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THE BUYOUT CLAUSE: WHAT'S THE POINT?

*Robin Mistretta-Bradley**

I. INTRODUCTION

On December 8, 2006, Rich Rodriguez made an important career decision. At the time Rodriguez was employed as head football coach at West Virginia University (WVU) with a contract lasting through the 2012 season.¹ Rodriguez decided to continue his tenure with WVU, turning down an offer to become the head coach at the University of Alabama (Alabama).² Rodriguez's decision to coach his sixth season was met with "loud applause" from WVU students and fans.³ During his first five seasons, Rodriguez built WVU's football program into a Big East Conference power, winning a share of three straight conference titles, and, in 2005, leading the team to a Bowl Championship Series (BCS) Victory, with a win at the Sugar Bowl.⁴ In the 2006 season Rodriguez led WVU to a record of 10 wins with 2 losses, and a bid to play in the Gator Bowl.⁵ Rodriguez expressed his excitement to continue as the WVU head coach and his intention to remain at the WVU for a long time.⁶ Rodriguez signed an extension of his contract with WVU, through the 2013 season.⁷ At the conclusion of the 2007 regular season, the Rodriguez-coached WVU football team earned a number nine ranking in the BCS, a fourth conference title in five years and was poised to play in the Fiesta Bowl, its second BCS Bowl game in three years.⁸ In Rodriguez's six seasons as coach, WVU compiled a record of 60 wins and 26 losses.⁹

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1. *Rodriguez Denies 'Bama, Will Return To Morgantown*, ESPN, Dec. 8, 2006, <http://sports.espn.com/espn/print?id=2691319%Type=story> [hereinafter *Rodriguez Denies 'Bama*].

2. *Id.*

3. *Id.*

4. *Id.*

5. *Id.*

6. *Id.*

7. *WVU Sues Rodriguez, seeks \$4 Million contract buyout*, USA TODAY, Dec. 12, 2007, http://www.usatoday.com/sports/college/football/2007-12-27-wvu-rodriguez_N.htm, [hereinafter *WVU Sues*].

8. *Rodriguez leaving West Virginia to coach Michigan*, ESPN, Dec. 16, 2007, <http://sports.espn.com/espn/print?id=3157227&type=story>.

9. *Id.*

Following the 2007 season, in another part of the country, the University of Michigan's (Michigan) head coach Lloyd Carr announced that he would retire after coaching his team one last time in the Capital One Bowl.¹⁰ After Louisiana State University (LSU) Head Coach and Michigan alumnus, Les Miles, rejected Michigan's offer to become its next head coach, the Michigan Athletic Department was left searching for a new, high profile coach and leader for its football program.¹¹ Michigan chose Rodriguez.¹² On December 16, 2007, Rodriguez became Carr's successor as head football coach at the University of Michigan.¹³

The contract extension that Rodriguez signed with WVU included a \$4,000,000 buyout clause if Rodriguez left early.¹⁴ It also included several conditions that WVU promised to perform in order to keep Rodriguez as its head football coach.¹⁵ West Virginia University sued Rodriguez for breach of contract and sought payment of the buyout clause.¹⁶ Rodriguez challenged the buyout clause claiming that WVU did not perform the conditions that it committed to in the contract and; therefore, breached the contract.¹⁷ Rodriguez also claimed that the buyout clause itself was improper, as he was pressured by WVU into signing it.¹⁸ As the parties filed their complaints, answers to complaints and counterclaims in preparation for trial to resolve the issues brought by both WVU and Rodriguez, the parties settled.¹⁹ On July 9, 2008, after months of legal preparations, Rodriguez and Michigan agreed to pay the \$4,000,000 buyout to WVU and settle the lawsuit.²⁰ In the interest of alleviating a major distraction from its program and allowing Rodriguez to devote his full attention to football, Michigan agreed to pay \$2.5 million of the buyout with Rodriguez to pay \$1.5 million.²¹

10. *Id.*

11. *Id.*

12. *Id.*

13. *Id.*

14. *Id.*

15. *Rodriguez denies 'Bama, supra* note 1.

16. *WVU Sue, supra* note 7.

