

Joe Wickline: To call plays or not to call plays,
that was the question at the forefront of Wickline's contract battle with Oklahoma State
by Martin J. Greenberg

I. INTRODUCTION

Joe Wickline (“Wickline”), is a former Assistant Coach at the University of Florida and Oklahoma State University (“Oklahoma State”); after leaving Oklahoma State, Wickline went on to the University of Texas (“Texas”) where he was Offensive Coordinator and Offensive Line Coach.¹ Wickline is regarded as one of the elite line coaches in college football.² Wickline spent nine years at Oklahoma State and led the Cowboys to top 20 national finishes in total offense six times.³ From 2010-13, the Cowboys’ offense scored fifty or more points in nineteen games, exceeded the 60-point mark seven times, scored more than 70 points twice, and even scored over 80 points once behind Wickline’s linemen.⁴ When Wickline was an Assistant Coach at Oklahoma State, he “helped coach an Oklahoma State offense that averaged at least 40 points per game in five of the last seven seasons.”⁵ The offensive line also helped earn “six consecutive first-team All-Big 12 running backs from 2007-12, a 1,000-yard rusher in five of the past six seasons, and a 1,000-yard receiver in six of the past eight seasons” under Wickline at Oklahoma State.⁶ During the 2012 season, “Oklahoma State ranked in the top 10 in the nation in scoring offense (third/45.7 ppg), total offense (fourth/547.0 ypg), passing offense (seventh/331.7 ypg), and sacks allowed (ninth/.92 pg), while ranking 21st in rushing as the team finished 8-5.”⁷ Throughout his coaching career, Wickline has coached five All-Americans, “including first-

¹ *Staff Directory, Joe Wickline*, TEXAS LONGHORNS ATHLETICS, <http://texassports.com/staff.aspx?staff=167> (last visited June 25, 2016).

² *Biography, Joe Wickline*, http://www.cstv.com/printable/schools/okst/sports/m-footbl/mtt/joe_wickline_408495.html (last visited June 25, 2016).

³ *Staff Directory*, *supra* note 1.

⁴ *Id.*

⁵ *Id.*

⁶ *Id.*

⁷ *Id.*

teamers Lomas Brown, Shannon Snell, and Jeff Zimmerman.⁸ Wickline also coached Max Starks, a former U[niversity of]F[lorida] tackle who now plays for the Pittsburgh Steelers.”⁹

II. EMPLOYMENT CONTRACTS

Wickline first entered into an Employment Contract with Oklahoma State on January 1, 2009 when he was hired as an Assistant Coach.¹⁰ In Paragraph 11 of the original contract, Wickline agreed that

[i]n the event of Coach’s termination of this Contract without cause under Paragraph Nine (9) hereof prior to its expiration date without first obtaining a release therefrom by the University, Coach shall pay to University, liquidated damages, a sum equal to fifty percent (50%) of the sum of the of the gross base monthly salary in effect on the date of termination and remaining due under Section 2 of this Contract but for termination of the Contract, said sum to become due and payable within thirty (30) days of the effective date of termination of the Contract, *provided, however,* University agrees to release Coach from his obligations under the Contract upon his request in order to enable him to assume employment as a Head Football Coach at a NCAA Division I–A institution and thereafter no liquidated damages shall be payable by Coach upon his termination of the Contract without cause.¹¹

The First Amendment to Wickline’s Employment Contract was entered into on January 1, 2011¹² and contained the following amendment: “[t]hat in addition to employment as a Head Football Coach, Coach shall also be released from the obligation to pay liquidated damages upon assumption of employment as an Offensive Coordinator (with play calling duties) at a NCAA Division I-A Institution or as an Assistant Coach in the NFL.”¹³

The Employment Contract was amended again by a Second Amendment dated January 1, 2012.¹⁴ The Second Amendment further provided that: “[s]ubject to the exceptions allowing

⁸ *Id.*

⁹ *Id.*

¹⁰ Employment Contract between Okla. State Univ. and Gregory Joe Wickline (Jan. 1, 2009).

¹¹ *Id.* at para. 11.

¹² First Amendment to Employment Contract between Okla. State Univ. and Gregory Joe Wickline (Jan. 1, 2011).

