holders seats at transferred home games).

153. *See id.* (internal citation omitted) (denying judgment on pleadings to Rams).

154. *See id.* (stating McAllister Plaintiffs’ claims).

155. *See id.* (quoting termination clauses of Agreements).

156. *See id.* (“The Rams explain that any duty to refund deposits could not have survived expiration of the Agreements.”).

157. *See id.* at 1128 (“By the Agreement’s own terms, the right to terminate and a refund of deposits go hand-in-hand.”). Regarding the FANS Agreement, the court left the determination of what exactly constitutes a deposit—a matter of damages, not liability—to a later date. *Id.* at 1129. The court also diligently noted that although the McAllister Plaintiffs did not seek a remedy under the Rams Agreement, the remedy *would* have been the ability to obtain tickets in Los Angeles. *Id.*

158. *See* Ashley Milano, *Fans Win Refund or New Tickets in Rams Relocation Class Action*, TOP CLASS ACTIONS (Sept. 23, 2016), <https://topclassactions.com/lawsuit-settlements/lawsuit-news/345254-fans-win-refund-new-tickets-rams-relocation-class-action/> (summarizing Judge Limbaugh’s holding).

ingly, despite the fact that both “the FANS and Rams contracts sa[id] a PSL holder cannot sue for damages over PSLs, the Rams failed to present that as an argument or even mention it in court.”¹⁵⁹

2. *Expectancy Interest: I.D. Craig*

Although PSLs have added another dimension, the debate over who owns the “property interest” associated with season ticket packages has been going on for decades.¹⁶⁰ If season ticket holders have a property interest in their season tickets, professional sports teams “would be forced to compensate [those] able to demonstrate damages.”¹⁶¹ For this reason, as a matter of state law, the distinction between revocable licenses and property interests becomes quite important.¹⁶²

Relevant to this determination are (1) whether the sports organization operates under an open or closed transfer system and (2) whether holders have an automatic right to renew their season tickets.¹⁶³ Open transfer policies afford season ticket owners the “convenience of transferring or ‘selling’ their season tickets to whomever they wish[].”¹⁶⁴ In contrast, a “closed transfer system forces an existing season ticket holder who elects not to renew their account to return ‘the team’s’ ticket to its control.”¹⁶⁵ Multiple lawsuits took place throughout the 1990s that support the view that in a *closed* transfer system that does *not* afford the holder an automatic right to renew, season tickets ought to be considered revocable seat licenses—as opposed to the fans’ property interests.¹⁶⁶

159. *Id.* (quoting FANS and Rams Agreements).

160. *See infra* notes 167–224 and accompanying text (discussing prior case law on season tickets renewal rights).

161. James T. Reese et al., *National Football League Ticket Transfer Policies: Legal and Policy Issues*, 14 J. LEGAL ASPECTS SPORT 163, 185 (2004) (discussing importance of property interest in season tickets and PSLs).

162. *See id.* (recognizing importance of ticket classification).

163. *See id.*

When tickets are considered revocable seat licenses, sports organizations have the ability to move season ticket holders to similar locations without fear of legal consequences. However, if season ticket locations are classified as property by the courts, legal action could be taken by any season ticket holder unhappy with the new seat assignment in a new facility.

Id.

164. *Id.* at 167 (discussing open transfer system).

165. *Id.* at 171 (discussing closed transfer system).

166. *See id.* at 176–78 (citing *In re Harrell*, 73 F.3d 218 (9th Cir. 1996), *Soderholm v. Chi. Nat’l League Ball Club, Inc.*, 587 N.E.2d 517 (Ill. App. Ct. 1992), and *Ganey v. N.Y. Jets Football Club*, 550 N.Y.S.2d 566 (N.Y. Civ. Ct. 1990)).

Nonetheless, an innovative legal argument led to the opposite result in *I.D. Craig*.¹⁶⁷ In that case, litigated in the United States Bankruptcy Court for the Western District of Pennsylvania, a trustee of a debtor's bankruptcy estate sold the debtor's Pittsburgh Steelers season tickets.¹⁶⁸ Separately, the trustee moved to sell each ticket's "renewal rights thereafter."¹⁶⁹ At the onset, the court recognized two important points.¹⁷⁰ First, in Pittsburgh, "[s]eason ticket holder status historically has included an automatic annual purchase offer and the right to transfer the status via written request and payment of a five dollar transfer fee."¹⁷¹ Second, as a bankruptcy matter, the court acknowledged that under 11 U.S.C. § 541, "all interests of [a] debtor are estate property."¹⁷² As a result, the trustee reasoned the debtor had a property interest in his right to renew his Steelers season tickets.¹⁷³ Conversely, Pittsburgh Steelers Sports, Inc. ("Sports, Inc.") objected to the sale of renewal rights by alleging such a sale would violate Pennsylvania's anti-scalping laws and "constitute an executory contract which Trustee failed to assume within sixty days after the case was converted to chapter 7."¹⁷⁴ Furthermore, Sports, Inc. argued that in order to be fair to individuals on the season-ticket-holder waiting list, it was good policy to limit the number of openly transferable season tickets to one ticket per holder.¹⁷⁵

The court determined that even though the debtor's trustee conceded that each individual ticket is a revocable license, it is immaterial to deciding whether the defendant can legally refuse to recognize the debtor's status or prevent him from transferring his

167. See generally 138 B.R. 490 (Bankr. W.D. Pa. 1992) (holding expectancy interest in irrevocable right to renew season tickets).