17. Mark Snyder, *BUYOUT MESS: Rodriguez will challenge paying a \$4-million buyout to West Virginia*, FREEP.COM, Dec. 19, 2007, www.freep.com.

18. *Id.*

19. Mark Snyder, *Rich Rodriguez's contract finalized with U-M*, FREEP.COM, Oct. 24, 2008, <http://www.freep.com>.

20. *Michigan to pay \$2.5M, Rodriguez \$1.5M to satisfy WVU buyout*, ESPN, Jul. 9, 2008, <http://sports.espn.go.com/espn/Print?id=3479493&type=story> [hereinafter *Michigan To Pay \$2.5M*].

21. *Id.*

Although the settlement may have allowed both parties to continue with their affairs without further distraction, it was an unsatisfactory result. It did not provide any sort of precedent or guidance for future disputes that arise when a coach leaves his position before his contract has expired. Further, it was never determined whether Rodriguez or WVU breached the employment agreement. Although Michigan may have been justified to pay part of the buyout, in order to focus on its own football tradition, its actions frustrated the possibility that this litigation would provide common law to other Universities and coaches entering into contracts with or without buyout clauses. If a school in the future wants to recruit a coach who is under contract, it merely has to offer to pay part of the buyout. Although the school receiving the payment will receive its contractual money, the purpose of the buyout is frustrated. A large buyout clause is meant to deter a coach from breaching the contract. If the recruiting school agrees to pay the buyout, the deterrence factor is no longer present.

II. EMPLOYMENT AGREEMENT

Rodriguez's first employment contract for the position of head coach of WVU's football team was signed on December 21, 2002.²² The original contract was to run for seven years, expiring in 2010.²³ The base salary was \$150,000.²⁴ As with most employment contracts, this contract included what was required by each party in relation to the other. Rodriguez was to receive the standard benefits of any WVU employee, the use of automobiles, tickets to football and basketball games and the possibility of various incentives based on the team's performance.²⁵ For example, Rodriguez would receive an additional \$75,000 for a Big East Conference title and an additional \$150,000 for a National Championship.²⁶ Rodriguez was also required to perform a variety of tasks in addition to his coaching responsibilities. Included in the required tasks were the operation of youth football camps, appearances at booster and fundraising events, television and radio appearances and other promotional events.²⁷

The contract required Rodriguez to perform his coaching duties within the WVU's educational mission and to conduct himself as an

22. Complaint, Exhibit A at 1, *West Virginia Univ. v. Rodriguez*, No. 07-C-851 (Cir. Ct. for Monongalia County, W. Va., Dec. 27, 2007) (unpublished document on file with author).

23. *Id.*

24. *Id.* at 2.

25. *Id.* at 3-6.

26. *Id.* at 6.

27. *Id.* at 7.

educator, not merely a coach.²⁸ The contract also required that Rodriguez's conduct conform to all regulations, at state, WVU, Big East or NCAA levels.²⁹ Regarding termination, the contract had clauses to deal with termination by WVU as well as termination by Rodriguez. The contract gave WVU the right to terminate for cause if one of the following occurred: a serious violation of Big East or NCAA regulations, conviction of a felony crime of moral turpitude, any material breach of the employment agreement that is not cured within thirty days or a willful disregard of instructions from the Athletic Director.³⁰ If terminated for cause, the contract stated that Rodriguez would not be entitled to any compensation beyond base salary and earned incentives, which were accrued but unpaid at the time of the breach.³¹ West Virginia University also retained the right to terminate the employment without cause, but if such event occurred, WVU would pay Rodriguez for the salary and incentives earned plus \$2,000,000.³²

The clause dealing with termination by Rodriguez stated that if Rodriguez terminated because of a material breach of contract by the WVU, then WVU would pay him salary and incentives earned plus \$2,000,000.³³ If Rodriguez were to terminate without cause, then he would have to pay WVU \$2,000,000.³⁴ Rodriguez also signed a covenant not to compete for other positions while employed by WVU.³⁵ Finally, the contract contained a merger clause stating that the employment agreement contained all the terms and conditions of the relationship between Rodriguez and WVU and that any modification must be agreed to mutually and in writing.³⁶

In the summer before the 2006 football season, Rodriguez signed the first amendment to the 2002 employment agreement.³⁷ In the amendment, the contract was extended through the 2013 season and Rodriguez's salary was increased.³⁸ The contract retained the \$2,000,000 payment to Rodriguez if WVU terminated without cause, but included a clause that reduced the payment by \$500,000 if the ter-

28. *Id.*

29. *Id.*

30. *Id.* at 8.

