

SUPERIOR COURT OF THE STATE OF RHODE ISLAND  
PROVIDENCE COUNTY

THE BIG EAST CONFERENCE, )  
)  
Plaintiff, )  
)  
-against- )  
)  
WEST VIRGINIA UNIVERSITY, )  
)  
Defendant. )

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Case No. **RB 11-6391**

**COMPLAINT**

Plaintiff The BIG EAST Conference seeks through this action specific performance, injunctive relief and/or damages against Defendant West Virginia University.

SUPERIOR COURT  
FILED  
CLERK OF SUPERIOR COURT  
2011 NOV -4 P 2:50

**INTRODUCTION**

1. This action arises from the breach by West Virginia University (“WVU”) of its obligations to the BIG EAST Conference and its Members, as expressly set forth in the BIG EAST Bylaws, which require any Member desiring to withdraw from the Conference to give at least twenty-seven months notice and to play all athletic competitions included in the Conference schedules until the effective date of the withdrawal.

2. Notwithstanding this express requirement, WVU has purported to withdraw from The BIG EAST Conference to join the Big 12 Conference on July 1, 2012, thereby breaching its obligations under the BIG EAST Bylaws.

3. Defendant WVU had knowledge of the express requirements of the BIG EAST Bylaws prior to indicating that it would not honor those Bylaws.

4. Absent relief, Defendant's actions will result in irreparable harm to the BIG EAST Conference and its Members, including damage to the Conference's reputation and goodwill, the quality of student life, alumni relations, and community relations.

5. In addition, Defendant's actions will result in significant monetary damages to the BIG EAST Conference and its Members.

6. Accordingly, Plaintiff seeks specific performance by Defendant WVU of the withdrawal requirements set forth in the BIG EAST Bylaws and/or injunctive relief precluding Defendant WVU from leaving the BIG EAST Conference before July 1, 2014.

7. Plaintiff also seeks damages from WVU for its improper actions.

## **THE PARTIES**

8. Plaintiff The BIG EAST Conference is a District of Columbia not-for-profit corporation headquartered in Providence, Rhode Island.

9. Defendant West Virginia University is an institution of higher education with a main campus in Morgantown, West Virginia.

## **JURISDICTION AND VENUE**

10. This Court has jurisdiction over this matter pursuant to R.I. Gen. Laws §§ 8-2-13 and 8-2-14 because the amount in controversy exceeds ten thousand dollars (\$10,000).

11. Venue is proper in the Superior Court in Providence County under R.I. General Laws § 9-4-3 which allows an action to be brought in the Superior Court of the County in which Plaintiff dwells. The Big East Conference has its headquarters in Providence County.

## **FACTUAL BACKGROUND**

12. The BIG EAST Conference provides a jointly-governed body for sponsoring, supervising and regulating intercollegiate athletics, assists its Members in funding and promoting their intercollegiate athletics programs, and enhances the opportunities for participation in, and the level of competition of, men's and women's intercollegiate athletics on an equitable basis.

13. The Members of the BIG EAST Conference are Providence College, Georgetown University, St. John's University, Villanova University, Seton

Hall University, The University of Connecticut, Rutgers, the State University of New Jersey, Marquette University, The University of Notre Dame, The University of Louisville, The University of Cincinnati, DePaul University, The University of South Florida, West Virginia University, Syracuse University, and The University of Pittsburgh. Certain of the Members do not participate in all of the Conference's sports.

14. To accomplish the Conference's goals, the participating Member schools have worked together on a number of collective activities, including, among other activities, creating annual conference schedules in which Conference teams play each other every season in 24 sports, negotiating and participating in joint agreements with respect to the sale of broadcast and other media rights, ongoing joint marketing efforts, and an ongoing effort to maximize the athletic and financial interests of the BIG EAST Conference and its member schools.

