

CONFLICTING FIDUCIARY DUTIES WITHIN COLLEGIATE ATHLETIC CONFERENCES: A PRESCRIPTION FOR LENIENCY

Abstract: The 2003–05 migration of three universities from the Big East Conference to the Atlantic Coast Conference prompted several remaining Big East schools to sue the departing schools, alleging the departure constituted a breach of the fiduciary duties the university officials owed to the Big East Conference. This Note examines potential breach of fiduciary duty claims in the context of athletic conference migration, and explores how conflicts of interest can arise in such situations because university representatives owe fiduciary duties both to their own universities and to the conference. This Note first contends that, absent clear evidence of intent to harm a conference and its members, breach-of-duty claims against university officials following athletic conference departures should be viewed with skepticism. In such situations, university representatives should be considered university officials first, and conference board members second, since conference memberships are only a part of the job of being a university official. This Note also argues that any damages from departure sustained by the remaining schools should be subsumed into withdrawal fees contractually established within conference constitutions, thus allowing universities to resolve conference conflicts quickly and without resort to the court system.

INTRODUCTION

When Rutgers played Princeton University in the first college football game on November 6, 1869, it was doubtful that any of the participants could have foreseen the massive revenue-creating machine college football would become.¹ Today, college football annually generates \$5 billion in revenue.² In 2003, 40.6 million fans attended college football games and events.³ Intercollegiate competition has turned into big business; television rights alone for college football and basketball

¹ See Rutgers Football, *It Started Here—The First Intercollegiate Game*, http://www.scarletknights.com/football/history/first_game.htm (last visited Feb. 9, 2006). Rutgers won the game, 6 to 4. *Id.*

² Rick Horrow, *College Football: Search for Revenues, Protection for Athletes*, CBS SPORTSLINE.COM, Sept. 30, 2004, <http://cbs.sportsline.com/general/story/7741030>.

³ *Id.*

games generate nearly \$700 million for schools and conferences.⁴ Because of the huge sums of money at stake in college athletics today, any perceived threat to a university's football revenue can lead a school to take action in pursuit of greater profit.⁵

In particular, colleges and universities may be drawn to the potential revenue-boosting opportunities presented by migrating from one athletic conference to another, even though such movement also carries financial ramifications for the conferences and other schools involved.⁶ Although the switching of conference allegiances is not historically atypical,⁷ the revenue-generating potential for the major conferences today creates high stakes for those involved.⁸ Thus, the 2003–05 departures of the University of Miami (“Miami”), Boston College, and Virginia Polytechnic Institute and State University (“Virginia Tech”) from the Big East Conference (the “Big East”) to the Atlantic Coast Conference (the “ACC”) resulted in a significant degree of bitterness⁹ and several lawsuits,¹⁰ despite the payment of \$1 million withdrawal penalties by the departing schools.¹¹

The Big East, an association of colleges formed under the National Collegiate Athletic Association (the “NCAA”) to conduct athletic competitions between Big East member schools, is organized as a nonprofit corporation.¹² As such, members of the Big East have fiduciary duties of care and loyalty to the conference itself and potentially to the other members as well.¹³ A claim in one of the lawsuits

⁴ Rick Horrow, *College Football: Return of the Humans*, CBS SPORTSLINE.COM, Oct. 22, 2004, <http://cbs.sportslines.com/general/story/7818325>.

⁵ See Horrow, *supra* note 2.

⁶ See *id.*

⁷ Steve Wieberg, *The Complications of Conference Calls*, USA TODAY, Nov. 4, 2003, at 8C, available at http://www.usatoday.com/sports/college/other/2003-11-03-realignment_x.htm.

⁸ See Horrow, *supra* note 2.

⁹ See NCAA Basketball Recap: (8) Connecticut 63, Boston College 58, SI.COM, Jan. 31, 2004, http://sportsillustrated.cnn.com/basketball/ncaa/men/recaps/2004/01/31/7849_recap.html. After Boston College accepted an invitation to join the ACC, Connecticut men's basketball coach Jim Calhoun remarked that he would refuse to schedule Boston College as a basketball opponent in the future. See *id.*

¹⁰ See *infra* notes 106–20 and accompanying text.

¹¹ Michael Vega, *BC Accepts an Invitation to Join the ACC: Big East Officials Unhappy as Eagles Prepare to Fly*, BOSTON GLOBE, Oct. 13, 2003, at F1 (Miami and Virginia Tech payments); *Conferences Schedule Games as Part of Settlement*, ESPN.COM, May 4, 2005, <http://sports.espn.go.com/ncaa/news/story?id=2052787> [hereinafter *Conferences Schedule Games*] (Boston College payment).

¹² *Trs. of Boston Coll. v. Big East Conference*, 18 Mass. L. Rptr. 177, 178 (Super. Ct. 2004).

¹³ See *infra* notes 155–72 and accompanying text.

related to the recent conference migrations alleged a breach of fiduciary duty by the departing schools.¹⁴ In short, the claim asserted that the departing schools owed fiduciary duties to other members of the Big East, which they breached by engaging in talks with the ACC about transferring to the ACC while at the same time reassuring the other members of the Big East that such a transfer would not occur.¹⁵

This Note examines the claim of breach of fiduciary duty by the schools that migrated from the Big East to the ACC and analyzes the handling of similar claims in the future.¹⁶ Part I of this Note reviews the organization of major college football and discusses the history and role of conferences in intercollegiate athletics.¹⁷ Part II details the dispute between the Big East and the ACC and the ramifications of the school migration between conferences.¹⁸ Part III discusses the lawsuits involved in the Big East-ACC dispute, focusing on the claim for breach of fiduciary duty.¹⁹ Part IV discusses the fiduciary duties owed by a director or officer of a nonprofit corporation such as an athletic conference, examines duties that are based on the relationship between university administrators and their students, and sets out the potential for conflicts between these duties.²⁰ Part V discusses the competing fiduciary interests at play in the Big East-ACC dispute and recommends a deferential approach to administrators' actions in similar future conflicts.²¹ Finally, Part VI recommends that any damages resulting from a potential breach of fiduciary duty in similar situations should be considered as subsumed in any withdrawal fee paid by the schools upon departure from the conference.²²

I. MAJOR COLLEGE FOOTBALL: BACKGROUND OF THE DISPUTE

Having a working knowledge of the structure, history, and components of major college football is crucial to understanding the motivation behind the lawsuits that arose out of the defections from the Big

¹⁴ See Complaint for Monetary Damages and Injunctive Relief at 6, Univ. of Conn. v. Univ. of Miami, No. TTD-CV-03-0081757-S (Conn. Super. Ct. June 6, 2003) [hereinafter Complaint], available at <http://www.ct.gov/governorowland/lib/governorowland/downloads/060603.pdf>; *infra* notes 124–29 and accompanying text.

¹⁵ See *infra* notes 124–29 and accompanying text.

¹⁶ See *infra* notes 229–67 and accompanying text.

¹⁷ See *infra* notes 23–58 and accompanying text.

¹⁸ See *infra* notes 59–105 and accompanying text.

¹⁹ See *infra* notes 106–34 and accompanying text.

²⁰ See *infra* notes 135–228 and accompanying text.

²¹ See *infra* notes 229–55 and accompanying text.

²² See *infra* notes 256–67 and accompanying text.

East to the ACC.²³ The revenue-generating powerhouse that is major college football today can lead to disputes regarding huge amounts of money, such as the situation involving the Big East and the ACC.²⁴

A. Structure of Major College Football

Major college football is governed by the NCAA, which is a voluntary organization through which universities and colleges regulate their athletic programs.²⁵ The NCAA is comprised of more than 1250 institutions, conferences, organizations, and individuals.²⁶ Within the larger framework of the NCAA, entities known as conferences provide further structure to intercollegiate athletics.²⁷ Conferences are associations of NCAA-member schools that conduct competitions among their members and determine a conference champion in one or more sports.²⁸

Conferences are structured in different ways; the Big East²⁹ and the Big Ten conferences (the "Big Ten"),³⁰ for example, are structured as not-for-profit corporations, whereas the ACC is structured as a tax-exempt unincorporated membership organization.³¹ Member universities of conferences generally share common missions, practices, and policies for the benefit of the universities and their student-athletes.³² They often have a common purpose (eight of the eleven Big Ten schools³³ are land-grant research institutions) or common

²³ See *infra* notes 25–105 and accompanying text.

²⁴ See *infra* notes 25–105 and accompanying text.

²⁵ Nat'l Collegiate Athletic Ass'n, About the NCAA, http://www2.ncaa.org/about_ncaa/ (last visited Feb. 9, 2006).

²⁶ *Id.*

²⁷ See GLENN M. WONG, *ESSENTIALS OF AMATEUR SPORTS LAW* 183 (2d ed. 1994).

²⁸ *Id.*; Nat'l Collegiate Athletic Ass'n, NCAA Membership Breakdown, Sept. 1, 2005, http://www1.ncaa.org/membership/membership_svcs/member-ship_breakdown.html.

²⁹ *Trs. of Boston Coll. v. Big East Conference*, 18 Mass. L. Rptr. 177, 178 (Super. Ct. 2004).

³⁰ See Brainy Encyclopedia, Big Ten Conference, http://www.brainyencyclopedia.com/encyclopedia/b/bi/big_ten_conference.html (last visited Feb. 9, 2006).