¹³ *Id.*

¹⁴ Second Amendment to Employment Contract between Okla. State Univ. and Gregory Joe Wickline (Jan. 1, 2012).

release in Section 11, the referenced percentage for calculating liquidated damages payable by Coach to University shall be one hundred percent (100%) in the event Coach accepts employment by a member institution of the Big Twelve Conference.”¹⁵

In January of 2014, Wickline terminated his Employment Contract with Oklahoma State and joined the University of Texas at Austin football program as an assistant coach.¹⁶ An employment agreement was executed by the University of Texas and Wickline on March 25, 2014 entitled Assistant Coach Employment Agreement and was between The University of Texas at Austin and Gregory J. Wickline (“Assistant Coach – Offensive Coordinator”).¹⁷ Paragraph 4 of the Agreement lists the Assistant Coach’s Duties and Responsibilities, which are general in nature and do not mention offensive coordinator or play call responsibilities.¹⁸

On or about March 24, 2014, Wickline received a letter from Oklahoma State’s Mike Holder (“Holder”), Vice President for Athletic Programs and Director of Intercollegiate Athletics.¹⁹ The letter stated as follows:

A few weeks ago, you unilaterally and voluntarily terminated your employment contract (the Contract) with Oklahoma State University (OSU). The Contract contains a clause which obligates you to pay liquidated damages to OSU for such a voluntary termination. As you know, because of the significant investment OSU made in you as an assistant coach and because of the known, but difficult to calculate, damages OSU would incur in finding, relocating and training a replacement coach, that clause was intended to compensate OSU should you leave for a lateral position. However, you and OSU agreed those liquidated damages would be waived if you left OSU for a promotion to become a head coach at another NCAA Division 1-A university. Accordingly, the Contract was initially phrased:

¹⁵ *Id.*

¹⁶ Gina Mizell, *Oklahoma State Football: Offensive Line Coach Joe Wickline Confirms He’s Headed to Texas*, NEWS OK (Jan. 12, 2014), <http://newsok.com/article/3923293>.

¹⁷ Assistant Coach Employment Agreement between the Univ. of Tx. at Austin and Gregory J. Wickline (Mar. 25, 2014).

¹⁸ *Id.* at para. 4.

¹⁹ Letter from Mike Holder to Joe Wickline (Mar. 24, 2014) (on file with author).

“University agrees to release Coach from his obligations under the Contract upon his request in order to enable him to assume employment as a Head Football Coach at a NCAA Division 1-A institution...”

Subsequently, the Contract was amended in an attempt to accommodate another potential promotion. Because an Offensive Coordinator (the primary assistant in charge of the entire offense) would ordinarily have attendant play calling duties, the Contract was amended as follows:

“That in addition to employment as a Head Football Coach, Coach shall also be released from the obligation to pay liquidated damages upon assumption of employment as an Offensive Coordinator (with play calling duties) at a NCAA Division 1-A Institution...”

Upon your departure from OSU, you advised you had accepted a position at another university as the Offensive Coordinator with “play calling duties.”

Regrettably, it has come to our attention that neither of those statements is apparently accurate. You are apparently subordinate to not only the Head Coach at your new school, but also to the Assistant Head Coach for the Offense. Thus, it appears that your current job is commensurate with your previous job title here as an assistant coach. As you know, when you signed your Contract with OSU, it was not the intent of the parties to waive the liquidated damages clause for such a lateral move.

Further, it has now come to our attention that you **do not** have “play calling duties.” Instead it appears that your Head Coach has confirmed that Shawn Watson, not you, will be calling the plays. Thus, in reality it appears you unilaterally and voluntarily terminated the Contract to make a lateral move and as such a waiver of the liquidated damages clause of the Contract is not triggered.

While OSU wishes you every success in your endeavors and burgeoning career, it is paramount to OSU that contract terms be taken seriously and that they be strictly enforced in the interest of professionalism. Accordingly, OSU will insist upon payment of the liquidated damages clause of the Contract. Those damages are equal to one hundred percent (100%) of the sum of the gross base monthly salary in effect on the date of termination and remaining under the term of the Contract, but for your termination. OSU has calculated that amount at \$593,478, which is now due and payable.²⁰

²⁰ *Id.*

III. LAWSUITS

On or about October 17, 2014, Oklahoma State filed a lawsuit against Wickline in the District Court of Payne County, Oklahoma.²¹ The suit alleged the following:

4. On or about January 1, 2009, Wickline entered into the Contract (a copy of which is attached hereto as “Exhibit A”) with OSU to serve as an Assistant Coach for OSU’s Intercollegiate Football Team.²²

5. The Contract was subsequently amended (a copy of said amendments are attached hereto as “Exhibit B” and “Exhibit C”) through mutual agreement executed in writing.²³

6. Pursuant to Section 11 of the Contract, as amended OSU and Wickline agreed that Wickline had special, exceptional, and unique knowledge, skill, and ability as a football coach.²⁴

7. In the Contract, as amended, Wickline recognized that the loss of his services to OSU, without OSU’s approval and release, prior to the expiration of the term of the Contract, as amended, would cause an inherent loss to OSU incapable of estimation with certainty, fairness or adequate compensation through monetary damages.²⁵