31. *Id.* at 10.

32. *Id.*

33. *Id.*

34. *Id.*

35. *Id.* at 11 (The covenant only covered employment at other Big East Schools or any other conference in which WVU competes).

36. *Id.*

37. Complaint, Exhibit B at 1, West Virginia Univ. v. Rodriguez, No. 07-C-851 (Cir. Ct. for Monongalia County, W. Va., Dec. 27, 2007) (unpublished document on file with author).

38. *Id.*

mination occurred after certain dates.³⁹ Thus, as the time remaining on the contract decreased, so did damages for termination.⁴⁰ The payment by Rodriguez to WVU was also amended to include the same sliding scale as the WVU's payment to Rodriguez.⁴¹

Following the 2006 season, and in preparation for the 2007 season, after entertaining offers from Alabama, Rodriguez signed a second amendment to the employment agreement.⁴² The term of employment was extended through the 2014 season.⁴³ In addition, the amendment raised Rodriguez's base salary to \$250,000 per year and increased the supplemental compensation and incentives available to Rodriguez.⁴⁴

The second amendment also included changes to the buyout scheme for termination of Rodriguez's employment without cause by WVU⁴⁵, increasing the payment due to Rodriguez to \$4,000,000, if the termination occurred before August 31, 2008.⁴⁶ The second amendment also reduced the payment due by one-half, to \$2,000,000 if the termination occurred after August 31, 2008, and reduced the amount even further to \$1,000,000 if termination occurred after August 31, 2011.⁴⁷ Similarly, the amount to be paid to WVU by Rodriguez was increased to \$4,000,000 if he terminated before August 31, 2008, and had the same reductions as WVU's payment to him if it terminated.⁴⁸ The second amendment also stated that WVU was to receive one-third of the payment within thirty days of termination by Rodriguez.⁴⁹ The second amendment also required both parties to give written notice of any breach to the other party so that the alleged breaching party would have the opportunity to cure the breach and alleviate the need for termination.⁵⁰

The second amendment also placed further conditions on WVU to perform in exchange for Rodriguez's continued employment. The first of these conditions was the formation of a special retirement plan for

39. *Id.*

40. *Id.* at 2-4.

41. *Id.*

42. Complaint, Exhibit C at 1, West Virginia Univ. v. Rodriguez, No. 07-C-851 (Cir. Ct. for Monongalia County, W. Va., filed Dec. 27, 2007) (unpublished document on file with author).

43. *Id.*

44. *Id.* (The additional compensation, and compensation for BCS wins was increased).

45. *Id.* at 3.

46. *Id.*

47. *Id.*

48. *Id.* at 4.

49. *Id.*

50. *Id.*

Rodriguez.⁵¹ The second amendment required WVU to establish a retirement pension fund for Rodriguez to which it would make scheduled contributions.⁵² It also required WVU to make a one-time contribution of \$150,000 to the assistant coaches' salary pool and a lesser annual payment of \$50,000 to the pool.⁵³ Finally, the second amendment required WVU to construct and renovate certain facilities, contributing \$2,200,000 to an academic center and \$4,000,000 to the locker rooms.⁵⁴

III. WEST VIRGINIA SUES RODRIGUEZ AND THE UNIVERSITY OF MICHIGAN

When Rodriguez accepted the head football coach position at Michigan on December 16, 2007, WVU claimed that Rodriguez terminated his employment without cause before August 31, 2008 and; therefore, owed West Virginia \$4,000,000.⁵⁵ West Virginia University filed its complaint on December 27, 2007, and an amended complaint on January 20, 2008.⁵⁶ In its original complaint, WVU sought declaratory judgment that Rodriguez be required to pay WVU \$4,000,000 pursuant to the employment agreement because he terminated his position as head football coach, without cause, before August 31, 2008.⁵⁷ West Virginia University also sought declaratory judgment that it did not materially or substantially breach the employment agreement.⁵⁸ Finally, WVU sought declaratory judgment that Rodriguez never provided written notice to WVU of any material breach so that it would have a chance to cure said breach, an action required by the agreement and included in the second amendment.⁵⁹

West Virginia University supported its claim for declaratory judgment with a series of allegations regarding Rodriguez's behavior. West Virginia University alleged that, at the conclusion of the second amendment, the buyout amount was set at \$4,000,000 for termination by Rodriguez without cause, to be paid within thirty days of termina-

51. *Id.* at 6-7.

