

**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.:** \_\_\_\_\_

**RICHARD RODRIGUEZ,**

**Defendant.**

**COMPLAINT FOR DECLARATORY JUDGMENT AND OTHER RELIEF**

COMES NOW the plaintiff, West Virginia University Board of Governors for and on behalf of West Virginia University, by counsel, pursuant to Rule 57 of the West Virginia Rules of Civil Procedure and W.Va. Code § 55-13-1 *et seq.* and for its complaint against the defendant, Richard Rodriguez [“Rodriguez”], alleges as follows:

**PARTIES**

1. The West Virginia University Board of Governors, created by the legislature of West Virginia pursuant to W.Va. Code § 18B-2A-1 *et seq.*, is the governing body with the mission of general supervision and control over the academic and business affairs of West Virginia University. The West Virginia University Board of Governors [hereinafter, the “University”] is a resident of the State of West Virginia.

2. Rodriguez is a resident of the State of West Virginia and a resident of the State of West Virginia at all times relevant to this action. Rodriguez served as Head Coach of the West Virginia University football team up to December 19, 2007.

### **JURISDICTION**

3. This complaint is properly before this Court as both parties are residents of the State of West Virginia and the contract at issue was made and entered into in Monongalia County, West Virginia, for performance in whole or in part in Monongalia County, West Virginia.

### **NATURE OF ACTION**

4. Pursuant to W.Va. Code § 55-13-1 *et seq.* and Rule 57 of the West Virginia Rules of Civil Procedure, the University seeks a declaratory judgment regarding the obligations of Rodriguez pursuant to the terms and conditions of the "Employment Agreement", including "First Amendment to the Employment Agreement for Richard Rodriguez" [the "First Amendment"] and "Second Amendment to the Employment Agreement for Richard Rodriguez" [the "Second Amendment"] [collectively referred to herein, at times, as the "Agreement"], entered into between the parties hereto. The "Employment Agreement" is attached as Exhibit "A." The First Amendment is attached as Exhibit "B." The Second Amendment is attached as Exhibit "C."

5. Specifically, the University seeks a declaratory judgment that Rodriguez is required to pay the University Four Million Dollars (\$4,000,000.00) as a result of his voluntary termination of the Agreement by virtue of his resignation from the position of Head Coach of the West Virginia University football team prior to the expiration of the Agreement and prior to August 31, 2008.

6. The University seeks a declaratory judgment that the University did not materially and substantially breach the Agreement.

7. The University seeks a declaratory judgment that Rodriguez never provided written notice to the University of any material and substantial breach as required by Article V(D)(1) of the Agreement and amended by the Second Amendment.

#### **JUSTICIABLE CONTROVERSY**

8. This matter is appropriate for declaratory judgment as a justiciable controversy exists between the parties as the University is informed and believes that Rodriguez does not intend to abide by the terms of the Agreement.

#### **CHOICE OF LAW**

9. West Virginia law governs the validity and interpretation of the Agreement pursuant to the terms of the Agreement itself. Employment Agreement at ¶ XII, Ex. A.

#### **SUBSTANTIVE ALLEGATIONS**

10. On or about December 21, 2002, Rodriguez entered into the Employment Agreement with the University to serve as Head Coach of the West Virginia University football team for a term of seven (7) years beginning on January 1, 2003 and terminating on January 15, 2010. Employment Agreement at ¶ II, Ex. A.

11. On or about June 24, 2006, Rodriguez entered into the First Amendment with the University amending the Agreement. The First Amendment, among other things, increased Rodriguez's compensation and provided for the payment by Rodriguez of liquidated damages to the University in the event Rodriguez terminated the Agreement prior to January 15, 2013.

12. On or about August 24, 2007, Rodriguez entered into the Second Amendment with the University further amending the Agreement. The Second Amendment was effective retroactively on December 8, 2006. The Second Amendment again increased Rodriguez's compensation.

13. The Second Amendment amended the Agreement, in part, by extending the term of the Agreement to January 15, 2014 and increasing the amount of liquidated damages Rodriguez must pay to the University in the event he terminated his employment under the Agreement. Second Amendment at ¶¶ 1, 6 (p. 4), Ex. C.

14. The Second Amendment deleted Article V(D) of the Agreement, as amended by the First Amendment, and replaced it, in relevant part, with the following:

(D) Termination by Coach.