168. See *id.* at 492.

169. *Id.*

170. See *infra* notes 171–172 and accompanying text (referencing threshold concerns).

171. *In re I.D. Craig Serv. Corp.*, 138 B.R. at 492 (referring to "renewal rights"). The President of the Pittsburgh Steelers attested that as long as season ticket holders continue to purchase season tickets, "they retain[] the status." *Id.* at 493. Notwithstanding, each ticket states that it is a "revocable license and may be revoked and admission refused upon refunding the printed price thereon. This ticket may not be resold at a premium . . ." *Id.*

172. *Id.* at 492 (emphasis in original) (citing 11 U.S.C. § 541(a) (2016)).

173. See *id.* (stating plaintiff's argument).

174. *Id.* (citing 11 U.S.C. § 365(d)(1) (1988)) (stating defendant's arguments); see also 4 PA. STAT. AND CONS. STAT. ANN. § 201 et seq. (West 1990) (stating Pennsylvania's anti-scalping laws).

175. See *In re I.D. Craig Serv. Corp.*, 138 B.R. at 492–93 (stating defendant's policy argument).

seats.¹⁷⁶ This is because “[t]he tickets themselves and the right to renew season tickets are two separate and distinct interests” since privileges, as opposed to property, are frequently sold in *bankruptcy* matters for value.¹⁷⁷ This is evidenced by, among other reasons, the large number of people who bid for season tickets when they go on sale privately, the large number of people that are on waiting lists to become season ticket holders through the team, and the fact that many season ticket holders purchase tickets to pre-season games (and games during losing seasons after being eliminated from playoff contention) solely to retain their status for the following year.¹⁷⁸

In coming to this conclusion, the court found ample evidence to support the debtor’s claim that in the twenty years preceding the suit, Sports, Inc. allowed the renewal and transfer of season ticket rights between individuals upon the submission of a written request.¹⁷⁹ Second, although Sports, Inc. claimed selling renewal rights would be unfair to those on the waiting list, there was, in fact, no evidence presented at trial that the debtor’s tickets would actually go to someone on the waiting list.¹⁸⁰ Third, since there was no evidence presented that the trustee was attempting to sell the season tickets for above face value, the anti-scalping provision as produced on each individual ticket did not apply (the court also concluded the Anti-Scalping Statute did not apply to the “annual renewal of season tickets”).¹⁸¹ Lastly, the court held that “the asset at issue does not constitute a prepetition executory contract”¹⁸² In summarizing its ruling in favor of the debtor, the

176. *See id.* at 494 (distinguishing tickets to individual events canceled due to reasons beyond control from tickets held by season ticket holders); *see, e.g.,* *Bickett v. Buffalo Bills, Inc.*, 472 N.Y.S.2d 245 (N.Y. Sup. Ct. 1983) (discussing tickets cancelled due to players’ strike).

177. *See In re I.D. Craig Serv. Corp.*, 138 B.R. at 492 (applying precedent from *In re Neijberger*, 934 F.2d 1300 (3d Cir. 1991)); *see also* 47 PA. STAT. AND CONS. STAT. ANN. § 4-468(b.1) (West 1987) (declaring trustee for insolvent license holder maintains same rights, benefits, and obligations, including right to transfer); *In re Neijberger*, 934 F.2d at 1302 (noting value of liquor licenses in bankruptcy cases).

178. *See In re I.D. Craig Serv. Corp.*, 138 B.R. at 495, 502 (illustrating how season ticket holder status is valuable).

179. *See id.* 495–96 (dismissing defendant’s transfer policy argument and distinguishing newer policies that “contained an express nonassignability clause”).

180. *See id.* at 497–98 (“To prohibit Trustee from transferring his status as season ticket holder would not be likely to provide relief to Sports, Inc. or its fans inasmuch as the harm it seeks to prevent . . . itself through its failure to adhere strictly to the waiting list hierarchy.”).

181. *See id.* at 499 (holding trustee was actually selling “record title” to tickets as opposed to “renewal rights” as term has been coined).

182. *Id.* at 501 (holding § 365 was not applicable).

court found “that the season ticket holders’ interest in season ticket renewal may be better termed an *expectancy interest* rather than a *contractual interest*.”¹⁸³

III. ANALYSIS: COURTS SHOULD STEP IN AND PROTECT FANS BY FINDING EXPECTANCY INTERESTS, AND THEY NEED TO DO IT QUICKLY

In an era where the institution of PSLs is becoming more commonplace, not much has changed.¹⁸⁴ As discussed in *Estate of Oshinsky*,¹⁸⁵ when the New York Giants forced long-time season ticket holders to enter into PSL contracts for amounts ranging between \$1,000 and \$25,000, season ticket holders argued, “their conduct, as well as the conduct of Defendants over the last thirty years, has conveyed irrevocable renewal rights to the Plaintiffs.”¹⁸⁶ However, given that the Giants expressed in each contract that “renewal privilege is extended at the option of the Giants, and is subject to revocation at any time,” the District Court for the District of New Jersey chose not to come to the defense of die-hard fans.¹⁸⁷ Before granting the defendant’s motion for summary judgment, the court proclaimed, “it is [the Giants’] responsibility to oversee ticket prices and PSL contracts, not the courts, absent a breach of an agreement.”¹⁸⁸

Despite the New Jersey District Court’s finding, this Article suggests that in an era where professional sports teams migrate between cities and fans have large expectancy interests in their season tickets, it *should* be the courts’ responsibility to protect the rights of the average fan.¹⁸⁹ Interestingly, in *McAllister*, both contracts under dispute stated that licensees were unable to seek damages pertain-

183. *Id.* at 502 (emphasis added) (summarizing holding and defining “expectancy interest”). “Even if season ticket holders do not attend all games or the team has a losing season, [season ticket holders] realize that next year’s performance might be better and they will have the first opportunity to buy tickets which are in very high demand.” *Id.*

184. *See Estate of Oshinsky v. N.Y. Football Giants, Inc.*, 2011 WL 383880 (D.N.J. 2011) (finding contractual interest); *supra* notes 106–110 (discussing Giants’ announcement that season-ticket-holder subscriptions would terminate if holder did not enter into PSL contract in 2008).

