

IN THE CIRCUIT COURT OF MONONGALIA COUNTY, WEST VIRGINIA

WEST VIRGINIA UNIVERSITY
BOARD OF GOVERNORS, for and on
behalf of WEST VIRGINIA UNIVERSITY,

Plaintiff,

v.

CIVIL ACTION NO. 07-C-851
(Judge Stone)

RICHARD RODRIGUEZ,

Defendant/
Third-Party Plaintiff,

v.

WEST VIRGINIA UNIVERSITY
FOUNDATION, INC., a West Virginia
corporation,

Third-Party Defendant.

**PLAINTIFF'S COMBINED SECOND REQUESTS FOR ADMISSION,
THIRD INTERROGATORIES AND THIRD REQUEST FOR PRODUCTION
OF DOCUMENTS TO DEFENDANT, RICHARD RODRIGUEZ**

TO: Richard Rodriguez
c/o Sean P. McGinley, Esq.
DiTrapano, Barrett & DiPiero, PLLC
604 Virginia Street, East
Charleston, West Virginia 25301

Pursuant to Rule 36 of the West Virginia Rules of Civil Procedure, comes now the plaintiff, West Virginia University Board of Governors, for and on behalf of West Virginia University (hereinafter "University"), and demands the defendant admit the truth of the following matters within thirty (30) days after service hereof. Also, pursuant to Rule 33 of the West Virginia Rules of Civil Procedure, the defendant is requested to answer the following interrogatories separately and fully, in writing, under oath, and to serve his answers on the undersigned within thirty (30) days after service of the same upon the defendant. Moreover,

pursuant to Rule 34 of the West Virginia Rules of Civil Procedure, the defendant is hereby requested to produce for inspection, examination and copying at the law offices of Flaherty, Sensabaugh & Bonasso, P.L.L.C., 200 Capitol Street, Charleston, West Virginia 25301 within thirty (30) days of the service of this request all documents described below.

For purposes of the defendant's responses, the following instructions are provided and are to be used throughout:

1. The words "and" and "or" also have the meaning "and/or."
2. "Document" means the original and all drafts of all written or graphic matter, however produced or reproduced, maintained or stored, whether or not sent or received, and all copies thereof that are different in any way from the original, including, but not limited to, any paper, book, memorandum, advertising material, letter, report, record, transcript, analysis, study, research, worksheet, note, notation, working paper, interoffice communication, chart, graph, minute, index sheet, recording of any telephone or other conversation or communication, or of any interview, or of any conference, or any other written, recorded, transcribed, punched, taped, videotaped, filmed or graphic matter, of which defendant or anyone acting or purporting to act on defendant's behalf has knowledge. "Document" also means information recorded and/or stored on tape, disc, record or by any electronic or other means, as well as to information stored in microfilm, microfiche and the like. Any document containing written or other interlineations in addition to that contained on another document must be produced in addition to that other document. "Document" also includes and refers to the file or any other item which holds, binds, or otherwise contains documents or which once held, bound or otherwise contained any documents, as well as to any writing or printing which might appear on such file, binder or container.

3. The terms "Identify," "Indicate," "Describe" and "List."
 - a. When used in reference to a natural person means state the name, present or last-known business and residence address, telephone number and position of the natural person during the time specified;
 - b. When used in reference to any other entity, means state the current or last-known business name and business address, telephone number, nature of the business, and identity of the Chief Executive Officer(s)and/or General Manager(s)of the entity throughout the specified time;
 - c. When used in reference to a document, means state the date of its preparation, the identity of its author, the type of document it is, its contents and identify all persons who received copies of it; and
 - d. When used in reference to an action or event, means state the date of the event or action, the persons involved in the action or event, and a description of the action or event.

4. "Agreement" means, collectively, the Employment Agreement entered into on or about December 21, 2002, between the defendant and the University for the defendant to serve as head coach of the West Virginia University Football Team, the First Amendment to the Employment Agreement for Richard Rodriguez entered into on or about June 24, 2006, and the Second Amendment to the Employment for Richard Rodriguez entered into on or about August 24, 2007.

5. The Interrogatories are continuing in character so as to require defendant to file supplementary answers thereto if further information is obtained subsequent to the date of your initial response.