(1) In the event that Coach terminates his employment under this Agreement because of material and substantial breach of the Agreement by University, if Coach has given written notice to the University within ninety (90) days of such breach and the breach has gone uncured for thirty (30) days after the University's receipt of such written notice, University will pay Coach:

\* \* \*

(2) Except as provided in Article V(B), if Coach terminates his employment under this Agreement for any reason other than as set forth under Article V(D)(1):

\* \* \*

(b) Unless Coach terminates his employment under this Agreement due to a permanent retirement from the University and all other employment with any coaching responsibility with an institution of higher education, in addition to all other forfeitures and penalties provided herein, Coach will pay University the sum of ... (b) Four Million Dollars (\$4,000,000.00), payable, as further described below, within two years of termination if termination occurs after August 31, 2007 and on or before August 31, 2008[.] ... This sum shall be deemed to be liquidated damages and extinguish all

rights of University to any further payment from Coach. All sums required to be paid by Coach to the University under this Section within two years shall be payable according to the following schedule: one-third due (30) days after termination; one-third due on the one year anniversary of termination; and one-third due on the second anniversary of termination.

Second Amendment at ¶ 6(D)(2)(b), Ex. C.

15. The Second Amendment further added new Articles XVI and XVII to the Agreement, which provide as follows:

**XVI. ASSISTANT COACHES' SALARY POOL**

The University shall make a one-time supplemental payment of One Hundred Thousand Dollars (\$100,000) to the assistant coaches' salary pool by or before July 1, 2007. In addition, from July 21, 2006 through to the end of the term of this Agreement, the University shall make an annual Fifty Thousand Dollars (\$50,000) payment to the assistant coaches' salary pool.

\* \* \*

**XVII. PUSKAR CENTER RENOVATIONS**

The Department of Intercollegiate Athletics hereby commits to the construction of and renovations to certain facilities as follows: (1) Solicitation of private financial contributions for the academic center in the amount of Two Million Two Hundred Thousand Dollars (\$2,200,000) by December 2006 with construction to commence by the first quarter of 2007; and (2) Solicitation of private financial contributions for the locker room in the amount of Four Million Dollars (\$4,000,000) by December 2007 with construction to commence by the first quarter of 2008.

Second Amendment at ¶¶ 10-11, Ex. C.

16. As provided in the Agreement, the Agreement was the result of arms length negotiation between Rodriguez and the University and their respective legal counsel and tax advisors. Second Amendment at ¶ 8, Ex. C. Rodriguez and the University were represented by

counsel and advisors of their own choosing and had the full benefit of such counsel through the negotiation of the terms of the Agreement and the drafting and execution of the Agreement. Id. Rodriguez and the University entered into the Agreement freely and voluntarily and with the full intent to be bound thereby. Id.

17. Also as provided in the Agreement, Rodriguez and the University mutually understood that the Agreement contained all of the terms and conditions to which the parties had agreed and that no other understandings or representations, either oral or written, regarding the subject matter of the Agreement existed or bound the parties. Employment Agreement at ¶ X, Ex. A. Rodriguez and the University further agreed that any modification, amendment, or addendum to the Agreement was effective only if made in writing and signed by both parties. Id.

18. Rodriguez never provided written notice to the University, as required by Article V(D)(1) of the Agreement and amended by the Second Amendment, of any material and substantial breach of the Agreement by the University.

19. The University fulfilled all material and substantial terms of the Agreement as required as of the date of Rodriguez's termination of the Agreement, including, but not limited to, the supplemental payment to the assistant coaches' salary pool and certain Puskar Center renovations.

20. Upon information and belief, on or before December 14, 2007 and prior to Rodriguez's termination of the Agreement, Rodriguez engaged in discussions with the University of Michigan regarding employment as the Head Coach of the University of Michigan football team. Said discussions occurred without the prior knowledge or consent of the University.

21. Upon information and belief, on or before December 16, 2007 and prior to his resignation, Rodriguez and/or persons on his behalf communicated with student athlete recruits for the 2008 football season regarding his employment as the Head Coach of the University of Michigan football team. Said discussions occurred without the prior knowledge or consent of the University.

22. Rodriguez voluntarily resigned from the position as the Head Coach of the West Virginia football team effective December 19, 2007. See Correspondence from Rodriguez to Ed Pastilong (Dec. 18, 2007), attached as Exhibit "D." Accordingly, Rodriguez resigned prior to August 31, 2008.

23. By virtue of Rodriguez's voluntary termination of the Agreement and anticipated employment as the Head Coach of the University of Michigan football team, Rodriguez's resignation was not the result of Rodriguez's death, disability, or permanent retirement. Termination of the Agreement due to death, disability, or permanent retirement do not require the payment of liquidated damages to the University.