185. 2011 WL 383880 (D.N.J. 2011).

186. *See id.* at *1 (stating plaintiff’s argument).

187. *Id.* at *7 (quoting Giants 2000 Season Ticket Invoice). The court granted defendant’s motion for summary judgment. *Id.*

188. *Id.* at *8 (choosing not to be judicial activist).

189. *See infra* notes 226–234 and accompanying text (advocating valuable expectancy interests in tickets’ renewal rights).

ing to the PSL agreements' terminations.¹⁹⁰ It is unfortunate that the Rams did not assert that as a possible defense because we do not know what effect it might have had on the court's opinion.¹⁹¹ That being said, the prior case law examined throughout this Article gives rise to several reasonable conclusions.¹⁹² Generally, according to the precedent of non-bankruptcy decisions, so long as ticket renewal rights are not guaranteed and there is no open transfer policy, professional sports teams hold the property interest inherent in season ticket packages.¹⁹³ That could lead a reasonable person to argue the inverse is true: in an open transfer system whereby season ticket holders are guaranteed renewal by complying with certain guidelines (such as purchasing tickets to each game), the owner *does* own a property interest.¹⁹⁴ Thus, under those circumstances, a PSL holder *should* be able to claim damages in that interest if a team decides to relocate cities.¹⁹⁵

A. Reasonableness of Expectancy Interests Initially

So, what options do the courts have when NFL teams relocate and institute PSLs?¹⁹⁶ First, they can follow the lead of the court in *I.D. Craig* and find there is an implied expectancy interest in PSLs (and season ticket renewal rights) separate from the tickets themselves and force teams to award damages to fans in an incumbent city should a team choose to relocate.¹⁹⁷ This is especially true if a team's season ticket and transfer policies have been loosely enforced in the past.¹⁹⁸ However, far too many courts have continued to take a strict contractual approach.¹⁹⁹ By doing so, not only are

190. See Milano *supra* note 158 and accompanying text (citing key provisions in applicable PSL contracts and noting Rams did not assert said provisions in defense).

191. See *supra* notes 158–159 and accompanying text (pointing out Rams did not argue relevancy of 'Additional Term' of contract in court).

192. See *infra* notes 200–227 and accompanying text (discussing seminal season ticket holder legal challenges).

193. See, e.g., Reese et al., *supra* note 161, at 184–85 (reconciling decisions pertaining to season ticket holder challenges).

194. Cf. *id.* at 185 (“[I]n *re Craig* established that rights to season tickets can be considered a property interest under certain circumstances.”).

195. See, e.g., *id.* (explaining recognition of property interests can lead to damages).

196. See *infra* notes 197–200 (generalizing two approaches courts can take).

197. See *supra* notes 167–183 (discussing reasoning of *In re I.D. Craig Serv. Corp.*).

198. See e.g., Reese et al., *supra* note 161, at 181 (distinguishing challenged season ticket holder cases on basis of which team had loose enforcement policy).

199. See *infra* notes 201–225 and accompanying text (discussing cases that follow strict contractual approach).

they ruining fans' prior loyalties to their cities' teams, but also hitting the same fans where it hurts: in their wallets.²⁰⁰

For example, in *In re Harrell*,²⁰¹ which took place in a similar bankruptcy court context as *I.D. Craig*, the Ninth Circuit looked to Arizona law to determine whether the option to renew season tickets should be considered a property right.²⁰² There, a debtor owned season tickets to the Phoenix Suns (NBA) home games.²⁰³ As a Suns season ticket holder, he held an option to purchase tickets to playoff games if the Suns made the post-season.²⁰⁴ The debtor also renewed his season ticket package each year, which was considered common practice.²⁰⁵ Just like in *I.D. Craig*, the debtor's trustee attempted to add "the opportunity to renew the debtor's season tickets" to the debtor's estate.²⁰⁶ However, the Ninth Circuit held "the mere expectation of renewal of an interest in property is not a property right."²⁰⁷

The Court of Appeals drew comparisons to revocable opportunities inherent in deciding whether to renew lease agreements.²⁰⁸ In Arizona, under non-automatically renewed lease agreements, if a lessor decides not to extend to the lessee the opportunity to renew, the lessee is unable to be compensated for his expectation.²⁰⁹ Under this premise, given the fact that the Suns' policy stated "[w]hile the SUNS will exercise reasonable efforts to maintain re-

200. See, e.g., Reese et al., *supra* note 161, at 185 ("When a franchise has extremely loyal and emotionally invested fans who consider themselves to be pseudo owners If fans are willing to fight family members in divorce or probate court for the 'ownership' of tickets, is it any surprise that they will sue the owner of their team?").

201. 73 F.3d 218 (9th Cir. 1996).

202. See *id.* at 219 (citing *State ex rel. Miller v. Gannett Outdoor Co. of Ariz.*, 795 P.2d 221 (Ariz. Ct. App. 1990)) (making determination based on state law).

203. See *id.* (providing background to bankruptcy case).

204. See *id.* (providing further background to case).

205. See *id.* (recognizing season ticket holder norm).

206. *Id. Compare id. with In re I.D. Craig Serv. Corp.*, 138 B.R. 490, 502 (Bankr. W.D. Pa. 1992) (attempting to put value on option to renew season tickets).

207. *In re Harrell*, 73 F.3d at 219 ("The Trustee's reliance on the bankruptcy court's decision in *In re I.D. Craig Serv. Corp.* . . . is misplaced.").