6. Where knowledge, information or possession of a party is requested, such request includes knowledge of the party's directors, officers, agents, representatives and, unless privileged, his attorneys.

7. Use of a singular noun shall include the plural and vice versa.

8. Where the answer or response to any of the Interrogatories may be derived or ascertained from any records of defendant or its agents or from an examination, audit or inspection of such records or from a compilation, abstract or summary based thereon, please specify the records from which the response may be derived or ascertained.

**SECOND REQUESTS FOR ADMISSION, THIRD INTERROGATORIES
AND THIRD REQUEST FOR PRODUCTION OF DOCUMENTS**

Request for Admission No. 1: Admit that the Letter of Intent Between the University of Michigan and Coach, attached as Exhibit A, is authentic, true and complete.

ADMIT: _____ **DENY:** _____

Interrogatory No. 1: If the response to Request for Admission No. 1 is other than an unqualified admission, please provide a full statement of all the facts and reasons which form the basis for defendant's failure to make an unqualified admission.

Response:

Request for Production No. 1: If the response to Request for Admission No. 1 is other than an unqualified admission, please provide all documents which form the basis of, or relate to, defendant's failure to make an unqualified admission, including, but not limited to, any and all documents which the defendant contends constitute any contract or agreement between the defendant and the University of Michigan.

Response:

Request for Admission No. 2: Admit that the defendant signed the Letter of Intent Between the University of Michigan and Coach, attached as Exhibit A, on December 16, 2007.

ADMIT: _____ **DENY:** _____

Interrogatory No. 2: If the response to Request for Admission No. 2 is other than an unqualified admission, please provide a full statement of reasons why it is anything other than an unqualified admission.

Response:

Request for Production No. 3: If the response to Request for Admission No. 2 is other than an unqualified admission, please provide all documents which form the basis of, or relate to, defendant's failure to make an unqualified admission.

Response:

Request for Admission No. 3: Admit that the Letter of Intent Between the University of Michigan and Coach, attached as Exhibit A, contains the following provisions:

- C. Athletically Related Outside Income As Allowed By Contract

...

- 6. Early Termination By Head Coach

Termination of contract by head coach prior to contract expiration date – Head Coach pays UM \$4,000,000 if termination is in contract year one. Buyout amount decreases \$500,000 each contract

year. Payment to be made within thirty (30) days of termination.

7. Early Termination By UM

Termination of contract without cause by UM prior to contract expiration date – pay to head coach \$4,000,000 if the termination occurs in year one. Buyout amount decreases by \$500,000 each contract year. Payment to be made within thirty days of termination.

ADMIT: _____ DENY: _____

Interrogatory No. 3: If the response to Request for Admission No. 3 is other than an unqualified admission, please provide a full statement of all the facts and reasons which form the basis for defendant's failure to make an unqualified admission.

Response:

Request for Production No. 3: If the response to Request for Admission No. 3 is other than an unqualified admission, please provide all documents which form the basis of, or relate to, defendant's failure to make an unqualified admission.

Response:

Request for Admission No. 4: Admit that provision C.6. of the Letter of Intent Between the University of Michigan and Coach, attached as Exhibit A, is a valid liquidated damages provision which is reasonable and does not constitute an unenforceable penalty which is against public policy.

ADMIT: _____ DENY: _____

Interrogatory No. 4: If the response to Request for Admission No. 4 is other than an unqualified admission, please provide a full statement of all the facts and reasons which form the basis for defendant's failure to make an unqualified admission.

Response:

Request for Production No. 4: If the response to Request for Admission No. 4 is other than an unqualified admission, please provide all documents which form the basis of, or relate to, defendant's failure to make an unqualified admission.

Response:

Request for Admission No. 5: Admit that provision C.7. of the Letter of Intent Between the University of Michigan and Coach, attached as Exhibit A, is a mutual liquidated damages provision which is reasonable and does not constitute an unenforceable penalty which is against public policy.

ADMIT: _____ **DENY:** _____

Interrogatory No. 5: If the response to Request for Admission No. 5 is other than an unqualified admission, please provide a full statement of all the facts and reasons which form the basis for defendant's failure to make an unqualified admission.