³¹ Complaint, *supra* note 14, at 6.

³² See Big Ten Conference Official Athletic Site, On Campus, About the Conference, <http://bigten.collegesports.com/school-bio/big10-school-bio.html> (last visited Feb. 9, 2006).

³³ Big Ten Conference, Official Athletic Site, Traditions, Big Ten History, <http://bigten.collegesports.com/trads/big10-trads.html> (last visited Feb. 9, 2006). Although the conference is named the Big Ten, it does in fact have eleven member schools. *Id.* From 1949 until 1990, the conference had ten members. *Id.* Upon admitting Pennsylvania State University in 1990, the conference retained its name, despite having increased its size to eleven members. *Id.*

geography.³⁴ One function of a conference is to promote, publicize, and market the teams of its member universities.³⁵ The conference can do this in a number of ways, including the lucrative practice of negotiating television broadcast contracts with large networks such as ABC, CBS, and ESPN.³⁶ These and other financial relationships created by NCAA conferences are a major source of the litigation between the remaining Big East schools and the departing schools.³⁷

Legal issues have often arisen in intercollegiate athletics as a result of the rule-making and enforcement activities of associations such as the NCAA and conferences such as the Big East.³⁸ Institutions of higher learning have sued conferences and associations over their rules, policies, or decisions.³⁹ The phenomenon of conference migration, although most publicized during the recent Big East to ACC shift, has been present for many years.⁴⁰ In fact, an examination of the history of conferences demonstrates that these school movements between conferences occur periodically.⁴¹

B. History of School Movement Between Conferences

Some conferences have existed for more than 100 years, whereas others are much younger.⁴² Expansion and realignment of conferences is not a one-time phenomenon; between 1990 and 2002, 34 schools migrated from one conference to another.⁴³

Many conference realignments are accomplished without litigation.⁴⁴ There is, however, at least one example of schools using the

³⁴ See Nat'l Ass'n of State Univs. & Land-Grant Colls., What is a Land-Grant College? http://www.nasulgc.org/publications/Land_Grant/land.htm (last visited Feb. 17, 2006).

³⁵ See BigEast.org, About the Big East, <http://www.bigeast.org/school-bio/bige-school-bio.html> (last visited Feb. 9, 2006).

³⁶ See *id.*

³⁷ See *infra* notes 80–105 and accompanying text.

³⁸ WILLIAM A. KAPLIN & BARBARA A. LEE, THE LAW OF HIGHER EDUCATION: A COMPREHENSIVE GUIDE TO LEGAL IMPLICATIONS OF ADMINISTRATIVE DECISION MAKING 894 (3d ed. 1995). See generally *NCAA v. Tarkanian*, 488 U.S. 179 (1988); *Arlosoroff v. NCAA*, 746 F.2d 1019 (4th Cir. 1984).

³⁹ KAPLIN & LEE, *supra* note 38, at 894. See generally *NCAA v. Bd. of Regents*, 468 U.S. 85 (1984).

⁴⁰ See Wieberg, *supra* note 7, at 8C.

⁴¹ See *infra* notes 42–43 and accompanying text.

⁴² Compare Big Ten Conference, *supra* note 32 (noting that the Big Ten was founded in 1896), with Official Site of Conference USA, C-USA Milestones, <http://conferenceusa.collegesports.com/ot/c-usa-milestones.html> (last visited Feb. 9, 2006) (noting that Conference USA was created in 1995).

⁴³ See Wieberg, *supra* note 7, at 8C.

⁴⁴ See *id.*

court system to resolve conference organizational disputes before the recent Big East litigation.⁴⁵ In 1995, five of the seven teams in the Metro Conference sought to combine with members of the Great Midwest Conference to form Conference USA.⁴⁶ Two members of the Metro Conference that were to be left out of Conference USA—Virginia Tech and Virginia Commonwealth University—sued the defecting universities.⁴⁷ They claimed that by seeking to form a new conference, the other schools were effectively withdrawing from the Metro Conference and thus each owed the conference the contractually established \$500,000 withdrawal penalty.⁴⁸ Although this lawsuit was settled before trial, it demonstrates how conference migration disputes have previously led to litigation in intercollegiate athletics.⁴⁹

C. The Big East Conference

Formed in 1979, the Big East organized the championships of seven sports, not including football, among its seven initial member universities.⁵⁰ In an effort to band together the major football-playing eastern independents, which were colleges and universities lacking conference affiliations, the Big East Football Conference, a separate entity from the Big East Conference,⁵¹ was formed on February 5,

⁴⁵ Eric Crawford, *Long, Strange Trip Continues*, COURIER-J. (Louisville, Ky.), Nov. 5, 2003, at 04C, available at <http://www.courier-journal.com/cjsports/news2003/11/05bigeast/big-4-east-old-7013.html>.

⁴⁶ Tom Robinson, *VCU, Virginia Tech Sue Metro: They're Seeking An Injunction Against Being Kicked Out of the Conference*, VIRGINIAN-PILOT, Jan. 19, 1995, at C3, available at <http://scholar.lib.vt.edu/VA-news/VA-Pilot/issues/1995/vp950119/01190494.htm>; Tech, *VCU File Lawsuit Against Metro Conference*, VA. TECH SPECTRUM, Jan. 26, 1995, available at <http://scholar.lib.vt.edu/vtpubs/spectrum/sp950126/1c.html>.

⁴⁷ Va. Commonwealth Univ. v. Metro. Collegiate Athletic Ass'n, No. CL95A00110-00, (Richmond City, Va. Cir. Court filed Jan. 17, 1995); Tech, *VCU File Lawsuit Against Metro Conference*, *supra* note 46; Robinson, *supra* note 46.

⁴⁸ Tech, *VCU File Lawsuit Against Metro Conference*, *supra* note 46; Robinson, *supra* note 46.

⁴⁹ See Crawford, *supra* note 45, at 04C.

⁵⁰ BigEast.org, *supra* note 35. The inaugural members of the Big East Conference were Boston College, University of Connecticut, Georgetown University, Providence College, Seton Hall University, St. John's University, and Syracuse University. BigEast.org, *supra* note 35. The seven men's sports initially governed by the Big East Conference were basketball, tennis, outdoor track, indoor track, cross-country, golf, and swimming and diving. BigEast.org, Record Center, <http://www.bigeast.org/ot/bige-records.html> (last visited Feb. 9, 2006) (links to each of the championship results or listings under each sport—Men's Basketball, Cross Country, Golf, Swimming and Diving, Men's Tennis, Men's Indoor Track & Field, and Men's Outdoor Track & Field—reveal that these seven sports were the only ones with championships held in the first academic year of the Big East's existence, 1979–80).

⁵¹ See Complaint, *supra* note 14, at 2. The inaugural members of the Big East Football Conference were Miami, Syracuse, West Virginia, Boston College, Virginia Tech, Pitts-

1991.⁵² In 2000, the Big East Football Conference and the Big East Conference merged to form one entity.⁵³ The Big East, after its realignment in 2005, is composed of eight football teams⁵⁴ and sixteen basketball teams, in addition to teams for other sports.⁵⁵ In total, it currently governs twenty-three championship sports.⁵⁶ The Big East, as a not-for-profit corporation, is governed by a board of directors.⁵⁷ Big East member schools have representatives who serve on this board.⁵⁸

II. DEPARTURES FROM THE BIG EAST AND THE RESULTING RIPPLE EFFECT

A. Anatomy and Asserted Rationale of the Departure

Although rumors of Miami moving to the ACC surfaced in 1999, the first official announcement of the ACC's interest in admitting some of the Big East schools to its membership came on May 16, 2003, when the ACC announced that it was entering into formal discussions with Boston College, Miami, and Syracuse University ("Syracuse") regarding potential membership in the ACC.⁵⁹ After several weeks of meetings, on June 25, 2003, the ACC invited Miami and Virginia Tech to join its nine member universities.⁶⁰ Virginia Tech accepted the invitation on June

burgh, Rutgers, and Temple. See Dustin Dow, *A Snapshot of the Big East Conference and Its Members in 2005*, CINCINNATI ENQUIRER, Nov. 5, 2003, at 4C.

⁵² Mark Asher, *Big East Football Set for Upcoming Season*, WASH. POST, Feb. 6, 1991, at F3.

⁵³ Complaint, *supra* note 14, at 2.

⁵⁴ Mike Mitchell, *College Football Landscape Will Change Drastically with Realignment for 2005*, C. FOOTBALL POLL, Mar. 18, 2005, http://www.collegefootballpoll.com/2005_conferences.html.

⁵⁵ Joe Drape, *Big East Is Bulking Up, But Not on Football Field*, N.Y. TIMES, Nov. 5, 2003, at D6.

⁵⁶ BIG EAST CONFERENCE, BIG EAST CONFERENCE POLICY MANUAL 2005-06, at 1 (2005), available at http://www.bigeast.org/ot/05_policy_manual.html.

⁵⁷ Complaint, *supra* note 14, at 5. The Big East is structured as a tax-exempt not-for-profit corporation under Section 501(c)(3) of the Internal Revenue Service Tax Code (1986). Telephone Interview with John Marinatto, Senior Associate Commissioner, Big East Conference (Nov. 16, 2004).