208. See *id.* (citing *State ex rel. Miller v. Gannett Outdoor Co. of Ariz.*, 795 P.2d 221 (Ariz. Ct. App. 1990)) (making comparisons to revocable opportunities when renewing lease agreements).

209. See *State ex rel. Miller*, 795 P.2d at 223 (Ariz. Ct. App. 1990) (describing what happens if lessor chooses not to extend to lessee opportunity to renew lease). The Arizona Court of Appeals stated that "[a] mere expectation, or even probability, that the lease will be renewed based upon past practice and present good relations between landlord and tenant, is not a legal right of renewal. It is nothing more than a speculation on chance." *Id.* (quoting *Stroh v. Alaska State Hous. Auth.*, 459 P.2d 480, 482 (Alaska 1968)).

newal privileges, season ticket holders are not guaranteed this opportunity,” the debtor’s trustee was unable to sell the renewal opportunity.²¹⁰

Four years later, the Court of Claims of Ohio took the contractual approach as well when a defendant-university increased its season ticket holders’ “service fee” from under \$100 per seat to \$1000 per seat to finance stadium construction.²¹¹ In *Rayle v. Bowling Green State University*,²¹² a season ticket holder filed a breach of contract claim against the university for violating his ticket “lease.”²¹³ According to the plaintiff, his leased seats were “goods,” in which he owned a property right.²¹⁴ A “Buy Back Option” was available for those who did not wish to retain their tickets at the stated price, but rather than accept the \$2000 check that was offered to him, the plaintiff turned to an Ohio claims court for relief to no avail.²¹⁵

Expressed in its opinion to hold the *plaintiff* in breach of contract, “the court [did] not agree with plaintiff’s characterization of the seats as goods,” but rather viewed “the contract between the parties [as] a personal seat license.”²¹⁶ Notwithstanding the “substantial” service fee, the court viewed the expressed terms of the contract as legally sufficient grounds to allow the price increase.²¹⁷

210. *In re Harrell*, 73 F.3d at 219 (entering judgment in favor of Suns).

211. *See generally* *Rayle v. Bowling Green State Univ.*, 739 N.E. 2d 1260 (Ohio Ct. Cl. 2000) (holding plaintiff in breach of contract for not paying increased service fee, thus allowing defendant to increase season ticket service fees in order to finance stadium construction).

212. 739 N.E.2d 1260 (Ct. Cl. Ohio 2000).

213. *See id.* at 1261 (stating plaintiff’s characterization of his alleged property interest).

214. *See id.* at 1262 (citing OHIO REV. CODE ANN. § 1301.02(A)(8) (LexisNexis 1996), *amended by* OHIO REV. CODE ANN. § 1301.103 (LexisNexis 2011)) (“Plaintiff alleges that the two seats he leased from defendant constitute ‘goods’ as defined in [OHIO REV. CODE ANN. §] 1301.02(A)(8), that he owns a property right in those goods, and that defendant defaulted on the lease contract when it increased the service fee in 1998.”); *see also id.* § 1310.65 (stating damages lessee is entitled to if lessor defaults on lease).

215. *Rayle*, 739 N.E.2d at 1262 (quoting defendant’s March 25, 1998 letter to plaintiff); *see id.* at 1261–62 (stating plaintiff refused defendant’s option to buy back seats).

216. *Id.* at 1262. The court further stated that “[a] ‘personal seat license’ ‘constitutes personal property that is vested in the owner and that is alienable by the terms of the grantor’s document that creates the right in the property owners.’” *Id.* (quoting *Marinik v. Cascade Group*, 724 N.E.2d 877, 880 (Ohio Mun. Ct. 1999)). Finally, the court noted that “[it] is not a mere license to purchase football tickets but rather is a valuable expectancy interest in renewable rights to season tickets that is a wholly separate and distinct interest from game tickets.” *Id.* (quoting *Marinik*, 724 N.E.2d at 880).

217. *See Rayle*, 739 N.E.2d at 1262 (entering judgment in favor of defendant by holding defendant had “high degree of official discretion”).

In June 2017, an Indianapolis Colts fan became the most recent victim of strict contractual interpretation in *Frager v. Indianapolis Colts*.²¹⁸ Back “[i]n 2010 the Colts established an online marketplace for owners of season tickets . . . to transfer their season ticket rights upon payment of a fee equal to 30 percent of the sale price of the tickets.”²¹⁹ As a result of said transfer policy, a plaintiff purchased ninety-four season tickets thinking he would be able to renew them the following season, but when he tried, the Colts refused him.²²⁰ While the plaintiff argued he already owned the tickets, the Colts argued the tickets were revocable.²²¹ On top of that, the Colts argued it had no duty to reimburse.²²²

In a bizarrely short opinion, the Seventh Circuit alluded to lease agreements similarly to the court in *Harrell* and declared, “a season-ticket holder has no right to future season tickets unless the Colts sold them that right in the first place, and the ticket contract forecloses that possibility.”²²³ Interestingly, even though the court chose not to offer the plaintiff relief, it recognized the easily ascertainable value in his particular “reasonable expectation” of renewal.²²⁴ Regardless, the Seventh Circuit believed that “given the wording of his contract with the Colts, it was merely ‘a speculation on chance, not a legal right.’”²²⁵

In an attempt to reconcile these holdings, *I.D. Craig* put great emphasis on the expectancy interest resulting from “the loose enforcement of the team’s transfer policies.”²²⁶ In contrast, the courts in *Oshinsky*, *Harrell*, *Rayle*, and *Frager* did not stray from interpreting the relevant expressed contractual language found on the team’s

218. 860 F.3d 583 (7th Cir. 2017); *see id.* at 583–84.