15. Defendant West Virginia University has been a Member of the BIG EAST since 1991.

16. In September 2006, the BIG EAST entered into a contract with ESPN for the broadcast of its football games, a contract worth tens of millions of dollars of revenue for the BIG EAST and its member schools over its duration. WVU voted to authorize the BIG EAST to enter into this contract. The contract is set to expire after the 2013 season, but it includes an exclusive

negotiating period for an extension, and the parties have been discussing an extension of that contract. The contract provides that if a member of the BIG EAST leaves during the term, the parties shall negotiate in good faith with respect to a reduction of the rights fee.

17. In September 2006, the BIG EAST entered into a six-year contract with ESPN, running through the 2013 season, to broadcast its men's and women's basketball games, a contract worth tens of millions of dollars of revenue for the BIG EAST and its member schools over its duration. WVU voted to authorize the BIG EAST to enter into this contract. The agreement between the BIG EAST and ESPN permits ESPN to negotiate a reduction in the rights fees it owes to the BIG EAST in the event that a member school leaves the Conference for any reason.

18. In 1994, the BIG EAST entered into a contract with CBS, which by subsequent amendment runs through the 2013 season, to broadcast its men's and women's basketball games, a contract worth tens of millions of dollars of revenue for the BIG EAST and its member schools over its duration. WVU voted to authorize the BIG EAST to enter into this contract. The agreement between the BIG EAST and CBS permits CBS to negotiate a reduction in the rights fees it owes to the BIG EAST in the event that a member school leaves the Conference for any reason.

19. Defendant WVU is a Member of the BIG EAST Conference and a party to the BIG EAST Bylaws and related agreements and thus has an existing contractual relationship with the BIG EAST and its member schools.

#### **BIG EAST BYLAWS WITHDRAWAL PROVISIONS**

20. The Members of the BIG EAST Conference, including WVU, are governed by Bylaws. A true and correct copy of those Bylaws, as amended and effective presently, is attached as Exhibit A.

21. The BIG EAST Bylaws, to which WVU is a party, provide in Article 11 that a Member may unilaterally withdraw from the Conference by: (i) providing written notice to the Commissioner, copying each of the other members, with an effective date of withdrawal at least 27 months after the date of receipt (and which withdrawal date must be July 1 of the applicable year in which the withdrawal is to be effective); (ii) payment of a Withdrawal Fee of \$5 million, with \$2.5 million due upon the first delivery of the withdrawal notice (although under certain circumstances this amount would increase to \$10 million for football-playing members); and (iii) playing all athletic competitions included in the conference schedules until the effective date of withdrawal.

22. The Bylaws expressly state the agreement of each Member, including WVU, that any attempted withdrawal without full compliance with these re-

quirements would cause irreparable harm to the Conference and to the non-withdrawing Members for which there is no adequate remedy at law.

23. The Bylaws specifically provide that the Conference shall be entitled to seek and obtain injunctive relief, including but not limited to an injunction, requiring the Departing Member to comply with the withdrawal procedures and obligations set forth in the Bylaws. The Withdrawing Member is also required to pay the Conference's costs, including reasonable attorneys' fees, associated with any proceeding seeking such equitable relief.

24. All BIG EAST member schools, including WVU, are required to adhere to and abide by the obligations set forth in the BIG EAST Bylaws.

25. The Bylaw provisions governing withdrawal from the Conference were adopted unanimously by the Members, including WVU.

26. The then-president of WVU, David Hardesty, and WVU's then-general counsel, Thomas Dorer, were among the principal drafters of the withdrawal provisions of the Bylaws, including the 27-month notice requirement.

27. The October 17, 2011 amendment to the withdrawal provisions was adopted unanimously by the Members eligible to vote, including WVU.

### **BREACH OF THE BYLAWS**

28. Despite these express provisions, to which it had agreed when it accepted membership in the BIG EAST—and which it has subsequently confirmed through amendments to the BIG EAST Bylaws—Defendant WVU

announced publicly on October 28, 2011 that it had applied to and been accepted to the Big 12 Conference, and that WVU would begin participating in Big 12 Conference athletic events in July 2012 (i.e., two years before the earliest effective date upon which WVU could withdraw from the BIG EAST).

29. On October 28, 2011, WVU sent a purported notice of withdrawal to the Commissioner of the BIG EAST stating that WVU purported to withdraw from the BIG EAST on June 30, 2012. A true and correct copy of this notice is attached at Exhibit B to this Complaint.