8. In the Contract, as amended, Wickline specifically promised not to accept employment, under any circumstances, as a football coach at any National Collegiate Athletic Association (hereinafter “NCAA”) member institution of higher education prior to the expiration of his contractual obligations to OSU or without first being released from the Contract, as amended, or reaching a negotiated settlement.²⁶

9. In the event of a breach by Wickline’s acceptance of employment by a member institution of the Big Twelve Conference prior to the expiration of his contractual obligations, Section 11 of the Contract, as amended, provided for liquidated damages to be paid to OSU in a sum equal to one hundred percent (100%) of the sum of Wickline’s gross base monthly salary in effect at the date of termination and remaining due.²⁷

²¹ Brief for Petitioner, Bd. of Regents v. Wickline, No. CJ-3024-420 (D. Okla. filed Oct. 17, 2014).

²² *Id.* at 2.

²³ *Id.*

²⁴ *Id.*

²⁵ *Id.*

²⁶ *Id.*

²⁷ *Id.*

10. Section 11 of the Contract, as amended, provided that Wickline would only be released from the liquidated damages provision of the Contract, as amended, if he was leaving OSU to accept employment as a Head Football Coach or as an Offensive Coordinator with play calling duties.²⁸

11. Upon Wickline's departure from OSU, he represented that the position he accepted at the University of Texas was as Offensive Coordinator with play calling duties.²⁹

12. Upon information and belief, Wickline is neither the Offensive Coordinator, nor does he have play calling duties. Instead he is an Assistant Coach in charge of the offensive line, which is a lateral move from Wickline's position at OSU and one that does not fall within the exception to pay liquidated damages.³⁰

13. As a result of this lateral move, Wickline is obligated to pay the liquidated damages specifically bargained for under the Contract, as amended.³¹

14. On or about March 24, 2014, OSU contacted Wickline via letter sent by UPS Next Day Air making demand for payment (a copy of that letter is attached hereto as ("Exhibit D")).³²

15. On or about April 22, 2014, OSU again contacted Wickline making demand for payment and informing Wickline of OSU's intent to file suit upon the expiration of thirty (30) day as required by the Contract, as amended (a copy of that letter is attached hereto as "Exhibit E").³³

Accordingly, Oklahoma State sought damages in the amount of \$593,478.00.³⁴

Subsequent to Oklahoma State filing its lawsuit, Wickline counter filed in October of 2014 by filing a tortious interference with contract lawsuit in Travis County District Court in Texas.³⁵ The claim was brought by Wickline against the Oklahoma State Board of Regents and Oklahoma State Athletic Director Holder for refusing to release Wickline from his Oklahoma

²⁸ *Id.* at 3.

²⁹ *Id.*

³⁰ *Id.*

³¹ *Id.*

³² *Id.*

³³ *Id.*

³⁴ *Id.* at 5. Kyle Fredrickson, *Oklahoma State Football: Breaking Down the Legal Dispute Between Joe Wickline and OSU*, News OK (Nov. 8, 2014), <http://newsok.com/article/5365082>.

³⁵ Chip Brown, *Wickline Engaged in Legal Battle with OSU*, TEXAS SCOUT (Oct. 22, 2014), <http://www.scout.com/college/texas/story/1472077-wickline-engaged-in-legal-battle-with-osu>.

State contract.³⁶ In the lawsuit, “Wickline alleged that Holder told him shortly before [Texas] offered Wickline the offensive coordinator position that Holder would never release him from his [Oklahoma State] contract because he was ‘the best offensive line coach in the country.’”³⁷ Wickline further alleged that Oklahoma State engaged in a “campaign of harassment, threats and intimidation,” and Wickline, as a result, sought damages after suffering “injury and mental anguish.”³⁸

Paragraph 14 of Wickline’s original Oklahoma State Employment Contract addressed the issue of jurisdiction:

Any action to enforce any of the provisions of this Agreement shall be filed in the Payne County District Court. No such action may be filed until the party claiming to be aggrieved shall first have delivered to the other a written notice of intention to file suit, including an outline of complaints. This notice shall be delivered at least 30 days before any suit is filed, and the parties shall use that period to engage in good-faith negotiations aimed at resolving the dispute without litigation. This paragraph is not intended to limit or circumscribe the legal rights of any party thereto, but rather to ensure that the parties exhaust all avenues of seeking a mutually agreeable accommodation of their differences before instituting litigation. In any situation where the terms of this paragraph might affect the legal rights of any party hereto, the parties shall stipulate to appropriate extensions of limitation periods and other matters to eliminate any such potential effect.³⁹

On or about November 7, 2014, Wickline’s attorney, David Beck (Beck), filed a Motion to Dismiss for Failure to State a Claim Upon Which Relief Can be Granted and Forum Non Conveniens.⁴⁰ The motion claimed that the liquidated damages penalty in Wickline’s employment contract was “a covenant not to compete against an employee and [wa]s void as a matter of law.”⁴¹ In the alternative, the motion alleged that the liquidated damages provision was a

³⁶ *Id.*

³⁷ *Id.*

³⁸ *Id.*

³⁹ Employment Contract between Okla. State Univ. and Gregory Joe Wickline (Jan. 1, 2009).