52. *Id.*

53. *Id.* at 12.

54. *Id.*

55. *WVU Sues, supra* note 7.

56. Complaint at 1, *West Virginia Univ. v. Rodriguez*, No. 07-C-851 (Cir. Ct. for Monongalia County, W. Va., filed Dec. 27, 2007) (unpublished document on file with author); Amended Complaint at 1, *West Virginia Univ. v. Rodriguez*, No. 1:08-CV-00041 (N.D.W.Va., filed Jan. 20, 2008) (unpublished document on file with author).

57. Complaint, *supra* note 56, at 2.

58. *Id.* at 8.

59. *Id.*

tion.⁶⁰ West Virginia University then alleged that Rodriguez never provided WVU with any notice of a breach of said terms, which would be grounds for Rodriguez to terminate his employment and that, further, WVU fulfilled all obligations pursuant to the agreement.⁶¹ West Virginia University finally alleged that Rodriguez voluntarily terminated his employment with WVU before August 31, 2008 and; therefore, triggered the \$4,000,000 payment to WVU.⁶²

In its amended complaint, WVU further noted that Rodriguez breached his contract with WVU and was in violation of the terms of the agreement.⁶³ West Virginia University alleged that Rodriguez's failure to make any payment to WVU within thirty days of termination constituted a breach of the agreement.⁶⁴

IV. RODRIGUEZ RESPONDS TO WEST VIRGINIA'S COMPLAINT

In his answer to WVU's complaint, Rodriguez admitted to entering into an agreement and two amendments with WVU.⁶⁵ Rodriguez denied that the parties freely and voluntarily entered into the agreement with the full intent to be bound by the terms of the agreement and claimed that West Virginia University officials manifested their intent not to bind Rodriguez to the express terms of the buyout provisions.⁶⁶ Rodriguez also denied that the parties mutually understood that only the terms contained expressly in the agreement would be binding and that other understandings would not be considered.⁶⁷ Rodriguez denied that WVU fulfilled all of its material obligations of the agreement.⁶⁸ Rodriguez admitted that he voluntarily resigned from the WVU position and accepted the Michigan position, but denied that his actions triggered the buyout clause.⁶⁹ He finally denied that he owed WVU the buyout payments and; therefore, denied that his failure to make payments was a breach, as they were not required.⁷⁰

In addition to denying the validity of WVU's complaint, Rodriguez raised a series of affirmative defenses covering a wide range of is-

60. *Id.* at 4.

61. *Id.*

62. *Id.*

63. Amended Complaint, *supra* note 56, at 8.

64. *Id.*

65. Defendant's Answer to Amended Complaint at 4-6, *West Virginia Univ. v. Rodriguez*, No. 1:08-CV-00041 (N.D.W.Va. filed Feb. 1, 2008) (unpublished document on file with author).

66. *Id.*

67. *Id.*

68. *Id.*

69. *Id.*

70. *Id.*

sues.⁷¹ Rodriguez claimed that WVU materially and substantially breached the terms of the agreement and that the breach was the reason that he resigned.⁷² Additionally, Rodriguez claimed that WVU waived certain provisions of the employment agreement and; therefore, was estopped from seeking to enforce them.⁷³ Specifically, Rodriguez claimed that the President of West Virginia University told Rodriguez that he did not believe in buyouts and that WVU did not intend to bind Rodriguez to one.⁷⁴ Rodriguez also claimed that he was induced to enter into the second amendment by fraudulent representations of WVU officials.⁷⁵ Further, Rodriguez asserted that the West Virginia University Booster Foundation agreed to pay much of the compensation to Rodriguez, and, as a result, WVU had virtually no direct financial responsibility to Rodriguez.⁷⁶ However, WVU would be the direct recipient of the buyout clause to be paid by Rodriguez.⁷⁷ This, Rodriguez claimed, would constitute unjust enrichment on behalf of WVU as it would receive a large sum of money for breach of a contract to which it did not lose any money.⁷⁸