219. *Id.*

220. *See id.* at 584 (“[Plaintiff] has purchased season tickets for the 2015 season and he has requested their renewal for the 2016 season.”).

221. *See id.* (stating Plaintiff’s and Defendant’s arguments). The Plaintiff argued that although “the Colts are free to reject any transfer, . . . the season ticket holder continues to hold those rights if the Colts do so.” *Id.* (alteration in original) (quoting Plaintiff’s argument).

222. *See id.* (noting Colts’ argument).

223. *Id.*; *see also supra* note 206 and accompanying text (drawing comparison to expectancy interests inherent in lease agreements).

224. *Frager*, 860 F.3d at 545 (“That purchasers of season tickets are willing to pay a 30 percent transfer fee in the online marketplace indicates that the expectation of renewal added to the salable value of season tickets.”).

225. *Id.* (quoting *Emery v. Bos. Terminal Co.*, 59 N.E. 763, 765 (Mass. 1901)) (holding no automatic right to transfer ownership of season tickets from one season to following season).

226. Reese et al., *supra* note 161, at 181.

tickets.²²⁷ However, this Article argues that those latter courts actually erred by not drawing a distinction between “revocable licenses” (that is, the ticket itself) and the *separate expected* property interest that results from fans’ “automatic and routine ability” to both “renew[] and transfer” their season tickets.²²⁸

This distinction renders the opinions handed down by the Seventh Circuit, Ninth Circuit, United States Bankruptcy Court for the Northern District of Illinois, and the Ohio Court of Claims arguably without merit.²²⁹ By receiving extended annual offers to ticket holders to purchase season tickets, an “expectancy interest . . . [is] created, fostered, and honored” by each of the respective franchises.²³⁰ It is irrelevant whether this legal right comes from contractual language—either printed on the back of tickets or in a season ticket holder handbook—or made evident by the franchises’ courses of dealing.²³¹

This is because once the Giants, Suns, and Colts granted season ticket holders the option to renew their packages, the doctrine of “equitable estoppel” began to apply.²³² Such doctrine applies “when a party intentionally ‘induces another to believe that certain facts exist and the other justifiably relies and acts upon such belief’ and will be prejudiced if the first is permitted to contradict the expectation it has created.”²³³ By intentionally issuing season tickets to the same individuals and allowing these individuals to openly transfer their same tickets, franchises—whether they like it or not—

227. Compare *supra* notes 167–183 and accompanying text (discussing *In re I.D. Craig Serv. Corp.*) with *supra* notes 201–225 and accompanying text (discussing cases that found a contractual interest). See generally *In re Liebman*, 208 B.R. 38 (Bankr. N.D. Ill. 1997) (representing additional case in which court denied property interest in right to renew season tickets).

228. *In re I.D. Craig Serv. Corp.*, 138 B.R. 490, 495 (Bankr. W.D. Pa. 1992); see also *id.* at 494 (“The game tickets themselves and the right to renew the season tickets are two separate and distinct interests of this estate.”).

229. See *infra* notes 230–237 and accompanying text (distinguishing what may very well be revocable ticket from separate and distinct expectancy interest).

230. *In re I.D. Craig Serv. Corp.*, 138 B.R. at 496 (recognizing “automatic and routine” practices create “expectancy interest in season tickets and renewals . . . [that have] been created, fostered, and honored by [defendants] for many years”).

231. See *id.* at 502 n.22 (citing *H.R. Woolridge Co. v. Smith*, 5 Pa. D. & C. 230 (Pa. Ct. Com. Pl. 1978) (“A course of dealing has been defined as prior conduct between parties to a particular transaction which reasonably can be construed to establish an understanding.”)).

232. See *id.* at 497 (citing *Straup v. Times Herald*, 423 A.2d 713, 720 (Pa. Super. Ct. 1980)); *infra* note 233 and accompanying text and related materials.

233. *Id.* (quoting *Straup*, 423 A.2d at 720).

have produced the exact type of expectation that renders the doctrine applicable.²³⁴

It is precisely for this reason that the court in *I.D. Craig* proclaimed that what the “[t]rustee [was] actually selling, although termed ‘renewal rights’ . . . [was] the ‘record title’ to the status of registered season ticket holder which entails the entitlement to receive [an] offer to purchase season tickets each year.”²³⁵ It is also for this reason that when teams first transition from season ticket packages to PSL agreements, season ticket holders should not be forced to pay tens of thousands of dollars for the right to retain their seats; or, in the alternative, PSL prices should be offset by damages afforded to season ticket holders due to the team’s breach of such property interest.²³⁶ To this point, it is especially perplexing that the Seventh Circuit in *Fragger* recognized this “reasonable expectation”—as well as an accurate, non-speculative, quantitative amount of what said expectation was worth—and still withheld providing the plaintiff relief.²³⁷

However, as contract interpretation is a matter of state law, there is still uncertainty as to how other jurisdictions will approach the issue.²³⁸ This is illustrated by the Denver Broncos’ decision to settle a class action suit filed by 575 season ticket holders when the team changed its ticket transfer policy from an open to limited system in 1995.²³⁹ The Broncos season ticket holders claimed damages because the team’s new policy interfered with their “abilities to assign or sell their renewal rights.”²⁴⁰ Similar to the plaintiffs in *I.D. Craig*, these plaintiffs highlighted how the team had previously failed to regulate the transfer process for many years.²⁴¹ In re-

234. See, e.g., Reese et al., *supra* note 161 (stating recommendations for sports teams to avoid open transfer systems, wherein courts may deem ticket holders have property interest).

235. *In re I.D. Craig Serv. Corp.*, 138 B.R. at 500.