⁴⁰ Defendant’s Motion to Dismiss, *Bd. of Regents v. Wickline*, No. CJ-3024-420 (D. Okla. Filed Nov 7, 2004).

⁴¹ *Id.* at 1.

“penalty” and was void as a matter of law.⁴² Accordingly, the motion contended that “Defendant [wa]s entitled to a just and convenient forum to defend Plaintiff’s [Oklahoma State] lawsuit.”⁴³ In essence, Wickline requested that the case be moved out of Payne County to ensure a fair trial.⁴⁴ Alternative venues suggested for the case included Travis County, Texas, where Wickline filed his lawsuit, or a federal court in the Western District of Oklahoma.⁴⁵

On January 22, 2015, Judge Amy Clark Meachum, Travis County Judge, dismissed Wickline’s suit filed in Texas.⁴⁶ The court agreed that Wickline could not sue in Texas over the terms of his Oklahoma State Agreement as the employment agreement required that any dispute under the employment agreement must be settled in Payne County, Oklahoma.⁴⁷

IV. CONTRACT INTERPRETATION

In order to be exempted from paying the liquidated damage buyout, Wickline, pursuant to his Oklahoma State Employment Contract, would have had to be employed as an Offensive Coordinator (with play-calling duties). Wickline’s attorney, Beck, said that “Wickline’s [Texas Employment Agreement] did [not] specify that he call ‘all plays,’ but that he ‘just has play-calling duties.’”⁴⁸ Beck further stated that “if your game plan is running, I would assume coach Wickline is going to have a lot of play-calling responsibilities.”⁴⁹ Texas Head Coach Charlie Strong’s (“Strong”) statements have only further confused the issue of who was calling the plays

⁴² *Id.*

⁴³ *Id.*

⁴⁴ AP, *Joe Wickline: No Fair Trial in Okla.*, ESPN (Nov. 10, 2014), http://espn.go.com/college-football/story/_/id/11855036/joe-wickline-texas-longhorns-seeks-dismissal-oklahoma-state-lawsuit.

⁴⁵ *Id.*; Brian Davis, *Joe Wickline’s Attorneys Ask to Move Lawsuit to Travis County*, HEARTLAND COUNTY SPORTS (Nov. 11, 2014), <http://www.heartlandcollegesports.com/joe-wicklins-attorneys-ask-move-lawsuit-travis-county/>.

⁴⁶ Jordan Bishop, *Wickline’s Suit Against Oklahoma State Dismissed*, OCOLLY (Jan. 22, 2015), http://www.ocolly.com/sports/article_b6ae42b8-a299-11e4-88e3-4f915b59bff7.html.

⁴⁷ *Id.*

⁴⁸ Jim Vertuno, *Lawsuit Over Play-Calling at Texas Heating Up*, NCAA COLLEGE FOOTBALL (Dec. 18, 2014), <http://www.collegefootball.ap.org/article/lawsuit-over-play-calling-texas-heating>.

⁴⁹ *Id.*

for the Longhorns.⁵⁰ When Strong announced his staff in January of 2014, “Strong said [A]ssistant [Coach] Shawn Watson would collaborate but that ‘Joe will call the plays on offense.’”⁵¹ In March of 2014, “Strong said Wickline would be ‘involved’ in play-calling but that ‘the one final voice will be Shawn [Watson].’”⁵²

Wickline’s Oklahoma State Employment Contract exempted him from paying liquidated damages if he was an Offensive Coordinator. The language does not indicate that he had to be “the” or the “sole or only” Offensive Coordinator. The words Offensive Coordinator are followed by “(with play-calling duties).” Once again, the language utilized does not require that he be the “only” coach that had play-calling duties on an exclusive basis. Wickline’s official title at Texas was Offensive Coordinator. Strong said Wickline was involved in play-calling, although Assistant Coach Watson had the final say. If the battle played itself out, testimony from coaches or players about who actually called plays during Texas football games would be necessary. Sean Breen, Attorney for Oklahoma State, indicated that “[c]oaches, players, administrators, ex-players. . . . Ultimately, if this case gets to the merits, I think you’ll see a lot of people having to answer questions.”⁵³