30. Amplifying WVU's intention to breach the Bylaws, WVU's President James P. Clements stated in published news releases that, "[WVU's] intent is clearly July 1 we'll be a member of the Big 12."

31. By such conduct, Defendant WVU has both breached and unequivocally stated an intent to breach its contractual obligations to the BIG EAST.

32. In its October 28, 2011 news release, available on its website, the Big 12 Conference announced that it would accept WVU "as a full conference member effective July 1, 2012" and that the Mountaineers "will begin competing in the Big 12 beginning with the 2012-13 athletic season."

### **INJURY TO PLAINTIFFS**

33. Defendant, through its actions, has intentionally injured the reputation, goodwill and financial interests of the BIG EAST and its Members.



34. The withdrawal of Defendant WVU prior to July 1, 2014 would trigger rights on the parts of ESPN and CBS to negotiate for reductions in the rights fees payable under their respective contracts for the broadcast of BIG EAST football and men's and women's basketball games.

35. Moreover, if WVU were to leave the Conference prior to the 27-month period required by the Bylaws, the BIG EAST and its Member Schools will be irreparably harmed because it will be impossible to reschedule all of the Conference athletic contests in a fair and equitable manner. In addition, the BIG EAST and its Member Schools will likely incur additional costs and unquantifiable injuries resulting from having to reschedule or cancel contests for the 2012–13 and 2013–14 seasons.

36. Defendant's unlawful conduct as set forth herein was and continues to be willful, deliberate, and in bad faith.

37. For the foregoing reasons, Defendant's unlawful conduct has caused and likely will continue to cause injury to Plaintiff.

#### **COUNT ONE - BREACH OF CONTRACT**

38. Plaintiff incorporates by reference the allegations contained in paragraphs 1–37 as if fully set forth herein.

39. The BIG EAST Conference Bylaws constitute a valid and enforceable contract between and among the BIG EAST and its members, including WVU.

40. Defendant WVU is a member of the BIG EAST Conference and is thus obligated to adhere to the provisions set forth in the BIG EAST Bylaws.

41. By the actions set forth above, WVU has materially breached the Bylaws by not complying with the withdrawal provisions in Article 11 of the Bylaws.

42. As a direct and proximate result of WVU's breach, Plaintiff has suffered and will continue to suffer substantial damages and irreparable harm, as set forth above.

43. Pursuant to the Bylaws, Plaintiff is entitled to seek and obtain injunctive relief, including but not limited to an injunction requiring WVU to comply with the withdrawal procedures and obligations, including the obligation to participate fully in all scheduled Conference athletic events during the 2012–13 and 2013–14 seasons (i.e., through and including June 30, 2014).

44. Pursuant to the Bylaws, Plaintiff is also entitled to an award of costs, including reasonable attorneys' fees, associated with this proceeding.

45. In addition, Plaintiff is entitled to damages for the harms that can be quantified—in an amount in excess of \$10,000 to be proven at trial— as a result of WVU's breach of its obligations under the Bylaws.

## PRAYER FOR RELIEF

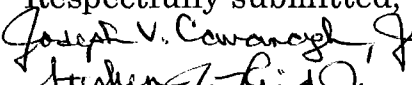

Plaintiff respectfully requests that this Court:

1. Order specific performance of WVU's obligations under the Big East By-laws, including full compliance with the withdrawal provisions of Article 11 (including the requirement that WVU participate fully in all Conference athletic events scheduled for up to and including June 30, 2014);
2. Issue an injunction prohibiting WVU from leaving the BIG EAST absent such compliance;
3. Require Defendant to pay an amount to be determined at trial to compensate the Plaintiff for all damages sustained as a result of Defendant's unlawful conduct described above, plus interest thereon;
4. Award Plaintiff the costs of this suit and their reasonable attorneys' fees; and
5. Grant such other and further relief as the Court deems appropriate.

Plaintiff hereby demands a trial by jury.

Of Counsel:

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Respectfully submitted,  
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