236. See *id.* (advocating for logic court deduced).

237. *Fragger v. Indianapolis Colts*, 860 F.3d 583, 584 (7th Cir. 2017) (recognizing “reasonable expectation” but following contract language to chagrin of plaintiff).

238. See *infra* notes 239–243 (discussing Denver Broncos’ settlement decision).

239. See, e.g., Reese et al., *supra* note 161, at 181–82 (analyzing PDB sports d/b/a Denver Broncos decision to settle in *Brinkhaus v. PDB Sports*, No. 96 CV 43, Div. 5 (D. Colo. 1996)).

240. *Id.* at 182 (“The plaintiffs contended the Broncos’ 1995 Transfer Policy improperly limited season ticket holders’ abilities to assign or sell their renewal rights (except to immediate family members), resulting in various losses.”).

241. See *id.* (“The plaintiffs claimed that by not regulating the ticket transfer process for the previous 35 years, the Denver Broncos had facilitated season ticket acquisition as an investment, rather than solely for entertainment purposes.”).

sponse, the Broncos' organization argued its prior policy "*expressly* allowed ticket-transfer policy revisions" and that the tickets constituted revocable seat licenses.²⁴² Although the organization's decision to settle was likely in response to the developing trend of recognizing an expectancy interest in the right to renew season tickets, concededly, as some scholars point out, it is also possible the decision was not for legal reasons at all.²⁴³

B. Increasing Difficulty in Establishing an Expectancy Interest Moving Forward

At this point, it is important to draw a distinction between cases in which a professional sports team instituted PSLs *for the first time*, like the Giants, and cases in which the team already issued PSLs to their fans and *then* chose to relocate and attempt to issue new PSLs.²⁴⁴ As for the former, harmed season ticket holders will be able to persuasively employ the reasoning of *I.D. Craig* in an attempt to establish an expected property interest in their already-existing season ticket holder status.²⁴⁵ However, *McAllister* stands for the proposition that if well-drafted PSL agreements are already executed at the time an owner decides to relocate his or her team, the provisions found within represent legally binding terms that will be upheld in court.²⁴⁶

Therefore, whether a team's PSL agreement contains a lawful termination clause becomes of utmost importance if ticket holders wish to argue that there is an expected property interest in the right to renew season tickets separate from the contractual interest of owning the PSL itself.²⁴⁷ If an organization's PSL agreement has a valid termination clause, it will be difficult for fans to successfully

242. *Id.* (emphasis added) (noting Broncos' argument).

243. *See id.* at 185 ("Why did the Broncos settle the case? Perhaps the answer is not strictly a legal one, but also includes elements of marketing, public relations (pending stadium vote), and fan loyalty that made settling the case a smart business decision.").

244. *Compare* Estate of Oshinsky v. N.Y. Football Giants, Inc., 2011 WL 383880 (D.N.J. 2011) (issuing PSLs to already-existing season ticket holders) *with* McAllister v. St. Louis Rams, LLC, 209 F. Supp. 3d 1121, 1124–27 (E.D. Mo. 2016) (desiring issuance of new PSLs to fans in new city after decision to relocate from St. Louis where PSLs were already executed).

245. *See supra* notes 226–236 and accompanying text (using routine ability to renew tickets and loose transfer policy as means of establishing expected property interest).

246. *See McAllister*, 209 F. Supp. 3d at 1129 (looking to four corners of PSL agreement to resolve dispute); *see also supra* notes 126–159 and accompanying text (discussing in detail *McAllister* court's determination).

247. *See infra* notes 248–253 and accompanying text (contrasting FANS Agreement and Rams Agreement and importance of "Additional Terms" provision).

argue that the recurring offers by the team to their stadium's PSL owners to purchase season tickets each year represent a property interest *distinct* from the legal contractual interest resulting from a signed PSL agreement.²⁴⁸ The FANS Agreement in *McAllister* exemplifies this concept.²⁴⁹ Since the FANS Agreement "remain[ed] valid only as long as NFL football [was] played at the stadium by RAMS, up to a maximum of thirty (30) years," the Envision and Arnold Plaintiffs' "expectation" that they would have an irrevocable right to buy tickets to "transferred games" in L.A. was held to be without merit.²⁵⁰

However, apparent from the Rams Agreement in *McAllister*, not all PSL agreements contain a well-drafted termination clause.²⁵¹ Recall that contrary to the FANS Agreement, the Rams Agreement remained valid until the year 2025, irrelevant to the location of the team's home facilities.²⁵² Therefore, when Stan Kroenke moved his team to L.A., he breached the Rams Agreement and was required to refund the *McAllister* plaintiffs' deposits.²⁵³ Furthermore, unlike some greedy NFL owners, "most NFL teams using a PSL system[] employ *permanent* seat licenses to prevent a potential public relations backlash"²⁵⁴ When this is the case, theoretically, it should be easier to argue there is an *I.D. Craig* property right in cases involving PSLs than in cases involving season ticket packages.²⁵⁵

This is because the two main factors discussed in *I.D. Craig* that compelled the court to hold that there is a property right inherent in holding "record title" to "season ticket holder status" are expressed as legally binding characteristics of PSL agreements.²⁵⁶

248. See *infra* notes 249–253 and accompanying text (reiterating outcome for each set of plaintiffs in *McAllister*).

249. See *McAllister*, 209 F. Supp. 3d at 1126 ("[The contract has terminated just as it would have if the contract had run its full 30 year course. The 'Best Efforts' provision is rendered ineffective (along with the rest of the Agreement) as a result.>").

250. *Id.* at 1124 (quoting FANS Agreement); see *id.* at 1126 ("The *Envision and Arnold* plaintiffs' claims based upon the FANS Agreement are therefore without merit, and the judgment on the pleadings will be granted to defendant Rams on those claims.>").