⁵⁸ See Complaint, *supra* note 14, at 5.

⁵⁹ See Press Release, Univ. of Miami Athletics, ACC to Enter Formal Discussions with U.M. for Potential Membership (May 16, 2003), available at <http://hurricanesports.collegesports.com/genrel/051603aaa.html>.

⁶⁰ ACC: Miami, Virginia Tech Ready to Accept, ESPN.COM, June 25, 2003, <http://espn.go.com/ncaa/news/2003/0625/1572842.html>.

27, and Miami accepted on June 30.⁶¹ Boston College and Syracuse were not offered ACC membership at that time.⁶²

After the two additions, the ACC had eleven members, which was one short of the twelve required by the NCAA to hold a conference championship game.⁶³ Several months later, in the fall of 2003, the NCAA Championship Cabinet and Football Issues Committee decided not to recommend that the NCAA allow conferences with fewer than twelve teams to have a championship game.⁶⁴ Soon afterward, on October 12, the ACC offered, and Boston College accepted, a formal invitation to become the twelfth member of the ACC.⁶⁵ Each of the three migrating schools paid a \$1 million withdrawal fee to the Big East upon its departure.⁶⁶

Boston College's proffered reasons for switching conferences included more than the potential financial gain.⁶⁷ Although some members of the remaining Big East schools asserted that Boston College was part of a conspiracy to weaken and destroy the Big East as a competitor for broadcast revenue and other rights,⁶⁸ Boston College stated several reasons similar to those advanced by other schools that have decided to switch conferences.⁶⁹ University officials noted that the ACC is comprised of schools that are similar to Boston College academically, as the ACC has a number of universities that, like Boston College, are ranked in the top forty national universities.⁷⁰ Other important considerations,

⁶¹ Mike Corey, *Update: Miami, Va. Tech. Accept Invitations from ACC*, CHRON. ONLINE (Duke Univ.), June 26, 2003, available at <http://www.dukechronicle.com/media/paper884/news/2003/06/26/News/Update.Miami.Va.Tech.Accept.Invitations.From.Acc-1463907.shtml?>

⁶² ACC: *Miami, Virginia Tech Ready to Accept*, *supra* note 60.

⁶³ See *Boston College Could Become League's 12th Team*, ESPN.COM, Oct. 11, 2003, <http://espn.go.com/ncaa/news/2003/1011/1635604.html>.

⁶⁴ *Id.*

⁶⁵ Vega, *supra* note 11, at F1.

⁶⁶ Vega, *supra* note 11, at F1; *Conferences Schedule Games*, *supra* note 11. Although Miami and Virginia Tech paid \$1 million withdrawal fees as dictated by the Big East constitution, Boston College only paid the \$1 million fee by settlement after a court battle over the fee amount. *Univ. of Conn. v. Univ. of Miami*, No. TTD-CV-03-0081757-S (Conn. Sup. Ct. filed June 6, 2003); *Big East, ACC Settle Dispute on Realignment*, WASH. POST, May 4, 2005, at D02 [hereinafter *Big East, ACC Settle*]; Vega, *supra* note 11, at F1; *Conferences Schedule Games*, *supra* note 11; see *infra* notes 130–34 and accompanying text.

⁶⁷ See *Q&A: Fr. Leahy Discusses BC's Move to the ACC*, BOSTON COLL. CHRON., Oct. 17, 2003 [hereinafter *Q&A: Fr. Leahy*], available at http://www.bc.edu/bc_org/rvp/pubaf/chronicle/v12/o17/qa.html. For a brief discussion of the financial prospects of members of the newly enlarged ACC, see *infra* notes 80–82 and accompanying text.

⁶⁸ *ACC Has 12 to Stage Football Title Game*, ESPN.COM, Oct. 12, 2003, <http://espn.go.com/ncaa/news/2003/1012/1636467.html>.

⁶⁹ See *Q&A: Fr. Leahy*, *supra* note 67.

⁷⁰ *Id.*

according to Boston College officials, were the expansion of the potential student recruitment base and the ACC's commitment to a program of academic cooperation and collaboration.⁷¹ In addition to academic concerns, the stability and long-term viability of the new ACC was an attractive feature.⁷² Finally, the financial gain from joining the ACC was expected to benefit Boston College in numerous ways, including support for non-revenue sports.⁷³

B. Ramifications of Recent Departures from the Big East Conference

The migration of Miami, Boston College, and Virginia Tech from the Big East to the ACC sent shock waves across many universities throughout the country.⁷⁴ The Big East responded by replacing the departing schools with three teams that were previously members of Conference USA: the University of Louisville, the University of Cincinnati, and the University of South Florida.⁷⁵ Conference USA lost several other member schools as well; Texas Christian University moved to the Mountain West Conference, and both the University of North Carolina-Charlotte and Saint Louis University moved to the Atlantic 10 Conference.⁷⁶ To compensate for these losses, Conference USA added Rice University, Southern Methodist University, the University of Texas at El Paso, and the University of Tulsa from the Western Athletic Conference (the "WAC") and the University of Central Florida and Marshall University from the Mid-American Conference.⁷⁷ The WAC offset its losses by adding the University of Idaho, Utah State University, and New Mexico State University from the Sun Belt

⁷¹ *Id.*

⁷² *Id.*

⁷³ *Id.* Non-revenue sports are Olympic sports such as wrestling, track and field, swimming, and volleyball, which do not generate much money for their respective colleges. Myles Brand, *Non-Revenue? Olympic Sports are Priceless at Colleges*, SAN DIEGO UNION-TRIB., Aug. 15, 2004, available at http://www.signonsandiego.com/uniontrib/20040815/news_1s15guest.html.

⁷⁴ See Brand, *supra* note 73.

⁷⁵ Drape, *supra* note 55, at D1. The Big East also added Marquette University and DePaul University in every sport but football, as neither university currently fields a football team. *Id.*

⁷⁶ See Official Site of Conference USA, *supra* note 42.

⁷⁷ See *id.*

Conference.⁷⁸ Thus, the migration out of the Big East triggered a domino effect of conference realignment across the country.⁷⁹

The financial implications of these conference realignments were staggering.⁸⁰ For example, expansion to twelve teams from nine gave the ACC the ability to procure a more lucrative television football contract, create an ACC Championship Game, and increase ticket sales.⁸¹ The ACC expected these new opportunities to generate an additional \$30 to \$35 million in annual revenue.⁸²

Conversely, the Big East faced adverse financial effects.⁸³ As a result of a reconfiguration clause in its television contracts with ABC and ESPN, the Big East was forced to renegotiate the terms of those deals.⁸⁴ Because three of the preeminent football schools in the Big East left for the ACC, the Big East was forced to accept less money for rights to broadcast its football games.⁸⁵ As a result, annual television payments to the Big East dropped from \$15 million to \$10 million.⁸⁶

The financial impact of the conference realignments extended to the profit opportunities presented by the Bowl Championship Series (the "BCS").⁸⁷ Before the late 1990s, college football determined its national champion through a series of games, called bowl games.⁸⁸ Representatives from each bowl game would invite two successful teams to play a game, and after all of the bowl games were played,

⁷⁸ See Official Web Site of The Western Athletic Conference, About the WAC: History of the WAC, http://www.wac.org/view_section.asp?section=About%20the%20WAC (last visited Feb. 9, 2006).

⁷⁹ See William C. Rhoden, *Switching Conferences for Prestige and Profit*, N.Y. TIMES, Nov. 5, 2003, at D6.

⁸⁰ See Horrow, *supra* note 2.

⁸¹ See *id.*

⁸² See *id.*

⁸³ See *id.*

⁸⁴ Drape, *supra* note 55, at D6.

⁸⁵ See *id.* ESPN.com writer Ivan Maisel commented, "Take Ohio State and Michigan out of the Big Ten, or USC and Washington out of the Pac-10, and you have life as the Big East is about to know it." Ivan Maisel, *What About Football?*, ESPN.COM, June 25, 2003, <http://espn.go.com/ncaa/news/2003/0625/1572842.html>.

⁸⁶ Horrow, *supra* note 2.

⁸⁷ See Bowl Championship Series 2004-05 Media Guide at 6-7 (2004) [hereinafter BCS Media Guide] (on file with author); Press Release, Executive Office of Governor John G. Rowland, State of Conn., Connecticut, Other Big East Schools Sue Miami, BC, ACC Over Move to ACC (June 6, 2003), available at <http://www.ct.gov/governorowland/cwp/view.asp?A=1336&Q=257274>. The BCS Media Guide is updated annually and is available at <http://www.bcs.football.org/mediaguide.pdf> (last visited Feb. 9, 2006).