V. RODRIGUEZ COUNTERCLAIMS

After raising affirmative defenses, Rodriguez brought a counterclaim against WVU. In his counterclaim Rodriguez claimed that he was pressured into signing the second amendment by the administration through a variety of statements and promises made to him.⁷⁹ Rodriguez explained that that the statements made to him, by WVU officials, indicated that the \$4,000,000 buyout was insisted upon by major donors to the West Virginia University Athletic Department and that neither the President of WVU nor its Athletic Director had required such a payment.⁸⁰ He further claimed that the incoming President of West Virginia University told him that if he decided to leave early, the lawyers would negotiate a reduction in the buyout.⁸¹ The statements also contained a promise to give Rodriguez additional funds to pay his assistants, a website to promote athletics, funds to

71. *Id.* at 7-13.

72. *Id.*

73. *Id.*

74. *Id.*

75. *Id.*

76. *Id.*

77. *Id.*

78. *Id.*

79. *Id.* at 14-26.

80. *Id.*

81. *Id.*

renovate the athletic center and a variety of other promises to help the athletic programs, football in particular.⁸²

Rodriguez explained that he relied on these statements from the incoming President and Athletic Director when he agreed to extend his contract and increase the buyout amount to \$4,000,000, and that the commitments made to him, as incentives to sign the employment agreement, were not honored by WVU.⁸³ Rodriguez asserted that this failure to keep its promises was a breach of contract by WVU.⁸⁴ Also, Rodriguez asserted that WVU's President, as well as its Athletic Director, later told him that they did not intend to honor the commitments that they had made and; therefore, were in breach of the contract that Rodriguez signed.⁸⁵

Based upon these improper actions by WVU, Rodriguez brought several counts against his past employer. Rodriguez brought a claim for breach of contract as well as a claim for false inducement and misrepresentation arguing that WVU used false statements to pressure him into signing the second amendment to his employment agreement, a document that contained terms that were unfavorable to him.⁸⁶ A claim for lack of mutuality and inability to fund penalty was also raised by Rodriguez.⁸⁷ Here Rodriguez claimed that the \$4,000,000 buyout was improper as it was not mutual because it required Rodriguez to pay the money from his personal resources if he breached, but WVU was not actually liable for the payment to Rodriguez if it breached.⁸⁸ Rodriguez explained that the \$4,000,000 amount was supposed to be mutual, so that if he were fired without cause he would be entitled to \$4,000,000 from WVU.⁸⁹ However, WVU had not allocated this amount to be paid to Rodriguez in the event that it was triggered by WVU's actions.⁹⁰ This failure to allocate meant to Rodriguez that the buyout amount lacked mutuality.⁹¹

Rodriguez also claimed that the penalty clause was invalid because the \$4,000,000 buyout was far beyond the damages suffered by WVU.⁹² Rodriguez stated that the damages to the WVU and its foot-

82. *Id.*

83. *Id.*

84. *Id.*

85. *Id.*

86. *Id.*

87. *Id.*

88. *Id.*

89. *Id.*

90. *Id.*

91. *Id.*

92. *Id.*

ball program were minimal or non-existent.⁹³ Another claim raised was that WVU anticipatorily breached the contract.⁹⁴ Rodriguez asserted that the statements from WVU's incoming President and from its Athletic Director, that they did not intend to honor the promises made to Rodriguez, indicated that they would not honor the second amendment and therefore constituted an anticipatory breach, effectively terminating his employment with the WVU.⁹⁵

VI. WEST VIRGINIA DEFENDS

West Virginia University brought a defense against each of Rodriguez's affirmative defenses and also against his counterclaim. In its defense, WVU alleged that Rodriguez could not bring his counterclaim because of the merger clause in the contract; this stated that only the terms of the contract, and not public policy, govern the employment relationship.⁹⁶ WVU also claimed that the merger clause in the contract, holding that oral statements between the parties would not govern the contract, barred Rodriguez from bringing his counterclaim.⁹⁷ West Virginia University also argued that Rodriguez's counterclaim was barred because he voluntarily signed a clear and unambiguous contract with legal counsel available to advise him.⁹⁸ West Virginia University further denied that it used fraud or misrepresentations to induce Rodriguez into signing the contract.⁹⁹ Based on its defenses to Rodriguez's affirmative defenses and counterclaim, the University filed a motion to dismiss Rodriguez's counterclaim.¹⁰⁰