Response:

Request for Production No. 5: If the response to Request for Admission No. 5 is other than an unqualified admission, please provide all documents which form the basis of, or relate to, defendant's failure to make an unqualified admission.

Response:

Interrogatory No. 6: Please state all facts and information which form the basis of any contention by the defendant that the plaintiff did not provide additional monies to pay assistant coaches as set forth in the terms of the Agreement.

Response:

Request for Production No. 6: Please provide all documents which form the basis of, or relate to, any contention by the defendant that the plaintiff failed to give additional monies to pay assistant coaches as required by the terms of the Agreement.

Response:

Interrogatory No. 7: Please state all facts and information which form the basis of any contention by the defendant that the plaintiff violated the terms of the Agreement with respect to renovations to the Puskar Center.

Response:

Request for Production No. 7: Please provide all documents which form the basis of, or relate to, any contention that the plaintiff violated the terms of the Agreement with respect to renovations to the Puskar Center.

Response:

**WEST VIRGINIA UNIVERSITY
BOARD OF GOVERNORS for
and on behalf of WEST VIRGINIA
UNIVERSITY,**

By Counsel,



Thomas V. Flaherty (WV Bar # 1213)

Jeffrey M. Wakefield (WV Bar #3894)

Jaclyn A. Bryk (WV Bar #9969)

Flaherty Sensabaugh & Bonasso PLLC

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Robert P. Fitzsimmons (WV Bar # 1212)

Robert J. Fitzsimmons (WV Bar # 9656)

Fitzsimmons Law Office

1609 Warwood Avenue

Wheeling, West Virginia 26003

Telephone: (304) 277-1700

Facsimile: (304) 277-1705

LETTER OF INTENT
BETWEEN THE UNIVERSITY OF MICHIGAN AND COACH

The Board of Regents of the University of Michigan for and on behalf of the University of Michigan and Coach have reached mutual agreement on the basic financial terms under which coach will become the next head football coach at the University of Michigan. The purpose of this Letter of Intent is to outline and confirm those basic financial terms that will be incorporated into a more detailed legally binding Head Coach Employment Agreement.

I. BASIC PROVISIONS:

A. Contract Term:

- 6 years - January 2, 2008 to December 31, 2013.
- Contract year one runs January 2, 2008 to December 31, 2008; each contract year thereafter runs January 1 to December 31.

B. Compensation:

1. Head Coach:

- i. **Base Salary:** \$300,000 per Contract Year.
Fringe benefits will be calculated on Head Coach's Base Salary.
- ii. **Additional Compensation** \$2,200,000 per Contract Year¹
- iii. **Retirement:** Participation in the University's 403(b) retirement plan. To the extent permitted by law and within the University's established retirement vehicles, the parties will jointly work to craft appropriate additional retirement vehicles for Head Coach.
- iv. Head Coach will participate in the Athletic Department's dealer provided automobile program, which currently provides for two automobiles plus paid insurance while he serves as Head Coach.

2. Incentive Compensation

- 1. \$50,000 - UM plays in a non-January 1 bowl
- 2. \$100,000 - UM plays in a January 1, non-BCS bowl
- 3. \$200,000 - UM plays in a Bowl Championship Series game.
- 4. \$300,000 - Win Bowl Championship Series National Championship game.

(Bonuses are not cumulative.)

3. Assistant Coaches:

- i. Salary pool of up to \$1,950,000 to be spent for the nine (9) assistant football coaches and the head football strength coach.
- ii. One (1) year contracts for the assistant head coach and the offensive and defensive coordinators. Contracts run June 1 to June 1.

¹ As consideration for the Additional Compensation, head coach assigns to University of Michigan all commercial endorsement, sponsorship, marketing, promotions, internet rights, merchandising, radio and television broadcast rights, and all other similar media rights.

COPY

EXHIBIT

A

tabbies

- iii. Hiring and retention decisions with respect to assistant coaches and football staff shall be made by the head coach subject to the approval of the Athletics Director which approval shall not be unreasonably withheld.