24. Upon information and belief, Rodriguez accepted the position of Head Coach of the University of Michigan football team prior to resigning as Head Coach of the West Virginia University football team.

Based on the foregoing, the University seeks the following declaratory judgment:

- (a) The Agreement, including the First Amendment and the Second Amendment, is a valid and enforceable contract.
- (b) Rodriguez is required to pay the University liquidated damages in the amount of Four Million Dollars (\$4,000,000.00) arising out of his termination of his employment under the Agreement, specifically the Second Amendment.

(c) Rodriguez is required to pay the University pre-judgment interest on all sums not paid to the University by the time required by the Agreement, specifically the Second Amendment.

(d) The University has not materially or substantially breached the Agreement.

WHEREFORE, the plaintiff, West Virginia University Board of Governors for and on behalf of West Virginia University, seeks the above declaratory judgment and, as a result thereof, payment of Four Million Dollars (\$4,000,000.00) from the defendant, Richard Rodriguez. The University further seeks reimbursement for any fees and/or costs sustained as a result of this declaratory judgment and any other relief that the Court deems just and proper.

The plaintiff, West Virginia University Board of Governors for and on behalf of West Virginia University, demands a trial by jury for all issues so triable.

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

By Counsel,



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COPY

**EMPLOYMENT AGREEMENT**

THIS EMPLOYMENT AGREEMENT (the "Agreement") is made this 21<sup>th</sup> day of December, 2002, by and between West Virginia University Board of Governors for and on behalf of West Virginia University (hereinafter "University") and ~~Richard Rodriguez~~ (hereinafter "Coach").

WHEREAS, University requires the services of a head coach for its football team; and

WHEREAS, Coach is willing to serve as University's head football coach under the following terms and conditions;

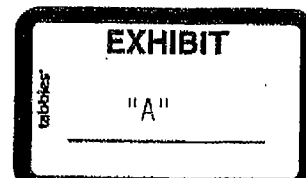
NOW, THEREFORE, WITNESSETH, that for and in consideration of the mutual covenants and conditions herein contained, and other good and valuable consideration, the receipt and sufficiency of all of which hereby is acknowledged by the parties hereto, University and Coach agree as follows:

**I. EMPLOYMENT**

Subject to the terms and conditions contained herein, University hereby employs Coach as University's Head Football Coach and Coach hereby agrees to and does accept the terms and conditions for said employment outlined herein.

**II. TERM**

The term of this Agreement shall be for a term of seven (7) years beginning on the 1<sup>st</sup> day of January, 2003, and terminating at 11:59 p.m. on the 15<sup>th</sup> day of January, 2010 ("the



Termination Date"). The one-year period beginning January 16 each year shall be deemed to be an "Agreement Year" as that term is used in this Agreement.

### **III. COMPENSATION AND BENEFITS**

A. **Base Salary.** In consideration of services and satisfactory performance of the terms and conditions of this Agreement by Coach, University agrees to pay Coach an annual base salary of One Hundred Fifty Thousand Dollars (\$150,000.00) per Agreement Year, payable in semi-monthly installments. Payment of all salary shall be in accordance with the payroll policies of University and subject to such deductions as may be required by applicable state and federal laws and regulations, and such employee benefit plans in which Coach elects to participate. Under no circumstances, however, shall the base salary ever be decreased during the term of this Agreement.

B. **Employee Benefits.** Coach will be eligible to participate in all employee benefit programs available to other University administrative employees. Such benefits shall be governed by University policies and the laws of the State of West Virginia and will include, among others, health insurance, retirement, vacation, sick leave and all other standard benefits.

#### **C. Other Benefits, Compensation and Incentives**

1. **Courtesy Automobiles:** Coach shall receive two (2) courtesy automobiles via the Wheels Club program.
2. **Tickets:** During each Agreement Year, Coach shall be provided twenty (20) tickets for each home football game, four (4) tickets for each home men's basketball game, and, if applicable, ten (10) tickets for each post-season bowl game in which University's football team participates, to be distributed by Coach as allowed by law and by the rules and regulations of the Big East Conference and

the NCAA.