⁸⁸ See Jodi M. Warmbrod, Comment, *Antitrust in Amateur Athletics: Fourth and Long: Why Non-BCS Universities Should Punt Rather Than Go for an Antitrust Challenge to the Bowl Championship Series*, 57 OKLA. L. REV. 333, 336-45 (2004).

members of the national sports media would vote to determine which team deserved to be crowned national champion.⁸⁹ Several national media polls were used in the voting and on numerous occasions, the polls selected different teams as the national champion.⁹⁰

Dissension over this ranking system grew among college football participants and followers, so the major bowl game organizers modified the system to increase the likelihood of yielding a single national champion.⁹¹ In 1998, the Orange, Sugar, Rose, and Fiesta Bowls joined with the ACC, Big East, Big 12, Big Ten, Pacific-10, SEC, and the University of Notre Dame to establish the BCS, a system by which the Division I football national champion could be determined while maintaining the traditional bowl system.⁹² Eight teams play in BCS bowl games each year; six berths are guaranteed to the respective champions of the aforementioned BCS conferences.⁹³ The other two at-large berths can be obtained by any Division I team, regardless of conference affiliation.⁹⁴

The guaranteed spot in a BCS game is extremely lucrative for the conferences.⁹⁵ For example, each conference with teams in the 2005 Rose Bowl received payments of \$14.5 million.⁹⁶ On the other hand, participation in non-BCS games does not generate nearly the same amount of money for the conferences.⁹⁷ For example, whereas BCS participants in the 2002–03 season were paid between \$13.5 and \$16.5 million for a bowl game, payouts to non-BCS bowl participants rarely exceeded \$1 million.⁹⁸

⁸⁹ See *id.* at 338–40.

⁹⁰ See *id.* at 338–39. Between 1990 and 1997, for instance, the national polls selected “dual” national champions three times—1990, 1991, and 1997. *Id.* at 338–39 & n.30.

⁹¹ See *id.* at 338–49.

⁹² BCS Media Guide, *supra* note 87, at 2.

⁹³ *Id.* at 3. The five non-BCS Division I conferences are Conference USA, the Mid-American Conference, the Mountain West Conference, the Sun Belt Conference, and the Western Athletic Conference. See *id.*

⁹⁴ *Id.* at 4. An at-large bid is one which is not guaranteed to the champion of one of the BCS Conferences. See *id.* at 3–4.

⁹⁵ See *id.* at 6.

⁹⁶ Tournament of Roses, Rose Bowl Game FAQs, <http://www.tournamentofroses.com/rosebowlgame/gamefaqs.asp> (last visited Feb. 9, 2006). The revenue generated from the participation of one conference member in the Rose Bowl is distributed for the benefit of all member universities of the respective conferences. *Id.*

⁹⁷ See Press Release, Executive Office of Governor John G. Rowland, State of Conn., *supra* note 87.

⁹⁸ *Id.*

The BCS agreement, however, provides for review and possible removal of the six conferences with guaranteed berths in BCS games.⁹⁹ If the champion of one of these conferences does not average a BCS ranking between one and twelve over a four-year period, that conference may lose its guaranteed berth and the accompanying financial payout.¹⁰⁰ The loss of perennial national football powers Miami and Virginia Tech exposed the Big East to this risk.¹⁰¹ The BCS standings from the 2004 season validate this concern, as the Big East champion and representative in the BCS Tostitos Fiesta Bowl, the University of Pittsburgh ("Pittsburgh"), had a final BCS ranking of only twenty-one.¹⁰²

Financial gains to colleges from participation in the BCS significantly raise the stakes of conference membership and realignment.¹⁰³ The harmful impact that the defections had on the Big East is demonstrated by the statistical weakness of its BCS representative in the year after the conference realignment.¹⁰⁴ The potential for losing its guaranteed berth in the BCS is one of the likely factors which spurred remaining Big East members to seek legal remedies from defecting schools.¹⁰⁵

III. LAWSUITS STEMMING FROM THE BIG EAST DEPARTURES

The significant financial effects of conference realignment give schools the incentive to fight against migration, including by seeking damages through litigation.¹⁰⁶ As it became clear that several schools, including Miami and Boston College, would leave the Big East for the ACC, several remaining Big East schools jointly sued the departing

⁹⁹ See BCS Media Guide, *supra* note 87, at 3.

¹⁰⁰ See *id.* If the Big East loses its guaranteed BCS berth, the number of schools in BCS-guaranteed conferences would drop below fifty percent of the total number of Division I schools. See Steve Wieberg, *The Runaway Train*, USA TODAY, Nov. 4, 2003, at 1C, available at http://www.usatoday.com/sports/college/football/2003-11-04-state_x.htm (online version titled *Opinions Differ on How to Implement Changes*). This shift would provide further ammunition for those who argue that the BCS violates antitrust laws. See *id.* For a comprehensive discussion of antitrust aspects of the BCS, see generally Warmbrod, *supra* note 88.

¹⁰¹ See Wendell Barnhouse, *Big East Losing its BCS Clout*, FORT WORTH STAR-TELEGRAM, Sept. 27, 2004, at 17D.

¹⁰² Press Release, Nat'l Football Found. and Coll. Hall of Fame, Inc., *2004 Final Bowl Championship Series Standings* (Dec. 5, 2004), <http://www.bcsfootball.org/files/bcs-short-8.pdf>.

¹⁰³ See *supra* notes 80–102 and accompanying text.

¹⁰⁴ See *supra* notes 101–02 and accompanying text.

¹⁰⁵ See *supra* notes 99–102 and accompanying text.

¹⁰⁶ See *supra* notes 80–102 and accompanying text.

schools.¹⁰⁷ This Part examines this suit, frames the claim of breach of fiduciary duty, and discusses related litigation regarding the withdrawal fee.¹⁰⁸

A. An Overview of the Lawsuits

On June 6, 2003, the University of Connecticut ("UConn"), Pittsburgh, Rutgers, Virginia Tech, and West Virginia University ("West Virginia") sued the ACC, Miami, and Boston College in Connecticut Superior Court (the "UConn lawsuit").¹⁰⁹ Virginia Tech soon dropped out of the lawsuit when it opted to join the ACC.¹¹⁰ The lawsuit pursued several causes of action against the parties.¹¹¹ Against Miami and Boston College, the "defecting schools," the plaintiffs brought claims of breach of fiduciary duty, breach of the implied covenant of good faith and fair dealing, promissory estoppel, and equitable estoppel.¹¹² Against the ACC, the plaintiffs asserted claims of inducing a breach of fiduciary duty; aiding and abetting that breach and seizure of a venture opportunity; and breach of the implied covenant of good faith and fair dealing.¹¹³ The plaintiffs also filed claims of unjust enrichment and civil conspiracy against all the defendants, and plaintiff UConn filed a claim of unfair competition against all the defendants under Connecticut's Unfair Trade Practices Act.¹¹⁴

On October 10, 2003, Connecticut Superior Court Judge Sferrazza dismissed the ACC from the UConn lawsuit, citing lack of personal jurisdiction.¹¹⁵ Connecticut Attorney General Richard Blumenthal, a

¹⁰⁷ Press Release, Executive Office of Governor John G. Rowland, State of Conn., *supra* note 87.

¹⁰⁸ See *infra* notes 109–34 and accompanying text.

¹⁰⁹ See generally Complaint, *supra* note 14.

¹¹⁰ Press Release, Office of the Attorney Gen. of Va., *Kilgore Hails Dismissal of Lawsuit Against Atlantic Coast Conference* (Feb. 25, 2004), http://www.oag.state.va.us/media%20center/Current%20AG%20News%20Releases/022504_Kilgore_Hails_Dismissal_of_ACC_Lawsuit.htm.

¹¹¹ Complaint, *supra* note 14, at 25–35.

¹¹² *Id.* at 25–29. Boston College was dropped from the initial lawsuit on June 26, 2003 after the ACC declined to offer Boston College membership in the ACC. See ACC: Miami, Virginia Tech Ready to Accept, *supra* note 60.

¹¹³ Complaint, *supra* note 14, at 29–31.

¹¹⁴ *Id.* at 31–35.

¹¹⁵ Univ. of Conn. v. Univ. of Miami, No. X07CV030081757S, 2003 WL 22390940, at *4 (Conn. Super. Ct. Oct. 10, 2003). The ACC, an unincorporated association of universities, had its offices and officers located in North Carolina. *Id.* at *1. No member university of the ACC or officer of the ACC was located in Connecticut; thus, personal jurisdiction would have existed only if the ACC had been doing business or operating within the state. *Id.* at *3. The court ruled that the minimal contacts between the ACC and Connecticut,

strong advocate for his state school and a lead attorney in the case, quickly re-filed the lawsuit, adding as defendants the directors of the ACC in their representative capacities, the Commissioner of the ACC in his individual capacity, and Boston College's Athletic Director.¹¹⁶ On February 23, 2004, the court granted motions to dismiss the claims against the ACC directors and against the ACC Commissioner.¹¹⁷

As a result of the negative publicity generated by the conference transfers, on October 20, 2003, Miami filed a lawsuit (the "Miami lawsuit") against the Big East Conference, UConn, Pittsburgh, Rutgers, and West Virginia in the Miami-Dade County Circuit Court.¹¹⁸ This lawsuit alleged breach of contract and a conspiracy to defraud.¹¹⁹ Additionally, Miami sued UConn for defamation.¹²⁰

On April 27, 2005, the parties settled the UConn lawsuit for approximately \$5 million.¹²¹ Settlement terms provided that each of the four Big East schools in the lawsuit would receive \$1 million, nine football games would be played between Big East and ACC teams, and Miami and Boston College each would receive smaller payments from the Big East as "returns of capital."¹²² Ostensibly as part of the settlement, the Miami lawsuit was dismissed in early May 2005 upon the stipulation of the parties.¹²³

resulting from out-of-conference athletic conferences, and payments from a corporation located in Connecticut, were not sufficient to constitute "doing business" under the long-arm statute. *Id.* at *4.