This case, if it had ultimately gone to trial, would have resulted in a case of contract interpretation by the court. Some basic principles of contract interpretation are provided by Attorney Vincent R. Martornana (“Martornana”) in *A Guide to Contract Interpretation*.⁵⁴ Martornana provided examples of how contracts are interpreted as follows:

⁵⁰ *Id.*

⁵¹ *Id.*

⁵² *Id.* Mike Finger, *OSU Lawyer: No Wickline Trial Before 2016*, MY SAN ANTONIO (July 24, 2015), <http://blog.mysanantonio.com/longhorns/2015/07/osu-lawyer-no-wickline-trial-before-2016/>.

⁵³ Jim Vertuno, *Strong and Texas Players Could Testify in Dispute*, COLLEGE FOOTBALL (Nov. 19, 2014), <http://collegefootball.ap.org/article/strong-and-texas-players-could-testify-dispute>.

⁵⁴ VINCENT R. MORTORNANA, *A GUIDE TO CONTRACT INTERPRETATION* (July 2014). *See also* RICHARD R. ORSINGER, *THE LAW OF INTERPRETING CONTRACTS* (2007); Gaddy Wells, *Rules for Interpreting Contracts* (Jan. 7, 2015), http://www.gaddywells.com/INTERPRETING_CONTRACTS.html.

- A. Determine the intent of the parties with respect to the provision at issue at the time the contract was made.⁵⁵
- B. Defining ambiguity⁵⁶
 - 1. A contract or provision is ambiguous if it is reasonably susceptible to more than one interpretation.
 - a. Some courts look at whether the provision is reasonably susceptible to more than one interpretation when read by an objective reader in the position of the parties.
 - b. Some courts factor in a reading of the provision “by one who is cognizant of the customs, practices, and terminology as generally understood by a particular trade or business.”
 - i. Evidence of custom and practice in an industry is admissible to define an unexplained term.
 - ii. When the plain meaning of a word lends itself to only one reasonable interpretation, that interpretation controls.
 - c. The contract should be viewed in light of the circumstances under which it was made.
 - d. As between two interpretations, the court will not adopt an interpretation that produces an absurd result.
 - e. Contracts should be construed in a commercially reasonable manner.

⁵⁵ MORTORNANA, *supra* note 55, at 5.

⁵⁶ *Id.* at 6.

- f. A provision is not ambiguous simply because the parties disagree as to its construction or urge alternative interpretations.⁵⁷

C. Assessing whether a provision is ambiguous⁵⁸

1. Whether a contract or provision is ambiguous is a determination of law for the court to make on a claim-by-claim basis.
2. Parol evidence cannot be used to create an ambiguity.
3. Principles for determining whether a provision is ambiguous
 - a. Holistic Principles
 - i. Read the contract as a whole; do not read provisions in a vacuum.
 - ii. Provisions and terms should not be interpreted so as to render any provision or term superfluous or meaningless.
 - iii. The terms of the contract should be “harmonized” and read in context.
 - iv. Contracts entered into contemporaneously and for the same purpose should be read and interpreted together.
 - b. Canons of Construction
 - i. *Ejusdem generis*
 - ii. *Expresio unius est exclusio alterus*
 - iii. The specific governs over the general.
 - iv. The same words used in different parts of a writing have the same meaning.

⁵⁷ *Id.* at 6–16.

⁵⁸ *Id.* at 17.

c. Other Principles

- i. In determining whether an ambiguity exists, courts look at the language of the contract itself and the inferences that can be drawn from that language.
- ii. Preference for construing text as obligation rather than a condition.
- iii. When dealing with sophisticated parties, the court gives deference to the language used.
- iv. Contractual silence does not necessarily create ambiguity, but an omission as to a material issue can create an ambiguity.
- v. Punctuation is always subordinate to the text and is never allowed to create ambiguity or undermine otherwise clear meaning.⁵⁹

D. When a provision is unambiguous⁶⁰

1. If the provision is unambiguous, then the court interprets the contract as a matter of law.
2. If the provision is unambiguous, then the court should look only to the text of the contract to determine the parties' intent and parol evidence should not be used ("four-corners rule")
 - a. If the provision is unambiguous, then the court cannot use notions of equity and fairness to alter the contract.⁶¹

⁵⁹ *Id.* at 17–29.

⁶⁰ *Id.* at 30.