3. **Camps:** Coach shall operate at least one football youth camp and/or clinic on campus as part of the Department of Intercollegiate Athletics' operations and shall be entitled to the net profits therefrom after the payment of expenses associated with the camp, including room and board, personnel, standard University overhead charges and other costs associated with the camp(s) and/or clinic(s). The dates for each camp(s) and/or clinic(s) must be mutually agreed upon by Coach and University in order to avoid conflicts with other events and to ensure adequate facilities and residence hall occupancy space. Coach and all other WVU employees will be required to use vacation time while working camps. Solely in connection with such camps, Coach shall have permission to use the terms "West Virginia University", "West Virginia Football", "Mountaineer Football" and associated logos, trademarks and designs (collectively, "WVU logos"), upon the prior approval of University, such approval not to be unreasonably withheld; provided, however, that said permission shall not include permission to sell, manufacture or distribute, or contract for the sale, manufacture, or distribution of WVU logo merchandise, or otherwise to sublicense WVU logos, without the prior written permission of the University Director of Intercollegiate Athletics and the University Manager of the Trademark Licensing Programs, which permission shall be granted or denied in their sole discretion.

4. **Supplemental Compensation:** University will guarantee Coach the sum of Five Hundred and Fifty Thousand Dollars (\$550,000.00) for the first Agreement Year, increasing in each subsequent Agreement Year by Fifty

Thousand Dollars (\$50,000.00) per year, as supplemental compensation during the term of this Agreement for promotional activities, payable in semi-monthly installments. Under no circumstances shall the amount of the supplemental compensation be decreased during the term of this Agreement. Such promotional activities shall include:

- a. A minimum of fourteen (14) appearances per Agreement Year at events sponsored by the Mountaineer Athletic Club or WVU affiliated organizations and sponsors;
- b. Appearances and participation in radio, television and Internet programs produced by the University's Mountaineer Sports Network or its affiliated organizations. Such appearances and participation shall include, but not be limited to, weekly radio talk shows, pregame/postgame radio shows, weekly television shows, regular Internet audio programs and occasional Internet columns. University retains exclusive rights to Coach's services in these areas.
- c. Participation in endorsement opportunities arranged for by University. Such opportunities include, but are not limited to, athletic footwear, apparel, sideline gear, equipment, uniforms and media/promotional roles for businesses or organizations. University will exclusively negotiate and structure all endorsement opportunities. In addition to the athletic footwear, apparel and equipment deals, five (5) other endorsement/promotional opportunities are anticipated at any given time. University will obtain approval from Coach prior to committing

Coach to any such endorsement or promotional agreement involving Coach or the use of Coach's image, which approval will not be unreasonably withheld. University retains exclusive rights to Coach's services in these areas. Coach is, and will remain, the sole and exclusive owner of his name and likeness and all proprietary and potentially proprietary rights therein. Coach hereby grants University permission to use his name and likeness during the term of this Agreement, which permission will terminate or expire when Coach's employment with University ends, except for historical and archival uses in records and publications related to Coach's tenure and performance at University.

d. Participation in promotional and other activities as may be reasonably requested by University.

With respect to subsections a, c and d above, University agrees to consult with Coach and obtain his consent before scheduling such promotional activities, which consent shall not be unreasonably withheld. Except as limited or restricted by the provisions of this Article III(C)(4) and Article VII, and further subject to Coach's obligation to satisfy the terms and conditions of this Agreement, nothing contained herein shall be deemed to prevent Coach from arranging or participating in, and deriving personal income from, personal speaking engagements or other endeavors unrelated to his service as Head Football Coach, subject to prior approval of University, such approval not to be unreasonably withheld.

5. **Incentives:** University shall cause to be paid to Coach, from appropriate

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sources, annual incentives within One Hundred Twenty (120) days of the end of the season in which earned, for attainment of the following:

- a. (i) 30,000 season tickets sold (including employee and mini-packages), \$ 10,000.00  
or  
(ii) 35,000 season tickets sold (including employee and mini-packages) \$ 20,000.00  
or  
(iii) 40,000 season tickets sold (including employee and mini-packages) \$ 30,000.00
- b. Satisfactory evaluation of football team's student academic achievement \$ 10,000.00
- c. Big East regular season title (or share of title) \$ 75,000.00
- d. (i) Non-BCS Bowl appearance \$ 25,000.00  
or  
(ii) Bowl Championship Series appearance \$ 75,000.00
- e. National championship \$ 150,000.00
- f. (i) Final Top 25 ranking in ESPN/USA Today or AP polls \$ 15,000.00  
or  
(ii) Final Top 10 ranking in ESPN/USA Today or AP polls \$ 25,000.00