¹¹⁶ Matt Apuzzo, *Judge Again Dismisses Big East Lawsuit vs. ACC*, CSTV FOOTBALL NATION, Feb. 9, 2004, <http://www.collegesports.com/sports/m-footbl/stories/020904aaj.html>.

¹¹⁷ *Univ. of Conn. v. Atl. Coast Conference*, No. X07CV030082695S, 2004 WL 424221, at *4, *5 (Conn. Super. Ct. Feb. 23, 2004). The court agreed with the defendants that a suit against the officers or agents of the ACC ought to be regarded as a suit against the ACC itself. *Id.* at *3. Because the court previously ruled that it did not have personal jurisdiction over the ACC, the court also dismissed the claims against these defendants. *Id.* at *3, *4.

¹¹⁸ See Press Release, Univ. of Miami Athletics, *University of Miami Files Suit Against BIG EAST Conference and 4 Member Institutions* (Oct. 20, 2003), <http://hurricanesports.college-sports.com/sports/m-footbl/spec-rel/102003aaa.html>.

¹¹⁹ *Id.*

¹²⁰ *Id.*

¹²¹ *Univ. of Conn. v. Univ. of Miami*, No. TTD-CV-03-0081757-S (Conn. Sup. Ct. filed June 6, 2003); *Big East, ACC Settle*, *supra* note 66, at D02. This amount included the \$1 million exit fee that Boston College was scheduled to pay upon leaving the Big East at the end of June 2005. *Conferences Schedule Games*, *supra* note 11.

¹²² Ray Fittipaldo, *Settlement Benefits Pitt, WVU: Attractive Games, Money Fallout from ACC Suit*, PITTSBURGH POST-GAZETTE, May 5, 2005, at D1.

¹²³ *Univ. of Miami v. Big East Conference*, No. 2003-24488-CA-01 (Fla. Miami-Dade County Ct. filed May 18, 2005).

B. *Alleged Breach of Fiduciary Duty*

The UConn lawsuit plaintiffs alleged that the defecting schools breached their fiduciary duties by, among other things, making express and implied statements that reassured other Big East members that they remained committed to the conference.¹²⁴ Although the plaintiffs named both Miami and Boston College as defendants, the claim focused primarily on Miami.¹²⁵

Some of the allegations concerned rumored discussions between the ACC and Miami in 1999.¹²⁶ At that time, Miami officials, including its athletic director and its president, made statements regarding Miami's commitment to the Big East and its lack of plans to change conferences.¹²⁷ The UConn lawsuit plaintiffs alleged that several years later, in a 2002 conference meeting, Miami repeated its commitment to remain in the Big East.¹²⁸ The plaintiffs also alleged that Miami gave the Big East and its member schools implied assurances of remaining in the Big East by signing agreements in 2000 and early 2003 concerning rights to broadcast Big East games.¹²⁹

C. *The Withdrawal Fee*

Another chapter of the story unfolded when Boston College and the Big East disagreed about the exit fee that would be charged to Boston College for leaving the Big East.¹³⁰ Originally, the constitution of the Big East Conference imposed a \$1 million exit fee for leaving the Big East as long as notice was given at least one year in advance of July 1, the beginning of the conference year.¹³¹ On October 6, 2003, the Big East member schools, with Boston College and Notre Dame abstaining, amended the constitution to increase the exit fee to \$5 million for any member university that leaves the conference.¹³² Boston College, after accepting its invitation to join the ACC on October 12, challenged this

¹²⁴ Complaint, *supra* note 14, at 13–17, 25–26.

¹²⁵ See *id.* at 13–17, 25–26.

¹²⁶ See *id.* at 13–16.

¹²⁷ See *id.*

¹²⁸ *Id.* at 16.

¹²⁹ Complaint, *supra* note 14, at 17.

¹³⁰ Kevin Armstrong, *BC to Pay \$1 Million Fee to Leave Big East*, HEIGHTS (Boston College), Sept. 7, 2004, at B3, available at <http://www.bcheights.com/news/2004/09/07> (click on article title under "Sports").

¹³¹ *Trs. of Boston Coll. v. Big East Conference*, 18 Mass. L. Rptr. 177, 178 (Super. Ct. 2004).

¹³² *Id.*

amendment in court (the "Boston College lawsuit") by claiming that it was not adopted in accordance with the terms of the Big East constitution.¹³³ The court ruled in favor of Boston College, finding that the provision governing the amendment process in the Big East constitution had not been followed, and thus the court declared the purported amendment invalid.¹³⁴

IV. FIDUCIARY DUTIES IN THE CORPORATE SETTING

One claim in the UConn lawsuit was that the defecting schools, Miami and Boston College, breached the fiduciary duties that the schools owed to the Big East and its fellow member schools.¹³⁵ Before analyzing the facts and issues relevant to the case, it is helpful to have an understanding of the fiduciary duties involved.¹³⁶ Parts IV.A and IV.B discuss fiduciary duties on a conceptual level, while Part IV.C articulates specific duties owed in the context of nonprofit corporations such as the Big East.¹³⁷ Part IV.D explains that university representatives to conference boards have additional duties to their schools that are derived from the university-student relationship, and Part IV.E establishes a framework for understanding how the above-referenced duties can come into conflict.¹³⁸

A. Classic Articulation of Fiduciary Duties

The 1928 New York Court of Appeals case *Meinhard v. Salmon* provides a classic statement of fiduciary duties.¹³⁹ In *Meinhard*, the court concluded that the lessor/manager of a commercial building had a fiduciary duty to notify his leasing partner about related business opportunities.¹⁴⁰ *Meinhard* is the seminal case involving fiduciary duties, as it contains oft-quoted language from Chief Judge Cardozo articulating the classic understanding of fiduciary duties among those entering into business ventures together:

¹³³ *Id.* at 177.

¹³⁴ *Id.* at 182. The court also noted that, although the issue was not before it, the attempt to increase the withdrawal fee from \$1 million to \$5 million may have been void and legally unenforceable if it were found to be insufficiently related to the specific harm involved—that resulting from teams leaving the conference. *Id.* at 177.

¹³⁵ Complaint, *supra* note 14, at 25–27.

¹³⁶ See *infra* notes 139–216 and accompanying text.

¹³⁷ See *infra* notes 139–72 and accompanying text.

¹³⁸ See *infra* notes 173–228 and accompanying text.

¹³⁹ See 164 N.E. 545, 546 (N.Y. 1928).

¹⁴⁰ *Id.*

Joint adventurers, like copartners, owe to one another, while the enterprise continues, the duty of the finest loyalty. Many forms of conduct permissible in a workaday world for those acting at arm's length, are forbidden to those bound by fiduciary ties. A trustee is held to something stricter than the morals of the market place. Not honesty alone but the punctilio of honor the most sensitive, is then the standard of behavior.¹⁴¹

Chief Judge Cardozo proposed that, under certain circumstances, one might owe more than just the duty owed by those dealing at arms' length in market transactions.¹⁴² His articulation of fiduciary duty has been relied upon by hundreds of courts across the country.¹⁴³

B. *An Alternative View on Fiduciary Duties*

Judge Frank Easterbrook and Professor Daniel Fischel have suggested a view of fiduciary duties that varies from Cardozo's traditional conception.¹⁴⁴ They propose that fiduciary principles can be viewed as replacing specific penalties for actions taken in divergence with the original positions of the parties.¹⁴⁵ In many situations, contracting parties can have difficulty creating contractual language that covers all contingencies.¹⁴⁶ Because of these difficulties in anticipating when and how the interests of the parties might diverge, fiduciary duties act as a sort of standard-form penalty clause triggered when one party acts contrary to the interests of the other.¹⁴⁷ These fiduciary duties approximate what the contracting parties likely would have agreed upon had they been able to anticipate the specific events.¹⁴⁸ Conceptually, this is the functional equivalent of contractual good faith; when money damages are at stake, the concept operates somewhat like a liquidated damages provision.¹⁴⁹ Thus, fiduciary duties can be viewed

¹⁴¹ See *id.*

¹⁴² See *id.*

¹⁴³ See Mary Siegel, *Fiduciary Duty Myths in Close Corporate Law*, 29 DEL. J. CORP. L. 377, 442 n.340 (2004).

¹⁴⁴ See Frank H. Easterbrook & Daniel R. Fischel, *Corporate Control Transactions*, 91 YALE L.J. 698, 702 (1982).

¹⁴⁵ *Pross v. Katz*, 784 F.2d 455, 458 (2d Cir. 1986) (quoting Easterbrook & Fischel, *supra* note 144, at 702).

¹⁴⁶ See *id.*

¹⁴⁷ *Id.* (quoting Easterbrook & Fischel, *supra* note 144, at 702).

