

STATE OF NORTH CAROLINA

IN THE GENERAL COURT OF JUSTICE

GUILFORD COUNTY

SUPERIOR COURT DIVISION

12 CVS 10736

ATLANTIC COAST CONFERENCE,)

Plaintiff,)

vs.)

UNIVERSITY OF MARYLAND,)
COLLEGE PARK; BOARD OF)
REGENTS, UNIVERSITY SYSTEM)
OF MARYLAND,)

Defendants.)

COMPLAINT
(Jury Trial Requested)

Plaintiff Atlantic Coast Conference (“ACC” or “Conference”), complaining of defendants University of Maryland, College Park (“Maryland”) and the Board of Regents, University System of Maryland (“Board of Regents”), alleges and says:

THE PARTIES

1. Plaintiff ACC is an unincorporated nonprofit association organized and existing under the laws of North Carolina, and with its principal place of business in Greensboro, North Carolina.

2. The ACC is comprised of twelve members that are institutions of higher education. In addition to defendant Maryland, the members are Boston College, Clemson University, Duke University, Florida State University, Georgia Institute of Technology, University of Miami, The University of North Carolina, North Carolina State University, University of Virginia, Virginia Polytechnic Institute and State University, and Wake Forest University.

3. As an unincorporated nonprofit association, the ACC is its own legal entity duly authorized by statute to assert claims in its name on behalf of its members. One or more of its members have standing to assert in their own right the claim or claims asserted herein. The interests the ACC seeks to protect herein are germane to its purposes, and neither the claim or claims asserted herein nor the relief requested requires the participation of any particular member of the ACC as a party other than defendant Maryland.

4. Defendant Maryland is a university with its principal place of business in College Park, Maryland, organized and existing under the laws of the State of Maryland. Defendant Maryland is a member of the North Carolina unincorporated nonprofit association that is the ACC, and has been a member at all times since the founding of the ACC in 1953 in Guilford County, North Carolina.

5. The Board of Regents governs the University System of Maryland, of which defendant Maryland is a constituent institution. The Board of Regents takes certain official actions on behalf of defendant Maryland, including the actions described herein.

JURISDICTION

6. This court has the authority to grant the relief requested in this Complaint pursuant to N.C. Gen. Stat. § 1-253 et seq. and Rule 57 of the North Carolina Rules of Civil Procedure.

7. Defendants are subject to the jurisdiction of this Court pursuant to, *inter alia*, N.C. Gen. Stat. § 1-75.4 and the Constitution of the United States.

BACKGROUND

8. The Constitution of the ACC (the "Constitution") is a contract by and among the member institutions, pursuant to which the members have agreed to conduct the business affairs of the ACC.

9. Plaintiff ACC is organized by and operates pursuant to the Constitution and Bylaws.

10. The Constitution and Bylaws are governed by North Carolina law.

11. Article VII of the Constitution grants the complete responsibility for and authority over the ACC to the Council of Presidents, comprised of the chief executive officer from each member institution.

12. Each member has agreed, and each member has relied on the agreements of the other members, to be bound by votes of the Council of Presidents.

13. Specifically, defendant Maryland has agreed to be bound by votes taken by the Council of Presidents.

14. The Constitution of the ACC provides that upon notice of withdrawal from the association of members, a withdrawing member shall be subject to a withdrawal payment in an amount "equal to three (3) times the total operating budget of the Conference (including any contingency included therein), approved in accordance with Section V-1 of the Conference Bylaws, which is in effect as of the date of the official notice of withdrawal."

15. This provision of the Constitution requiring payment of the withdrawal amount and its immediate effective date were adopted by the duly authorized, binding, sufficient and effective vote of the Council of Presidents of the ACC member institutions

in North Carolina during the September 11-12, 2012 meeting of the Council of Presidents.

16. The members of the ACC are bound by the vote of the Council of Presidents during the September 11-12, 2012 meeting of the Council of Presidents.