- E. When a provision is ambiguous⁶²
1. If the provision is ambiguous, then the parties' intent becomes a question of fact.
 2. If the provision is ambiguous [or incomplete], then parol evidence can be used to determine the intent of the parties.
 3. If the provision is ambiguous, then summary judgment is not appropriate unless the parol evidence is uncontroverted or so one-sided that no reasonable person could decide otherwise.
 4. An ambiguity is generally construed *contra proferentum* (i.e., against the drafter), particularly in adhesion contracts.
 - a. Courts are divided as to whether the rule of *contra proferentum* applies prior to or after considering parol evidence.
 - i. Some courts apply the rule of *contra proferentum* as one of "last resort," (i.e., only after considering extrinsic evidence).
 - ii. Ambiguities in adhesion contracts (e.g., certificates of incorporation, insurance contracts) should be construed against the drafter without considering extrinsic evidence.
 - b. Parties can contract around the *contra proferentum* rule.
 5. A "whereas" clause cannot create any rights arising from beyond the contract's operative terms.⁶³

⁶¹ *Id.* at 30–32.

⁶² *Id.* at 33.

⁶³ *Id.* at 33–42.

V. DEPOSITIONS AND DISPOSITION

On March 11 and 12, 2015, Strong and Watson were deposed by Oklahoma State lawyers in an effort to determine who called plays for the 2013-2014 season.⁶⁴ “Strong said both of his co-coordinators were play callers, but when asked who called the majority of plays in a 31-7 loss to Arkansas in the Texas Bowl, he said, ‘I don’t know.’”⁶⁵ Strong continued and “indicated that Watson was in charge of calling pass plays and Wickline was in control of run plays.”⁶⁶

Wickline was also deposed.⁶⁷ Wickline stated he was aware of the liquidated damage clause in his contract when he started talking with Strong about coming to Texas, but didn’t recall if he specifically told him.⁶⁸ In addition, Wickline stated that he was hired before Watson.⁶⁹ He also indicated that Strong hired him as Offensive Coordinator and that he would have play calling duties.⁷⁰ He also testified that he told Texas that his Texas Employment Agreement “needed to have certain language to satisfy his [Oklahoma State] buyout clause.”⁷¹

“In terms of game planning, Watson said Wickline ‘gives me his opening runs that he likes, then I, you know, we merge it with the passing game.’ Added Wickline: ‘I am a decision-maker. I make calls. I call plays.’”⁷² Watson in his deposition indicated that “he is the one who tells the signal-caller what plays to run on offense.”⁷³ He also indicated that “he and Wickline are the final decision makers on offense.”⁷⁴

⁶⁴ Shawn Watson Dep., Mar. 11, 2015; Charlie Strong Dep., Mar. 11, 2015.

⁶⁵ Kyle Fredrickson, *Oklahoma State Football Notebook: Details Emerge from Sworn Statements in Joe Wickline Lawsuit*, NEWS OK (April 9, 2015), <http://newsok.com/article/5408828>.

⁶⁶ *Id.*; Strong Dep. 61–62.

⁶⁷ Gregory Joe Wickline Dep., Mar. 12, 2015.

⁶⁸ *Id.* 54.

⁶⁹ *Id.* 62.

⁷⁰ *Id.* 62–3.

⁷¹ Christian McDonald & Jason Jarrett, *OSU vs. Wickline, Key Points in Wickline vs. OSU Depositions*, AUSTIN AM.-STATESMAN (Apr. 10, 2015), <http://projects.statesman.com/sports/wickline-depositions/>.

⁷² Fredrickson, *supra* note 66.

⁷³ McDonald & Jarrett, *supra* note 72; Watson Dep. 28.

⁷⁴ McDonald & Jarrett, *supra* note 72; Watson Dep. 73.

In his April 2015 deposition, Oklahoma State Coach Mike Gundy testified that he believed Wickline made a lateral move.⁷⁵

Oklahoma State Athletic Director Holder (“Holder”) stated in his deposition that “he believes that Watson is the final decision-maker for calling plays at Texas, which does not satisfy the duties in the ‘liquidated damage clause.’”⁷⁶ Holder went on to say that “the final decision maker is when the play call is given to the quarterback and executed” and that was Watson’s job.⁷⁷

Ultimately, this lawsuit raises serious questions regarding the determination of titles and roles in the Texas football program. “If Watson leads the game-planning sessions and is the “one, final voice” in play calls, sending each and every one of them down to the field from the press box, where the offensive coordinator typically resides, why is Wickline the offensive coordinator?”⁷⁸

In September of 2015, Strong removed both Wickline and Watson from play-calling duties and assigned these duties to Receivers’ Coach Jay Norvell.⁷⁹

Both Oklahoma State and Wickline brought motions for summary judgment.⁸⁰ Oklahoma Associate District Judge Stephen Kistler denied both motions for summary judgment in

⁷⁵ AP, *Mike Gundy Deposition: Assistant Joe Wickline Took Lateral Move to Texas*, ESPN (May 12, 2015), http://espn.go.com/college-football/story/_/id/12873913/oklahoma-state-cowboys-coach-mike-gundy-states-deposition-former-assistant-joe-wickline-took-lateral-move-texas-longhorns; Brian Davis, *OSU’s Mike Gundy: Joe Wickline ‘Took a Lateral Move’ to Come to Texas* (May 12, 2015), <http://www.hookem.com/2015/05/12/osu-mike-gundy-joe-wickline-took-a-lateral-move-to-come-to-texas/>.