¹⁴⁸ *Id.*

¹⁴⁹ JAMES J. FISHMAN & STEVEN SCHWARZ, *NONPROFIT ORGANIZATIONS* 153 (2d ed. 2000); see Easterbrook & Fischel, *supra* note 144, at 702.

as a default rule, reducing transaction and enforcement costs and acting as an alternative to direct monitoring of individuals such as directors and officers.¹⁵⁰

For example, it would likely be difficult to approximate in advance the damages that would result from a corporate director's divulgence of a trade secret to a competitor.¹⁵¹ To include a specific damages provision in the director's contract would require knowledge of numerous future events or situations that would be impossible to know at the time of contract formation, such as the future development of trade secrets and their market values.¹⁵² It also would be impractical to amend all employment agreements involved whenever a new situation arises which could lead to potential future damages if the director or officer acts improperly.¹⁵³ In such situations, a loose concept of fiduciary duties is a more feasible alternative to an impractical contractual provision.¹⁵⁴

C: *Fiduciary Duties of Directors and Officers of Nonprofit Corporations*

The concept of fiduciary duties in general has been refined in the setting of nonprofit corporations.¹⁵⁵ The Big East is a nonprofit corporation governed by a board of directors whose fiduciary responsibilities are primarily influenced by the standards of corporate law.¹⁵⁶ Each Big East member university has representatives who sit on the board of directors and are subject to the fiduciary duties discussed in this section.¹⁵⁷ The standards and duties owed to the nonprofit corporation by directors are grounded in both the common law and state and federal statutes.¹⁵⁸ The Revised Model Nonprofit Corporation Act, which has been adopted by many states, explains this duty of care as follows:

¹⁵⁰ FISHMAN & SCHWARZ, *supra* note 149, at 153; see Easterbrook & Fischel, *supra* note 144, at 702.

¹⁵¹ See *supra* notes 144–50 and accompanying text.

¹⁵² See *supra* notes 144–50 and accompanying text.

¹⁵³ See *supra* notes 144–50 and accompanying text.

¹⁵⁴ See *supra* notes 144–50 and accompanying text.

¹⁵⁵ See *infra* notes 156–72 and accompanying text.

¹⁵⁶ See Complaint, *supra* note 14, at 5; James J. Fishman, *Improving Charitable Accountability*, 62 MD. L. REV. 218, 225 (2003).

¹⁵⁷ See Complaint, *supra* note 14, at 5.

¹⁵⁸ MELINDA A. AGSTEN, GOVERNANCE AND NONPROFIT CORPORATIONS: REQUIREMENTS AND EXPECTATIONS IN A POST-SARBANES-OXLEY WORLD: A PRIMER FOR DIRECTORS AND MANAGEMENT OF NONPROFIT ORGANIZATIONS 3 (2004), available at <http://www.wiggin.com/db30/cgi-bin/pubs/Governance%20and%20Nonprofit%20Corporations.pdf>.

A director shall discharge his or her duties as a director: . . . (1) in good faith; (2) with the care an ordinarily prudent person in a like position would exercise under similar circumstances; and (3) in a manner the director reasonably believes to be in the best interests of the corporation.¹⁵⁹

Caselaw from courts across the country confirms that fiduciary relationships and other obligations of corporate directors apply to charitable or nonprofit corporations.¹⁶⁰

The fiduciary duty owed by directors and officers of nonprofit corporations is commonly divided into two basic duties: the duty of loyalty and the duty of care.¹⁶¹ The duty of care, which is less applicable in the Big East dispute, requires acting as an ordinarily prudent person would under similar circumstances.¹⁶² This duty is primarily concerned with the director's competence in performing his or her functions and obligations as a director.¹⁶³ The duty of loyalty is to act faithfully and in the best interests of the corporation.¹⁶⁴ For a nonprofit corporation specifically, the duty entails pursuing the charitable purpose for which the corporation exists.¹⁶⁵ To satisfy the duty, directors must pursue the interests of the corporation, not their own interests or those of another organization.¹⁶⁶

These fiduciary duties are generally owed to the corporation.¹⁶⁷ If, however, the director causes harm to a corporation member as a result of the breach of the fiduciary duty, then the harmed member may bring claims for breach against the director.¹⁶⁸ For instance, the plaintiffs in the UConn lawsuit claimed that the defecting schools caused harm to the remaining Big East schools through breach of this duty of loyalty when they left for the ACC.¹⁶⁹

¹⁵⁹ REVISED MODEL NONPROFIT CORP. ACT § 8.30 (1987).

¹⁶⁰ See, e.g., *Triple-A Baseball Club Assocs. v. Ne. Baseball, Inc.*, 655 F. Supp. 513, 545 (D. Me. 1987); *Summers v. Cherokee Children & Family Servs., Inc.*, 112 S.W.3d 486, 503 (Tenn. Ct. App. 2002).

¹⁶¹ *Summers*, 112 S.W.3d at 503.

¹⁶² See *id.*

¹⁶³ Harvey J. Goldschmid, *The Fiduciary Duties of Nonprofit Directors and Officers: Paradoxes, Problems, and Proposed Reforms*, 23 J. CORP. L. 631, 641 (1998).

¹⁶⁴ *Summers*, 112 S.W.3d at 504.

¹⁶⁵ *Id.*

¹⁶⁶ *Id.*

¹⁶⁷ *Enchanted Valley RV Resort, Ltd. v. Weese*, 526 S.E.2d 124, 131 (Ga. Ct. App. 1999).

¹⁶⁸ *Id.*

¹⁶⁹ See Complaint, *supra* note 14, at 3.

The standards of fiduciary duties for directors of nonprofit corporations also call for close scrutiny of those directors who engage in conflict-of-interest transactions.¹⁷⁰ The Revised Model Nonprofit Corporation Act defines a conflict-of-interest transaction as "a transaction with the corporation in which a director of the corporation has a direct or indirect interest."¹⁷¹ A director of a corporation "has an indirect interest in the transaction if . . . another entity of which the director is a director, officer, or trustee is a party to the transaction."¹⁷²

D. *Conference Board Members' Duties to Their Own Universities*

While representative members of conference boards owe duties to the conference as members of a nonprofit corporation, they also owe duties to their own universities.¹⁷³ An officer of a not-for-profit corporation such as a private university or college must "discharge his or her duties in good faith and with the care that an ordinarily prudent person in a like position would exercise under similar circumstances and in a manner that the officer believes to be in the best interests of the corporation."¹⁷⁴

A background perspective into the varying theories of the relationship between universities and their students can illuminate the types of duties owed by universities to their students as well as demonstrate the potential for a conflict of duties for university officers who also sit on athletic conference boards.¹⁷⁵ Courts once considered the university as standing in loco parentis with respect to the student.¹⁷⁶ Under this view, the university's relationship with the student was one of nearly complete control.¹⁷⁷ As long as the university did not exercise its authority in an arbitrary or capricious manner, it satisfied its obligations to the student.¹⁷⁸ Over time, however, this doctrine has dissipated, and judicial protection of student rights has received more favor, in part because of recognition that the modern student makes a

¹⁷⁰ *Summers*, 112 S.W.3d at 504.

¹⁷¹ REVISED MODEL NONPROFIT CORP. ACT § 8.31(a) (1987).

¹⁷² *Id.* § 8.31(d).

¹⁷³ See MARGARET E. PHELAN, *NONPROFIT ENTERPRISES: CORPORATIONS, TRUSTS, AND ASSOCIATIONS* § 5:02 (2000) (citing REVISED MODEL NONPROFIT CORP. ACT § 8.42 (1987)).

¹⁷⁴ *Id.*

¹⁷⁵ See *infra* notes 176–216 and accompanying text.

¹⁷⁶ See, e.g., *Gott v. Berea Coll.*, 161 S.W. 204, 206–07 (Ky. 1913); see also Robert P. Faulkner, Note, *Judicial Deference to University Decisions Not to Grant Degrees, Certificates, and Credit—The Fiduciary Alternative*, 40 SYRACUSE L. REV. 837, 839–40 (1989).

¹⁷⁷ See Faulkner, *supra* note 176, at 840.

¹⁷⁸ *Id.* at 841–42.

significant investment of time and money in his or her education with the expectation of a substantial return.¹⁷⁹

More often, the relationship between the university and student has been cast in terms of contract law.¹⁸⁰ Educational institutions often have express contractual relationships with students associated with providing housing, food, and loans.¹⁸¹ In addition, implicit contractual relationships between universities and students have been recognized in a variety of contexts.¹⁸² Contract theory has been used for both academic and disciplinary disputes.¹⁸³

Theorists have advanced another important account of the relationship between universities and students that is based on fiduciary principles.¹⁸⁴ The theory, advanced by Professor Warren Seavey in 1957, starts with the proposition that a fiduciary is one whose function it is to act for the benefit of another in matters relevant to the parties' relationship.¹⁸⁵ Because schools exist primarily for the education of their students, it follows that professors and administrators act as fiduciaries of the students.¹⁸⁶ This notion has received some support from legal scholars over the years.¹⁸⁷

Furthermore, Professor Alvin Goldman has noted that the student-university relationship consists of all of the elements that are usually found in a fiduciary relationship.¹⁸⁸ He also noted that "the university's duty to its students may, from time to time, conflict with a duty it owes

¹⁷⁹ *Id.* at 844-45.

¹⁸⁰ *See id.* at 850-51.

¹⁸¹ KAPLIN & LEE, *supra* note 38, at 373.