VII. SETTLEMENT

The stage was set for trial. West Virginia University had filed its complaint, Rodriguez had defended and counterclaimed, to which WVU defended and moved for dismissal. It was as though two heavy-weight fighters had just begun the first few rounds and were still assessing each other with test blows. The time was right for punches to start landing and doing damage. The referee then called the fight, leaving the audience unsatisfied. The parties settled; Rodriguez gave

93. *Id.* (since his resignation the team won a BCS Bowl game, under direction of a new coach, and did not suffer any monetary damages).

94. *Id.*

95. *Id.*

96. Reply at 1, *West Virginia Univ. v. Rodriguez*, No. 07-C-85 (Cir. Ct. of Monongalia County, W. Va., filed Feb. 22, 2008) (unpublished document on file with author).

97. *Id.* at 2.

98. *Id.*

99. *Id.*

100. *Id.*

in.¹⁰¹ On July 9, 2008, the Associated Press released the story that WVU was to receive the \$4,000,000 that it was seeking from Rodriguez.¹⁰² Pursuant to the settlement, Rodriguez agreed to pay WVU \$1,500,000 in three annual payments with the remaining \$2,500,000 to be paid to WVU by Michigan's Athletic Department.¹⁰³ Also, Michigan would pay for Rodriguez's legal fees and WVU would pay its own.¹⁰⁴

It is interesting that Rodriguez agreed to a settlement by which WVU received the full amount of the buyout clause while he was contesting the buyout's validity in court. One possible conclusion to draw from the settlement is that Rodriguez felt as though he did owe something to WVU, but not the full \$4,000,000. Of course none of this will be known because of the disclaimer attached to the settlement. It is the actions of Michigan that allowed settlement to occur. Michigan's Athletic Director explained that the University of Michigan offered to pay part of the buyout in the interest of eliminating a distraction, which would shift some of Rodriguez's attention away from Michigan football.¹⁰⁵ Michigan's Athletic Director also told the press that Rodriguez continued to disagree with the terms of the buyout, but agreed to this settlement in the interest of moving forward.¹⁰⁶ Had Michigan not intervened it seems unlikely that the settlement would have occurred. After the settlement, both universities and coaching staffs were free to move forward with preparation for the 2008 football season. Although not with WVU, Rodriguez was still in the midst of contract disputes. Not until October 24, 2008, well into the season, did Rodriguez sign his contract with Michigan.¹⁰⁷ The salary and incentives in the contract were not notable, but what is interesting was the buyout. The contract had a \$4,000,000 buyout clause for either party that was reduced as the time remaining on the contract lessens.¹⁰⁸ Rodriguez signed the same type of buyout that he was contesting with WVU.¹⁰⁹

101. *Michigan To Pay \$2.5M*, *supra* note 20.

102. *Id.*

103. *Id.*

104. *Id.*

105. *Id.*

106. *Id.*

107. Snyder, *supra* note 19.

108. *Id.*

109. *Id.*

VIII. UNSATISFIED

Although the settlement involving West Virginia University, the University of Michigan and Rodriguez allowed all parties to put the case behind them and focus on football, it is an unsatisfactory legal conclusion. It was reasonable for Michigan to want to put the lawsuit behind so that Rodriguez could move forward with Michigan's football program. The settlement also was beneficial for Rodriguez's football coaching career as he was able to focus exclusively on preparing his new team for competition. Rodriguez also escaped the possibility of being held liable for the entire \$4,000,000. For WVU, the settlement makes financial sense as it recoups the entire amount of the buyout. However, the contract issues still remain unsettled. Rodriguez claimed that the buyout clause was unfair and that he was improperly pressured to sign it, but he will not have the chance to make this case in court. He also claimed that WVU breached the contract when it failed to fulfill its obligations. West Virginia University claimed that Rodriguez breached his contract when he terminated without good cause. The court was never given the opportunity to determine which side breached the contract. It is possible that WVU received the full benefit of a contract that it breached; although, Rodriguez did not have to pay the full amount required by his breach, because of Michigan's interest.