⁷⁶ McDonald & Jarrett, *supra* note 72; Mike Holder Dep. 87, Feb. 3, 2015.

⁷⁷ McDonald & Jarrett, *supra* note 72; Holder Dep. 75.

⁷⁸ Wescott Eberts, *Texas Coaches Say They Share Play Calling Duties in OSU Lawsuit Deposition*, SBNATION (Apr. 9, 2015), <http://www.burntorangenation.com/2015/4/9/8378195/joe-wickline-lawsuit-oklahoma-state-cowboys-depositions>.

⁷⁹ *Report: Texas to Settle OSU-Joe Wickline Lawsuit*, OCOLLY (Oct. 7, 2015), http://www.ocolly.com/sports/article_f4279c2e-6d33-11e5-b364-abad30e7d7fc.html.

⁸⁰ Max Olson, *Wickline-Oklahoma State Lawsuit Continues*, ESPN (Sept. 25, 2015), http://espn.go.com/college-football/story/_/id/13729454/the-wild-twists-turns-oklahoma-state-lawsuit-texas-longhorns-coach-joe-wickline-continues.

September of 2015 stating “[t]here are genuine issues of material fact that justify a trial, . . . neither party is entitled to judgment as a matter of law.”⁸¹ The trial in the case was scheduled to begin on May 8, 2016 and to last four days.⁸²

Steve Patterson, former Texas Athletic Director, insisted that the suit did not pertain to Texas and, therefore, Texas would not participate in any form of settlement discussions.⁸³ Patterson’s replacement, Mike Perrin, however, said that Oklahoma State’s lawsuit against Wickline was a distraction.⁸⁴

In December of 2015, Texas announced that Offensive Coordinators Wickline and Watson had been fired.⁸⁵ Both were demoted from their play calling duties after the first game of the Longhorns’ disappointing 5-7 season.⁸⁶

In December of 2015, it was announced that Wickline and Oklahoma State had entered into a Settlement Agreement for \$250,000.00 and the case was dismissed.⁸⁷ It was announced in January of 2016 that Wickline would be the new Offensive Coordinator at the University of West Virginia.⁸⁸ “Joe brings a wealth of experience, and his resume speaks volumes of his ability

⁸¹ Zach Barnett, *Joe Wickline v. Oklahoma State Trial Set for March 2016*, NBCSPORTS (Sept. 29, 2015), <http://collegefootballtalk.nbcsports.com/2015/09/29/joe-wickline-v-oklahoma-state-trail-set-for-march-2016/>.

⁸² *Id.*; Brian Davis, *Judge: Oklahoma State-Joe Wickline Case Will Go to Trial*, HookEm (Sept. 29, 2015), <http://www.hookem.com/2015/09/29/judge-oklahoma-state-joe-wickline-case-will-go-to-trial/>.

⁸³ Barnett, *supra* note 82.

⁸⁴ Ryan Autullo, *Mike Perrin Calls Joe Wickline Lawsuit ‘A Distraction,’* HookEm (Oct. 3, 2015), <http://www.hookem.com/2015/10/03/mike-perrin-calls-joe-wickline-lawsuit-a-distraction/>.

⁸⁵ Wescott Eberts, *WB Coach Shawn Watson, OL Coach Joe Wickline Officially Out at Texas*, SBNation (Dec. 12, 2015), <http://www.burntorangenation.com/2015/12/12/9997818/shawn-watson-joe-wickline-fired-texas-longhorns-charlie-strong>.

⁸⁶ *See generally id.*; *Report: Texas to Settle OSU-Joe Wickline Lawsuit*, *supra* note 80.

⁸⁷ AP, *Oklahoma State Settles Lawsuit Against Ex-Texas Assistant Joe Wickline*, ESPN (Dec. 29, 2015), http://espn.go.com/college-football/story/_/id/14461013/oklahoma-state-settles-lawsuit-ex-texas-assistant-joe-wickline.