17. The foregoing vote of the Council of Presidents in North Carolina followed discussion and consideration by the Council of Presidents, including the President of defendant Maryland, Dr. Wallace D. Loh. Over the course of more than a year, Dr. Loh freely participated in discussions and votes among members of the Council of Presidents regarding the withdrawal payment due to the ACC if any member were to withdraw from the Conference.

18. Dr. Loh, acting as the agent and representative of defendant Maryland, voluntarily consented to and participated, without objection, in the discussion and vote by and among the Council of Presidents during their September 11-12 meeting concerning the immediate establishment of the withdrawal payment at three times the annual operating budget of the ACC (although defendant Maryland did not vote in favor).

19. The Council of Presidents incorporated the withdrawal payment provision into the Constitution because it provides some measure of financial protection against potential damages and losses for members of the ACC that remain after withdrawal by one or more other members.

20. As the governing body of the common enterprise that generates substantial revenue on which the member institutions rely each year, and in light of the revenue of each member based on its involvement and activities with the other members of the ACC,

the Council of Presidents deemed it reasonable and necessary to provide some relief for the prospective and substantial harm caused by withdrawal.

21. The Council of Presidents, following consideration of the types and amounts of financial and other harm that would potentially occur in the event of a member's withdrawal, concluded that the sum of three times the annual operating budget of the ACC was a fair and reasonable approximation of the potential financial and other harm resulting from withdrawal.

22. The Council of Presidents previously had addressed the issue of a withdrawal payment on September 13-14, 2011. Following discussion at that meeting of potential harm resulting from withdrawal, the Council of Presidents adopted a proposal by Dr. Loh at that meeting to establish the withdrawal payment at one and one-quarter times the total operating budget of the ACC. The Council of Presidents unanimously voted on September 13, 2011 to amend the Constitution to establish the withdrawal payment at the amount proposed in discussion by Dr. Loh.

23. Following the September 2011 vote, the potential harm to ACC member institutions in the event of the withdrawal of one or more members of the Conference substantially increased. The September 11, 2012 amendment to the Constitution increasing the withdrawal payment to three times the annual operating budget of the ACC resulted from further assessment of the potential harm for Conference members in the event of withdrawal and from additional changes related to the structure of collegiate athletics.

24. The annual operating budget of the ACC for the 2012-2013 year is \$17,422,114. The withdrawal payment to which a member is subject upon withdrawal between July 1, 2012 and June 30, 2013 is \$52,266,342.

25. On or about November 19, 2012, following a vote, the Board of Regents endorsed, approved and authorized defendant Maryland's withdrawal from the ACC and, further, to join the Big Ten Conference, which was described by Dr. Loh as "a watershed moment for the University of Maryland."

26. On November 19, 2012, defendant Maryland conducted a public press conference, led by Dr. Loh, announcing and discussing its decision to withdraw from the ACC.

27. Dr. Loh, on behalf of and as the authorized agent of defendant Maryland, officially provided notice of Maryland's withdrawal to the Commissioner of the ACC on November 19, 2012.

28. The Big Ten Conference on or about November 19, 2012 published statements welcoming defendant Maryland to the Big Ten Conference.

29. In apparent reliance on the withdrawal of defendant Maryland from the ACC, and the decision of defendant Maryland to join the Big Ten Conference, the Big Ten Conference immediately agreed thereafter to accept as a new member Rutgers, The State University of New Jersey.

30. Following defendant Maryland's public announcement and Dr. Loh officially providing notice to the ACC of its withdrawal, defendant Maryland has become subject to the withdrawal payment of \$52,266,342.

31. Despite having participated in the vote to amend the Constitution two months earlier, Dr. Loh has distanced Maryland publicly from any commitment to pay the withdrawal payment as set forth in the Constitution.

32. In public statements, Dr. Loh, on behalf of defendant Maryland, has referred to the withdrawal payment as “illegal” and indicated his contention that it is unenforceable.

33. Dr. Loh, on behalf of defendant Maryland, has also stated publicly regarding the withdrawal payment that it raises issues “for a court to decide” and is “illegal.”