IX. ANALYSIS OF THE ARGUMENTS

West Virginia University has a fairly straightforward claim based on contract principles. On the most basic level, Rodriguez signed a contract with WVU, after the opportunity to negotiate the terms, and then breached the contract. The contract contained a merger clause that put Rodriguez on full notice that external communications would not be considered part of the contract. Rodriguez signed the most recent amendment, with the \$4,000,000 buyout clause, on August 24, 2007 and terminated within four months, on December 16, 2007. The timing of the breach supports WVU's claim.

Rodriguez argued that West Virginia breached its contract with him and; therefore, he was not liable for the buyout.¹¹⁰ To support his claim of breach by WVU, Rodriguez asserted that WVU failed to meet the conditions that were agreed upon in the contract.¹¹¹ This is where the timing of the signing and breach is salient. West Virginia

110. Defendant's Answer to Amended Complaint, *supra* note 65, at 14.

111. *Id.* (Specifically that West Virginia did not provide funds promised to renovate the athletic center and locker rooms as well as the promised website).

University had less than four months after agreeing to the conditions before Rodriguez resigned. It is unreasonable to expect it to meet all of the conditions in that time, especially those requiring large payments and construction. The contract stated that Rodriguez must give WVU written notice of any perceived breach, within ninety days of the breach, and then WVU would have thirty days to cure the breach before Rodriguez would be able to terminate for cause and collect damages.¹¹² Rodriguez did not alert WVU in writing of these breaches until after he had resigned.¹¹³ Rodriguez also claimed that WVU's President told him that in reality the \$4,000,000 would be reduced, and that he relied on this statement when he signed.¹¹⁴ Unfortunately for Rodriguez, the contract he signed had a merger clause which means that outside statements are not binding on the contract. After the Alabama offer, WVU renegotiated its contract with Rodriguez in an attempt to prevent him from taking another coaching position. To achieve this it included a large buyout clause of a sufficient amount to deter Rodriguez from leaving before his contract expired. Rodriguez then did precisely this: he accepted another offer. From WVU's point of view, Rodriguez breached his contract because he wanted to coach elsewhere. When WVU asked him to honor the buyout, he then claimed that WVU had breached the contract. Had he truly been concerned with WVU's actions he would have filed notice of breach with WVU intending to have the breaches cured, especially if he was planning to continue coaching at WVU.

Many of Rodriguez's arguments are simply not very compelling. He makes a series of claims that he was induced into signing a contract with terms that he did not like. Although this may have occurred, it is hard to be sympathetic to Rodriguez because he had full opportunity to negotiate the terms on the agreement. If he was unsatisfied with one part, he should not have signed. He also had the opportunity to have legal counsel when he signed the contract. Due to Rodriguez's opportunity to negotiate the contract, with lawyers, before signing, it is difficult to find the argument that he was induced into signing such a large buyout persuasive. He could have negotiated out of the buyout. The same applies to Rodriguez's claims that he was told that the buyout would be reduced. Again, Rodriguez negotiated the contract and signed it. He had notice of the merger clause in the contract. He was aware that oral statements would not be included as part of his contract. His reliance on any such statements to his detriment is his

112. Complaint, Exhibit C, *supra* note 42., at 3.

113. *Id.*

114. *Id.*

own fault because he knew they would not be considered part of the binding contract and that they needed to be included as written amendments before he could rely on them.