⁸⁸ Mike Montoro, *Holgorsen Announces Staff Addition*, WVU ATHLETICS (Jan. 14, 2016), <http://www.wvusports.com/page.cfm?story=29394>; Nick Castillo, *Report: Former OSU Assistant Joe Wickline to Become West Virginia Offensive Coordinator*, OSU SPORTS EXTRA (Jan. 14, 2016), http://www.tulsaworld.com/sportsextra/osusportsextra/report-former-osu-assistant-joe-wickline-to-become-west-virginia/article_4b0ec2f0-640a-59a8-bbb9-3ebc0a6498f9.html.

to build top offensive lines, as well as being a prominent voice in developing offensive units,” Holgorsen said. “We were on staff together at Oklahoma State in 2010, and he brings an excellent familiarity of the Big 12 Conference. I am excited to add him to our staff and welcome him and his family to West Virginia University.”⁸⁹

VI. CONCLUSION

In order for Wickline to be free of the liquidated damages provision in his Oklahoma State Employment Contract, he was required to meet one of three conditions subsequent to his resignation: (1) assume employment as a head football coach at a NCAA Division 1-A institution; (2) assume employment as an offensive coordinator with play-calling duties at a NCAA Division 1-A institution; or (3) finally, assume employment as an assistant coach in the NFL. Failure to meet one of the three conditions at his new place of employment would ultimately result in a liquidated damage cost of \$593,478.00.

A head football coach at a Division 1-A institution as well as an assistant coach in the NFL are easily definable and recognizable as a condition subsequent. An offensive coordinator with play-calling duties, on the other hand, is not. An offensive coordinator is normally in the second level of command structure of college football. An offensive coordinator position may be held by not just one coach, but by two. On the one hand, an offensive coordinator may as part of his job responsibilities draw up game plans; on the other hand, the offensive coordinator maybe required to call plays. However, it is not uncommon to have, in some instances, the offensive coordinator draw up the game plans, but the head coach actually calling the plays. Offensive coordinators have the option of operating from the press box or the sidelines.

⁸⁹ Mike Montoro, *Holgorsen Announces Staff Addition*, WVU ATHLETICS (Jan. 14, 2016), <http://www.wvusports.com/page.cfm?story=29394>

Wickline's Texas Employment Agreement is unusual. While he is identified as Assistant Coach – Offensive Coordinator, the portion of his agreement that lists his duties and responsibilities is general in nature and does not mention offensive coordinator or play calling responsibilities. In Wickline's deposition he testified that he told Texas that his Texas Employment Agreement needed to have certain language to satisfy his Oklahoma State buyout clause, and that he would need to be hired as an offensive coordinator with play calling duties. Based on the exposure of jumping to another job and the monetary damages that accrue therefrom, there is no question that Wickline's Texas Employment Agreement should have been more specific in nature. Care should have been taken in specifying that Wickline was the head offensive coordinator and that as part of that job description he would have play calling duties.

The language in the Texas Employment Agreement should have been more carefully drafted. Oklahoma State took the very basic position that the conditions subsequent were not met and that Wickline made nothing more than a lateral move. Strong's testimony may have been damning in that he said Wickline does call plays on offense, but the final word comes from Watson, and Watson sends the final plays to the quarterback. The drafting of the Texas Employment Agreement itself was subject to construction and further definition. While Wickline was identified as an Offensive Coordinator, the employment agreement did not indicate whether or not he was the sole Offensive Coordinator, and it did not indicate if he was expected to call all plays or was limited to calling plays that deal with running.

In my article, *Good Drafting Makes Good Contracts*,⁹⁰ I indicate that the use of undefined words and the absence of specificity are asking for a contract battle. That is exactly what Wickline got. The Oklahoma State employment contract was unclear as to whether the

⁹⁰ Greenberg, Martin J., *Good Drafting Makes Good Contracts*, For the Record, Volume 18, No. 3 (Jul-Sept. 2007) <http://law.marquette.edu/assets/sports-law/pdf/for-the-record/greenberg-v18no3.pdf>.

Offensive Coordinator position needed to be exclusive or sole, or whether there could be joint or co-offensive coordinators. The same issue existed with respect to play calling responsibilities. The Texas Employment Agreement was incomplete and should have cleaned up the missing language to prevent this “distracting” legal battle.

A special thank you to Lori Shaw for her assistance in footnoting and finalizing this article. Lori Shaw is a graduate of Marquette University Law School where she focused on Intellectual Property and Sports Law. Shaw was also the Managing Editor for the Marquette Intellectual Property Law Review and member of the Alternative Dispute Resolution Society and Labor and Employment Law Society at Marquette. Shaw was also a double-major in History and Political Science, with a Psychology minor, at Indiana University in Bloomington, Indiana.