251. See *infra* notes 252–253 (contrasting Rams Agreement).

252. See *McAllister*, 209 F. Supp. 3d at 1127 (citing Rams Agreement) ("Unlike the FANS Agreement the validity of the Rams Agreement is not contingent on the Rams playing football at the Stadium.>").

253. See *id.* at 1128 (agreeing with *McAllister* Plaintiffs' claim).

254. Reese et al., *supra* note 161, at 174 (emphasis added).

255. See *infra* notes 256–268 (applying *I.D. Craig* discussion about season tickets to PSL).

256. *In re I.D. Craig Serv. Corp.*, 138 B.R. at 500; see *supra* notes 163–166 and accompanying text (reiterating main premises of court's holding in *I.D. Craig*).

First, a signatory to a PSL agreement is guaranteed the right to purchase their seats each year as long as they comply with the terms of the PSL agreement.²⁵⁷ Second, the signatory may transfer ownership of the PSL per the terms of the contract.²⁵⁸ Accordingly, so long as PSL agreements omit a termination clause that contractually allows teams to lawfully relocate at a moment's notice, PSL owners should be able to find success by alleging ownership of a property interest in addition to the contractual rights provided in the agreements themselves.²⁵⁹

The fact that PSL purchases began as good investment vehicles is another factor that favors finding PSLs give rise to a property interest.²⁶⁰ Around the turn of the century when PSLs started to become commonplace, there were multiple ways fans looked to make money from them.²⁶¹ Fans bought PSLs in stadiums that housed successful teams and re-sold tickets to individual games above face value.²⁶² Alternatively, PSL owners sold their entire PSL in future years for more than the amount they originally paid for them.²⁶³ Both strategies were successful.²⁶⁴ In Pittsburgh, “the average Steelers PSL became eight times more valuable in the [eleven] years after the opening of Heinz field.”²⁶⁵ Likewise, as of 2012, “Ravens and Bears PSLs increased 243 percent and 131 per-

257. See, e.g., PHILA. EAGLES STR MARKET PLACE, User Agreement (2017), available at <https://eagles.strmarketplace.com/User-Agreement.aspx> [<https://perma.cc/W57F-P8W9>] (displaying Philadelphia Eagles' SBL User Agreement); see also *Eagles To Charge 'Stadium Builder License' Fees*, PHILA. BUS. J. (July 10, 2001, 5:03 PM), <https://www.bizjournals.com/philadelphia/stories/2001/07/09/daily18.html> [<https://perma.cc/73S8-PHY6>] (quoting Joe Banner, then Eagles' President: “People should understand that when they buy a license they are acquiring an asset . . . They can sell it, transfer it or give it to their children”).

258. See, e.g., *id.*; N.Y. GIANTS STR MARKETPLACE, GIANTS STADIUM LLC PERSONAL SEAT LICENSE (PSL) AGREEMENT (2017), available at <https://nygiants.strmarketplace.com/Images/library/new-york-giants/psl%20agreement.pdf> [<https://perma.cc/MF7B-3KZ5>] (displaying New York Giants PSL Agreement).

259. See *supra* notes 256–258 and accompanying text (discussing *In re I.D. Craig's* logic in context of PSLs).

260. See Ozanian, *supra* note 115 (concluding PSLs have been excellent investments for some teams).

261. See *infra* notes 261–268 and accompanying text (discussing multiple ways PSLs began as good investments).

262. See Peter Keating, *The BIZ: The PSL “Problem”*, ESPN (Aug. 5, 2008), <http://www.espn.com/espnmag/story?id=3520135> [<https://perma.cc/PEH5-PPTH>] (detailing “few good reasons” PSLs exist).

263. See, e.g., Ozanian, *supra* note 115 (discussing secondary market for PSLs).

264. See *infra* notes 265–266 and accompanying text (appreciating markets where PSLs increased in value).

265. Gordon, *supra* note 100 (interpreting PSLs as investment vehicles).

cent, respectively.”²⁶⁶ Moreover, PSLs were originally marketed to “extremely loyal and emotionally invested fans” to allow them to “consider themselves pseudo owners.”²⁶⁷ This type of marketing strategy encouraged the *expectation* that PSL owners would be considered part of their city’s organization.²⁶⁸

Concededly, however, this expectancy interest will likely be more difficult to establish moving forward.²⁶⁹ This is partly because PSLs were more reasonably priced in the 1990s and early 2000s.²⁷⁰ These days, some fans may have difficulty recognizing any return on their PSL investments due to the prices they initially paid and their teams’ current on-going poor performances.²⁷¹ Additionally, in the future, with the rising costs of stadium construction, original PSL purchase prices will rise to the point where it may no longer be reasonable for a PSL purchaser to expect a return.²⁷² With no expected return, it will make it harder to convince a court to award damages when a team relocates.²⁷³ Those debating whether to purchase PSLs when organizations originally offer them should also be aware that the NFL and its members understand the effect PSLs have on the secondary ticket market.²⁷⁴ If ticket prices continue to rise each year, it could make it increasingly hard for PSL holders to resell their season tickets for profit, which could make it harder to

266. *Id.* (“Even though the prices were perceived as exorbitant, fans held a valuable asset.”).

267. Reese et al., *supra* note 161, at 185; *see also supra* notes 101–102 and accompanying text (discussing original PSL marketing strategy).

268. *See* Reese et al., *supra* note 161, at 185–86 (“Denver is certainly a metropolitan area where exuberant enthusiasm for the football team appears to be the rule, not the exception.”).

269. *See infra* notes 270–276 and accompanying text (detailing how market has changed and contracts will be drafted to protect sports organizations).