One argument that Rodriguez makes that is more compelling than the others is that WVU anticipatorily breached the contract when the President and Athletic Director both told Rodriguez that they would not honor the conditions that were included in the second amendment.¹¹⁵ The argument is that WVU made a variety of promises to Rodriguez as consideration for the larger buyout clause. West Virginia University then told Rodriguez that it did not intend to honor the promises made. This statement would show the intent not to honor the contract and qualify as an anticipatory breach of the contract. However, the problem for Rodriguez is two fold: first, it is not clear that this statement is sufficient to qualify as an anticipatory breach, and second, he did not give notice of the breach so that the WVU could respond. For Rodriguez to be able to claim that WVU breached the employment contract, he should have notified it at the time they made the statement that he was considering the statement to be a breach of the contract. It is not clear that he did this. The contract requires written notice of any breach be given to WVU so that it have a chance to cure.¹¹⁶ Again, Rodriguez did not make his claims of breach by WVU known until after he has resigned. According to Rodriguez, WVU did in fact fail to honor some of the promises made to Rodriguez in the second amendment to the contract, but in each case he did not follow the contract-given procedure to deal with such a breach. It was not until after he was sued for damages that he made these claims known. Although this does not mean that the claims are invalid, it does make it difficult to allow them to be grounds for a breach, when Rodriguez did not follow the agreed-upon procedure. It seems as though Rodriguez wanted to go to Michigan, and did. Apparently it was not until WVU sued him for breach that Rodriguez determined that WVU breached or that the breaches were significant enough for him to try and deal with them. The timing raises suspicion about Rodriguez's motives. All of this would be for a court to determine, except the parties settled.

X. PURPOSE OF BUYOUTS

Consider for a moment a head football coach at a big college program. Now consider that another big program, perhaps a more elite

115. *Id.*

116. *Id.*

program in reputation, extends an offer to that coach for its head coaching job. This is great, except for that pesky \$4,000,000 buyout clause that the coach signed with the current program. What to do? If the buyout works as it is supposed to, the new offer will be rejected because of the coach does not want to make the \$4,000,000 payment that would then be required. If the buyout clause is not effective, the new offer is accepted and the waiting period begins. Either the old program will accept defeat, not likely, or will sue for the \$4,000,000 buyout. So the parties wait, and the school sues. In reaction to the suit, the coach brings a counterclaim arguing that the school actually breached and that the coach is the victim. This will lead to a long drawn out legal battle. Now enter the new, recruiting school. The coach's new school clearly cares about its football team as it is hiring a great coach with a good reputation. The coach will wait until his new school offers to pay part of the buyout and then settle. It is doubtful that this is the process envisioned at the outset when a buyout clause is agreed to and included in an employment contract. The offer from the new school to pay part of the buyout clause essentially frustrates the purpose of the buyout. This actually depends on the purpose of the buyout. If the purpose is simply to receive money if the employee leaves, then the buyout serves its purpose. If the purpose of the buyout is to deter an employee from leaving early, then the purpose is frustrated. It seems that in the realm of college football coaching, the latter purpose is applicable. College coaches are not interchangeable. Each coach brings a different coaching style or personality as well as reputation as a coach. It is this reputation and style that the school wants to preserve. When a coach leaves, the football program that he is departing from loses the style and reputation of that coach. This cannot easily be replaced. In the college coaching world, where each coach is like a brand name, the buyout clauses are intended to keep that coach and his style, personality and reputation at one program. The purpose of West Virginia University's buyout was not simply to get money if Rodriguez left; it was to keep Rodriguez as the face of the WVU football team and maintain the program's reputation and style.

When another school offers to pay a buyout, it signals that it wants the reputation and style of that coach. It somehow seems like an act of bad faith, or statement that the new program deserves this personality more than other programs and will simply buy it.

XI. CONCLUSION

West Virginia University made a compelling case that Rodriguez breached his contract and therefore owed liquidated damages. Rodriguez made some persuasive arguments that the liquidated damages clause was invalid and that WVU in fact breached. Both sides filed claims and counterclaims and seemed ready to argue their cases in court. In order to remove a major distraction from its football program, Michigan offered to pay part of the damages so that all parties could focus on the future. It is still unclear whether WVU or Rodriguez breached in the eyes of the law. The matter was complicated by Michigan's interest, but it would have been an interesting case to see at trial. Michigan essentially bought Rodriguez from WVU. While this may occur with professional athletes commonly, it does not occur frequently on the NCAA coaching level. Although the settlement was probably amenable to all parties, the contract disputes involving, but not limited to, breach, anticipatory breach, parole evidence and unjust enrichment go unresolved. It seems likely that a process for coaches to terminate their employment, and have the buyout paid for in part by the new school, will be a pattern followed in the future, especially by school with deep pockets.