¹⁸² *Id.* at 373-76; *see* Steinberg v. Chi. Med. Sch., 354 N.E.2d 586, 591 (Ill. App. Ct. 1976), *aff'd in part and rev'd in part*, 371 N.E.2d 634, 640 (Ill. 1977) (asserting that a medical school, upon receiving an application fee and an application for admission, had an implied contract with the applicant to judge his qualifications solely according to the school's published admission standards); Eden v. Bd. of Trs., 374 N.Y.S.2d 686, 691 (App. Div. 1975) (acceptance of an application for admission creates a vested contractual right for the student to receive instruction from the university); Healy v. Larsson, 323 N.Y.S.2d 625, 626 (Sup. Ct. 1971), *aff'd*, 348 N.Y.S.2d 971 (App. Div. 1973), *aff'd*, 318 N.E.2d 608, 608 (N.Y. 1974) (admission to a university creates an implied contract between student and university that the student will be granted a degree if he or she completes the prescribed requirements).

¹⁸³ KAPLIN & LEE, *supra* note 38, at 373.

¹⁸⁴ *See* Faulkner, *supra* note 176, at 855-59.

¹⁸⁵ Warren A. Seavey, *Dismissal of Students: "Due Process,"* 70 HARV. L. REV. 1406, 1407 n.3 (1957).

¹⁸⁶ *See id.*

¹⁸⁷ *See* Faulkner, *supra* note 176, at 855-59.

¹⁸⁸ Alvin L. Goldman, *The University and the Liberty of Its Students—A Fiduciary Theory*, 54 Ky. L.J. 643, 671 (1966).

to some other group."¹⁸⁹ In the context of disciplinary sanctions imposed by the university, for example, he asserted that these conflicts must be settled on a case-by-case basis by taking into account any special circumstances involved.¹⁹⁰ Although Professor Goldman's analysis focused on a potential conflict between duties such as the duty to protect the integrity of the educational process and the duty to act for the benefit of the community, the potential for conflicting fiduciary duties also seems likely in the current context of athletic conference migration.¹⁹¹

Another twist on the scholarly debate regarding fiduciary duties owed by university officials is the proposal that universities owe fiduciary duties as trustees.¹⁹² This perspective dictates that the university is a trustee for the students, faculty, donors, and alumni.¹⁹³ The university, as a trustee, owes fiduciary duties of selflessness, care, fairness, and disclosure in all its dealings with students, including in the administration of its admissions policy and in the management and allocation of its assets.¹⁹⁴

At least one commentator has used the fiduciary model of the university-student relationship in a discussion of administrative error in universities.¹⁹⁵ Under this approach, the elements of the fiduciary relationship are present in the university-student relationship because students confer upon the university a considerable amount of power and control over their money, futures, and persons.¹⁹⁶ This power is retained by the university and used to further the best interests of the student.¹⁹⁷ The student places great confidence in the university to act in his or her best interests; this type of confidence, offered by one giving up power to another to use it in the person's benefit, gives rise to a fiduciary relationship.¹⁹⁸ Thus, when making decisions implicating the relationship between the university and the student, the university, as fiduciary, must have the best interests of the student beneficiary at heart.¹⁹⁹

¹⁸⁹ See *id.* at 675.

¹⁹⁰ *Id.*

¹⁹¹ See *id.*

¹⁹² See Paul G. Haskell, *The University as Trustee*, 17 GA. L. REV. 1, 1 (1982).

¹⁹³ *Id.*

¹⁹⁴ *Id.*

¹⁹⁵ Faulkner, *supra* note 176, at 855-65.

¹⁹⁶ *Id.* at 856.

¹⁹⁷ *Id.*

¹⁹⁸ See *id.* at 856-57.

¹⁹⁹ *Id.* at 859.

Although courts most often view the university-student relationship as contractual in nature, courts have begun, in recent years, to find more legitimacy in some fiduciary duty claims against universities and colleges.²⁰⁰ Courts have not hesitated to find fiduciary relationships between universities and students in sexual harassment claims.²⁰¹ Moreover, courts have begun to recognize the potential for fiduciary relationships between universities and students in the context of research relationships.²⁰² In addition, a court in 2000 found that a university had a fiduciary relationship with a disabled student who was participating in an overseas program.²⁰³ Finally, a court in 2005 determined that a university dean and a dormitory housemaster had a special relationship with and thus a duty to exercise reasonable care regarding a troubled student who committed suicide.²⁰⁴

In the context of university financial investment, universities have a fiduciary duty to use student tuition funds and other fees for the uses for which they were intended.²⁰⁵ For example, one court found that the dean of a university breached a fiduciary duty by using student insurance premiums to help pay personnel who assisted him in the administration of a student health insurance program.²⁰⁶ In addition, trustees and officers of a university may be held liable for breaching their fiduciary duties by involving the university in speculative commercial activities.²⁰⁷ Students of a charitable institution, like a university, are considered to be beneficiaries of a charitable trust, triggering certain rights, like the right to sue in order to enforce the trust or to prevent the improper use of the funds.²⁰⁸ The Uniform

²⁰⁰ Kent Weeks & Rich Haglund, *Fiduciary Duties of College and University Faculty and Administrators*, 29 J.C. & U.L. 153, 158 (2002); see *Johnson v. Schmitz*, 119 F. Supp. 2d 90, 98 (D. Conn. 2000); *Bird v. Lewis & Clark Coll.*, 104 F. Supp. 2d 1271, 1277 (D. Or. 2000); *Schneider v. Plymouth State Coll.*, 744 A.2d 101, 105-06 (N.H. 1999).

²⁰¹ Weeks & Haglund, *supra* note 200, at 159; see *Schneider*, 744 A.2d at 105-06 (holding that the university-student relationship, built on a professional relationship of trust and deference, gave rise to fiduciary duties).

²⁰² Weeks & Haglund, *supra* note 200, at 162; see *Johnson*, 119 F. Supp. 2d at 98 (holding that where a graduate student alleged the misappropriation of his scholarly theory, the court recognized that Yale University may have owed a fiduciary duty to the graduate student to safeguard him from faculty misconduct).

²⁰³ *Bird*, 104 F. Supp. 2d at 1277.

²⁰⁴ *Shin v. Mass. Inst. of Tech.*, No. 020403, 2005 WL 1869101, at *11-13 (Mass. Super. Ct. June 27, 2005).

²⁰⁵ Weeks & Haglund, *supra* note 200, at 173.

²⁰⁶ See *Bd. of Regents v. Martine*, 607 S.W.2d 638, 642, 643 (Tex. Civ. App. 1980).

²⁰⁷ Pat K. Chew, *Faculty-Generated Inventions: Who Owns the Golden Egg?*, 1992 Wis. L. Rev. 259, 308 n.208 (citing *Jones v. Grant*, 344 So. 2d 1210, 1211-12 (Ala. 1977)).

²⁰⁸ *Jones*, 344 So. 2d at 1212.

Management of Institutional Funds Act ("UMIFA") supports the view that nonprofit corporate board directors have fiduciary duties regarding the use of university funds.²⁰⁹ UMIFA states:

In the administration of the powers to appropriate appreciation, to make and retain investments, and to delegate investment management of institutional funds, members of a governing board shall exercise ordinary business care and prudence under the facts and circumstances prevailing at the time of the action or decision. In so doing they shall consider long and short term needs of the institution in carrying out its educational, religious, charitable, or other eleemosynary purposes, its present and anticipated financial requirements, expected total return on its investments, price level trends, and general economic conditions.²¹⁰

Under this model statute, universities have a fiduciary duty regarding the proper use of university funds.²¹¹

As has been explained above, a fiduciary relationship exists in the context of the university-student relationship.²¹² Thus, when conducting their university-related activities, school officials have a duty to do what they believe to be best for their university and its students.²¹³ Although usually this duty exists harmoniously with the other duties of university officials, there are situations in which there may be conflicts.²¹⁴ An example of such an occurrence is the situation involving the schools that left the Big East.²¹⁵ While the university representatives to the Big East had the duty to do what they thought was best for their own schools—in this case to leave for the ACC—they also had a fiduciary duty of loyalty to the conference.²¹⁶

E. *Conflicting Fiduciary Duties*

As stated above, the university representatives to the Big East had duties to their respective schools as well as to the Big East and its

²⁰⁹ See UNIF. MGMT. INST. FUNDS ACT § 6, 7A (Part II) U.L.A. 500 (1972); Douglas M. Salaway, *UMIFA and a Model for Endowment Investing*, 22 J.C. & U.L. 1045, 1065 (1996).

²¹⁰ UNIF. MGMT. INST. FUNDS ACT § 6, 7A (Part II) U.L.A. 500 (1972).

²¹¹ See *supra* notes 205–10 and accompanying text.

²¹² See *supra* notes 173–211 and accompanying text.

²¹³ See *supra* notes 173–211 and accompanying text.

²¹⁴ See *supra* notes 188–91 and accompanying text.

²¹⁵ See *supra* notes 59–73 and accompanying text.