C. Athletically Related Outside Income As Allowed By Contract

1. Noncommercial public appearances only.
2. Outside athletic related commercial activities.

UM controls exclusively all commercial endorsement and marketing rights for head coach, the head coach's media programs and media rights, etc., and in return Coach receives Additional Compensation (See Section 1B-1f). Coach must receive prior written approval from the Athletic Director for all other athletically-related income.

3. Summer Sports Camps

Coach owns and operates the summer football camps, subject to best practices as established by Athletic Department and subject to University audit.

4. Moving Expenses

UM will pay reasonable moving expenses to relocate head coach to Michigan. UM will pay moving expenses for assistant coaches in accordance with the University's Standard Practice Guide.

5. Relocation Expenses

UM will pay for reasonable temporary housing expenses for a period of time not to exceed 90 days for the head coach and assistant coaches during the transition to their new position(s).

6. Early Termination By Head Coach

Termination of contract by head coach prior to contract expiration date - Head Coach pays UM \$4,000,000 if termination is in contract year one. Buyout amount decreases \$500,000 each contract year. Payment to be made within thirty (30) days of termination.

7. Early Termination By UM

Termination of contract without cause by UM prior to contract expiration date - pay to head coach \$4,000,000 if the termination occurs in year one. Buyout amount decreases by \$500,000 each contract year. Payment to be made within thirty days of termination.

B. Personal Conduct


Coach acknowledges that head coach employment agreement will obligate head coach to conduct himself at all times in a manner consistent with the highest standards of personal and ethical conduct.


II. The parties' definitive legal obligations will be contained in a separate more detailed Agreement which will include the above described basic financial terms and be governed by Michigan law. Once this Letter of Intent is executed, it shall remain in full force and effect until terminated in writing by the earlier to occur of (a) the execution and delivery of the Agreement or (b) termination by either party, in which event neither party thereafter shall owe, have, or assert any financial or other obligation or claim of any kind whatsoever against the other party. Unless otherwise agreed by the parties, within seven (7) calendar days from the execution of this Letter of Intent, UMI will submit to the head coach or his representative a head coach employment agreement for his review and approval; and with seven (7) calendar days after his receipt of the head coach employment contract from UMI, the head coach or his representative will respond to UMI whether or not the contract is in a form acceptable for signature.

The Board of Regents of The
University of Michigan

Head Coach:

By _____
Mary Sue Coleman
Title _____
President


Date 12/16/07

Date _____
By 
William C. Marsh
Title _____
Director, Intracollegiate Athletics
Date 12/16/07

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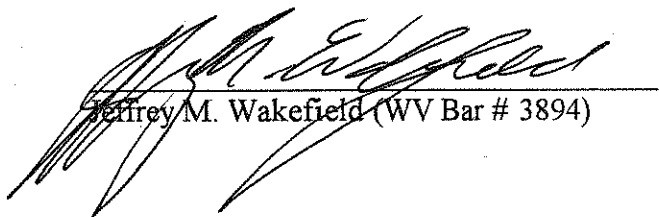
CERTIFICATE OF SERVICE

I, Jeffrey M. Wakefield, counsel for plaintiff, do hereby certify that the "**PLAINTIFF'S COMBINED SECOND REQUESTS FOR ADMISSION, THIRD INTERROGATORIES AND THIRD REQUEST FOR PRODUCTION OF DOCUMENTS TO DEFENDANT, RICHARD RODRIGUEZ**" was served upon the following counsel of record by placing true copies thereof in the United States Mail, first class, postage prepaid, this 25th day of February, 2008:

Sean P. McGinley, Esq.
DiTrapano, Barrett & DiPiero, PLLC
604 Virginia Street, East
Charleston, West Virginia 25301
Counsel for Plaintiff

Marvin A. Robon, Esq.
R. Ethan Davis, Esq.
Barkan & Robon Ltd.
1701 Woodlands Drive, Suite 100
Maumee, Ohio 43537
Counsel for Plaintiff

Stephen R. Crislip, Esq.
A. L. Emch, Esq.
S. Ryan White, Esq.
Jackson Kelly PLLC
P. O. Box 553
Charleston, West Virginia 25322
Counsel for west Virginia University Foundation, Inc.



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