34. When asked directly whether defendant Maryland intends to pay the withdrawal payment, Dr. Loh, on behalf of defendant Maryland, has refused to provide assurance that defendant Maryland will do so and has made it clear that defendant Maryland does not intend to pay the amount provided by the ACC’s Constitution.

35. Upon information and belief, Dr. Loh has asserted on other occasions that defendant Maryland will not pay the full amount of the withdrawal payment as provided by the ACC’s Constitution.

CLAIM FOR DECLARATORY RELIEF

36. The ACC re-alleges and incorporates by reference the allegations set forth in the preceding paragraphs.

37. An actual controversy has arisen between the ACC and Defendants over the validity and enforceability of the provisions of the Constitution that make defendant Maryland subject to the withdrawal payment.

38. This is an action seeking a declaratory judgment pursuant to N.C. Gen. Stat. § 1-253 et seq., determining the relative rights, liabilities and obligations of the ACC and defendant Maryland pursuant to Section IV-5 of the ACC's Constitution.

39. The ACC, as an unincorporated nonprofit association, is duly authorized by each member of the ACC to pursue legal action to enforce the rights of members against one or more other members related to duties and obligations owed to the ACC. Each member other than defendant Maryland has specifically authorized the ACC to act in that capacity in this Action.

40. A genuine controversy exists between the parties. Defendant Maryland has indicated its belief that Section IV-5 of the ACC's Constitution, as amended on or about September 11, 2012, is invalid and unenforceable. A declaratory judgment from this Court will clarify and settle the validity and enforceability of the withdrawal payment at issue and will afford relief from the controversy and dispute created by defendant Maryland's assertion that the withdrawal payment is invalid and unenforceable.

41. Additionally, through public and private statements, defendant Maryland has indicated that it does not intend to pay the amount provided by the ACC's Constitution.

42. The ACC is entitled to a declaratory judgment by the Court determining and declaring that the Section IV-5 of the ACC's Constitution, requiring payment by any withdrawing member of the withdrawal payment, is a valid and enforceable contractual term and that defendant Maryland is subject to the withdrawal payment of \$52,266,342.

WHEREFORE, Plaintiff ACC respectfully prays unto the Court as follows:

1. That the Court declare that the provision of Section IV-5 of plaintiff ACC's Constitution regarding the withdrawal payment owed by any member institution of the ACC that gives notice of withdrawal from the Conference is valid and enforceable;

2. That the Court declare that, pursuant to Section IV-5 of plaintiff ACC's Constitution, the University of Maryland is subject to a withdrawal payment in the amount of \$52,266,342, in light of the actions taken by the defendants;

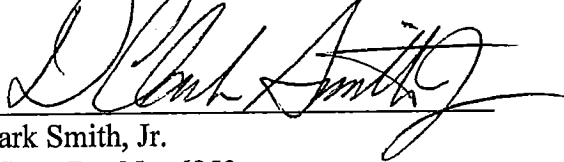
3. That plaintiff ACC recover its costs, including reasonable attorneys' fees, as may be provided by law;

4. That any and all issues so triable be tried by a jury; and

5. That plaintiff ACC have such other and further relief as the Court may deem just and proper.

This the 26th day of November, 2012.

SMITH MOORE LEATHERWOOD LLP



D. Clark Smith, Jr.
N.C. State Bar No. 6853
Alan W. Duncan
N.C. State Bar No. 8736
Alexander L. Maulsby
N.C. State Bar No. 18317
SMITH MOORE LEATHERWOOD LLP
300 North Greene Street, Suite 1400
Post Office Box 21927
Greensboro, North Carolina 27420
Telephone: (336) 378-5200
Facsimile: (336) 378-5400

Attorneys for Plaintiff Atlantic Coast Conference

OF COUNSEL:

James D. Smeallie
Elizabeth M. Mitchell
Benjamin M. McGovern
Holland & Knight LLP
10 St. James Avenue, 11th Floor
Boston, Massachusetts 02116
Telephone: (617) 523-2700
Facsimile: (617) 523-6850