270. *See, e.g.,* Gordon, *supra* note 100 (“But in the last few years, the PSL market adjusted as teams began charging five to even six figures for seat licenses.”).

271. *See* Pat Kessler, *Reality Check: Are Personal Seat Licenses a Risky Investment?*, CBS MINN. (Oct. 4, 2013, 6:43 PM), <http://minnesota.cbslocal.com/2013/10/04/reality-check-are-personal-seat-licenses-a-risky-investment/> [<https://perma.cc/7TZG-X2XQ>] (“Jets fans who tried to sell [their PSLs] lost an average of \$3,233 per seat in 2012. Giants fans lost \$189. Cowboys fans lost an average of \$2,390.”).

272. *Compare id.* (arguing that PSLs are risky investment some people are not willing to make) *with supra* notes 261–268 and accompanying text (arguing for expectancy interest in investment when appropriate).

273. *Compare id.* (arguing that PSLs are risky investment some people are not willing to make) *with supra* notes 261–268 and accompanying text (arguing for expectancy interest in investment when appropriate).

274. *See, e.g.,* Keating, *supra* note 262 (discussing NFL’s recognition of secondary ticket market and pros and cons to PSLs from NFLs perspective).

establish an expected property interest.²⁷⁵ Moreover, the Securities and Exchange Commission has already taken a stance “prohibit[ing] teams to advertise PSLs as an investment—and to include language in the PSL contract in which the buyers acknowledge that they have no expectation of profiting.”²⁷⁶

IV. CONCLUSION

Sports organizations will continue the practice of transitioning away from issuing season ticket packages to their fans in favor of using well-drafted PSL agreements to finance new stadiums.²⁷⁷ Therefore, courts have a specific window—the time organizations *first* transition from season ticket packages to PSL agreements—to employ the reasoning behind the decision handed down in *I.D. Craig*: find a property interest associated with season-ticket-holder status, and prevent teams from charging their fans for the right to chew before tasting their food.²⁷⁸ The purpose of this Article is to encourage courts to hold team owners liable for revoking season ticket packages and award sports fans damages to help offset the cost of rising PSL prices.²⁷⁹ Coupled with the plethora of routine expenses associated with relocating cities, maybe said damages could be severe enough to have a chilling effect on owners’ decisions to relocate their teams.²⁸⁰

Indeed, *McAllister* suggests that as long as PSL agreements “are license agreements, which are contracts governed by the general principles of contract law,” courts will interpret them as “to ascer-

275. See, e.g., Keating, *supra* note 262 (mentioning one way to receive return on investment is selling individual tickets on secondary market for above face value).

276. See Mike Florio, *PSLs May Be a Good Investment, or a Bad One*, NBC SPORTS (June 17, 2012, 10:58 AM), <http://profootballtalk.nbcsports.com/2012/06/17/psls-may-be-a-good-investment-or-a-bad-one/> [<https://perma.cc/CA33-L255>] (pointing out Securities and Exchange Commission position on PSLs).

277. See *supra* notes 98–118 and accompanying text (discussing trend of owners using PSLs to obtain adequate stadium financing).

278. See *supra* notes 228–237 and accompanying text (employing argument from *I.D. Craig* to establish irrevocable property right to renew season tickets).

279. See *McAllister v. St. Louis Rams, LLC*, 209 F. Supp. 3d 1121, 1128–29 (E.D. Mo. 2016) (discussing matter of damages); *supra* note 157 and accompanying text.

280. See *supra* notes 22–24 and accompanying text (discussing reasons why fan loyalty is important consideration in decision to locate); *supra* notes 35–97 (discussing economics of team relocation and perspective of NFL and its teams’ owners).

tain the intention of the parties and give effect to that intention.”²⁸¹ Although this Article strongly encourages owners to appreciate the message such a decision sends to their teams’ loyal and passionate fan bases, it expects that future PSL agreements will demonstrate the “meeting of the minds,” and recognize that in the event of team relocation, the agreement between the team and PSL owners will lawfully terminate.²⁸²

With regards to sports organizations that have instituted PSL agreements without setting an expiration date, thank you.²⁸³ However, in the event that these organizations do relocate at some point in future years, courts should award *significant* damages to these particular PSL owners.²⁸⁴ The fact that PSL owners have been legally granted the rights to repeatedly purchase and transfer season tickets—alone—warrants this determination.²⁸⁵ Moreover, given the way PSLs were originally marketed to loyal and passionate fans, such an award would be doing the sports world justice.²⁸⁶

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281. *McAllister*, 209 F. Supp. 3d at 1125 (quoting *Monsanto Co. v. Garst Seed Co.*, 241 S.W.3d 401, 406 (Mo. Ct. App.); *J.E. Hathman, Inc. v. Sigma Alpha Epsilon Club*, 491 S.W.2d 261, 264 (Mo. 1973) (*en banc*)).

282. See *Meeting of the Minds*, BLACK’S LAW DICTIONARY (10th ed. 2014) (“Actual assent by both parties to the formation of a contract, meaning that they agree on the same terms, conditions, and subject matter.”); see *McAllister*, 209 F. Supp. 3d at 1125 (quoting *J.E. Hathman*, S.W.3d at 264 (“A court will not resort to construction where the intent of the parties is expressed in clear and unambiguous language for there is nothing to construe.”)).

283. See *supra* note 257 and accompanying text (appreciating perpetuity of term).

284. See *supra* notes 255–268 and accompanying text (arguing strongly for expected property interest in PSLs).

285. See *supra* notes 160–183 and accompanying text (discussing *I.D. Craig*).

286. See *Gordon*, *supra* note 100 (claiming PSLs were way to incorporate loyal fans into stadium construction process).

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