²¹⁶ See *supra* notes 155–211 and accompanying text.

member schools.²¹⁷ The existence of these two separate sets of fiduciary duties belonging to university officials involved in a conference migration like that from the Big East to the ACC creates the potential for conflicts of interest to arise.²¹⁸ This is because it is not always the case that a course of action benefiting an individual conference member will also benefit the conference as a whole, and university officials will have to decide on the most appropriate action to take.²¹⁹

Although no court has actually assessed the potential conflicts of interest present in conference migrations, some guidance can come from other forms of conflict-of-interest transactions.²²⁰ In the general setting of nonprofit corporations, a prime example of a conflict-of-interest transaction occurs when a director or officer leaves a corporation to work for a competitor.²²¹ Courts have dealt with a significant amount of litigation regarding the potential breach of the duty of loyalty in such situations.²²² Several general principles emerge from these decisions.²²³ Directors or officers of corporations are not strictly forbidden from entering into a separate competing business.²²⁴ But if directors or officers do so, they must rebut claims of breach of fiduciary duty by showing that they acted in good faith and did not act in a way that caused injury to the first corporation.²²⁵

Although the law has yet to provide clear guidance in situations in which conflicts arise between a director's duties as a representative of a member organization (such as a university) and his or her duties as a director of a corporate board (such as the Big East), it appears that disclosure to the board is a critical element of meeting the director's obligations.²²⁶ This is because disclosure of conflicts of interest gives the board notice of the potential conflict and allows the board the opportunity to take steps to minimize any potential adverse effects.²²⁷ Had the Big East litigation proceeded, the court likely would

²¹⁷ See *supra* notes 155–211 and accompanying text.

²¹⁸ See *supra* notes 155–211 and accompanying text.

²¹⁹ See *supra* notes 155–211 and accompanying text.

²²⁰ See *infra* notes 221–28 and accompanying text.

²²¹ See, e.g., *Vigoro Ind. v. Crisp*, 82 F.3d 785, 787–89 (8th Cir. 1996); *Instrument Repair Serv. v. Gunby*, 518 S.E.2d 161, 162–63 (Ga. Ct. App. 1999).

²²² See, e.g., *Vigoro*, 82 F.3d at 787–89; *Gunby*, 518 S.E.2d at 162–63.

²²³ See *Anderson v. Bellino*, 658 N.W.2d 645, 656–57 (Neb. 2003).

²²⁴ *Id.*

²²⁵ *Id.*

²²⁶ See AGSTEN, *supra* note 158, at 8.

²²⁷ See *id.*

have examined the issue of disclosure regarding the migrating schools' plans to leave the conference and to join a competing conference.²²⁸

V. CONFLICTING DUTIES OF A MEMBER OF BOTH AN EDUCATIONAL INSTITUTION AND AN ATHLETIC CONFERENCE BOARD

In most cases, the duties of university representatives who simultaneously serve on conference boards do not conflict; thus, fiduciary principles need not be invoked.²²⁹ Under normal circumstances, the conferences serve to further the athletic, academic, and financial interests of their member universities and the students who attend those schools.²³⁰ It follows that actions taken by conference board directors and officers that are in the best interests of the conference are most often also in the best interests of the member universities.²³¹

Circumstances may arise, however, in which the best interests of the member university diverge from the best interests of the conference.²³² Such a situation occurred with the Big East schools.²³³ During discussions with the ACC in 2003, university officials from Miami and Boston College determined that it would be in the best interests of their respective schools and their students to leave the Big East and join the ACC.²³⁴ According to Boston College officials, this decision was reached based upon a number of factors, including academic similarity with ACC schools, academic cooperation opportunities, and financial stability.²³⁵

In cases involving such conflicting duties, disclosure is usually a critical factor.²³⁶ Thus, a key question for a court regarding a claim of breach of fiduciary duty in similar cases is to determine whether the defecting schools were forthright, honest, and timely in their discussions with their original conference and the other conference member schools regarding their potential interest in moving to another conference.²³⁷ At some point, the interests of the defecting schools

²²⁸ See *id.*

²²⁹ See *supra* notes 155–211 and accompanying text.

²³⁰ See BigEast.org, *supra* note 35.

²³¹ See *id.*

²³² See *supra* notes 59–73 and accompanying text.

²³³ See *supra* notes 59–73 and accompanying text.

²³⁴ See *supra* notes 59–62 and accompanying text.

²³⁵ Q&A: Fr. Leahy, *supra* note 67.

²³⁶ See AGSTEN, *supra* note 158, at 8.

²³⁷ See *id.*

and the conference diverge, and from that point on, the defecting schools have a duty to be open with the original conference and its member institutions.²³⁸

In exploring a claim for breach of fiduciary duty in a conference migration lawsuit, a court should take into account the history of conference movement and the environment in which the transactions took place.²³⁹ The history of movement among conferences shows that it is not unusual for schools to change conferences.²⁴⁰ It can be inferred that school representatives periodically have informal discussions with other conferences.²⁴¹ School representatives serving as both university administrators and conference board members have duties to both entities.²⁴² These duties, however, exist in a context in which conference members should understand the situation between all of the involved schools.²⁴³

Member universities join conferences with the understanding that they are looking out primarily for the good of their own schools.²⁴⁴ Allegiance to a beneficial association with other schools can be helpful to those other schools, but the primary purpose of that association is to benefit one's own school.²⁴⁵ This is unlike a situation where a director or officer of a corporate board is also surreptitiously a member of a competing organization.²⁴⁶ All parties involved in the conferences understand the nature of their association, and all parties have, or should have, an understanding of the history of conference movement.²⁴⁷ In the Big East conflict, evidence of this common understanding appeared on the face of the document underlying the conflict: a withdrawal fee was included in the Big East constitution.²⁴⁸ Thus, unless the plaintiffs in such lawsuits can clearly show that the defecting schools had secret agreements or significant negotiations with the new conference to join and undermine the strength of the old conference, thereby violating their fiduciary duties of disclosure

²³⁸ See *id.*

²³⁹ See *supra* notes 23–105 and accompanying text.

²⁴⁰ See Wieberg, *supra* note 7, at 8C.

²⁴¹ See *id.*

²⁴² See *supra* notes 155–211 accompanying text.

²⁴³ See *supra* notes 42–43, 50–58 and accompanying text.

²⁴⁴ See *supra* notes 50–58 and accompanying text.

²⁴⁵ See *supra* notes 50–58 and accompanying text.

²⁴⁶ See *supra* notes 220–25 and accompanying text.

²⁴⁷ See *supra* notes 42–43, 50–58 and accompanying text.

²⁴⁸ See *Trs. of Boston Coll. v. Big East Conference*, 18 Mass. L. Rptr. 177, 178 (Super. Ct. 2004).

and loyalty, the free-market-style movement of schools between conferences should be allowed to remain intact.²⁴⁹

As members of a conference's board of directors, representatives from the defecting schools have fiduciary duties of care and loyalty to their conference.²⁵⁰ These administrators, however, also have duties to their own schools.²⁵¹ These duties may arise from the implicit trust inured to them to make decisions regarding the best interests—academic, financial, or otherwise—for the university, similar to the duty to use university financial resources appropriately.²⁵² They may also arise from Professors Seavey and Goldman's conceptualization of the fiduciary relationship between universities and their students.²⁵³ But from whatever source the duty is derived, the administrators' first duty is to their university.²⁵⁴ By looking at administrators as representatives of their universities first, and as members of the conference board of directors second and simply as part of their duties to their universities, a broader understanding of the issues can be achieved, and courts can diminish their intrusions into the process of schools moving from one conference to another.²⁵⁵

VI. RECONCEPTUALIZING THE WITHDRAWAL FEE

One piece of the Big East dispute, and the subject of one of the lawsuits involved, was the \$1 million withdrawal fee in the Big East constitution, which was paid by Miami, Virginia Tech, and Boston College.²⁵⁶ The withdrawal fee likely was included in the constitution because the member schools of the Big East realized that member schools eventually might leave the conference, for whatever reason.²⁵⁷ As such, the member schools apparently bargained with each other to provide a sort of liquidated damages clause for leaving the Big East.²⁵⁸

Regarding this type of withdrawal fee, damages for any potential breach of fiduciary duty should be considered as subsumed into the withdrawal penalty already assessed to each of the defecting

²⁴⁹ See *supra* notes 23–228 and accompanying text.

²⁵⁰ See *supra* notes 155–72 and accompanying text.

²⁵¹ See *supra* notes 173–216 and accompanying text.

²⁵² See *supra* notes 205–11 and accompanying text.

²⁵³ See Goldman, *supra* note 188, at 671; Seavey, *supra* note 185, at 1407 n.3.

²⁵⁴ See *supra* notes 173–216 and accompanying text.

²⁵⁵ See *supra* notes 23–216 and accompanying text.

²⁵⁶ See *Trs. of Boston Coll.*, 18 Mass. L. Rptr. at 178.

²⁵⁷ See *id.* The Big East constitution is not a public document and was therefore unavailable for analysis.

²⁵⁸ See *id.*

schools.²⁵⁹ According to Judge Easterbrook and Professor Fischel, fiduciary principles can be viewed as taking the place of specific penalties for actions taken in divergence with the original positions of the parties.²⁶⁰ In this way, fiduciary duties act as a standard-form penalty clause.²⁶¹ They do so because of the difficulties of anticipating when and how the interests of the parties might diverge.²⁶² In a Big-East-type scenario, however, the existence of the withdrawal fee shows that the parties likely did in fact bargain for specific damages in the case of divergence from original intentions.²⁶³ This scenario has already played out with the intentions of the defecting schools, originally to remain in association with the Big East, changing according to the numerous articulated reasons, including academic and financial concerns.²⁶⁴ As the Big East dispute reveals, the withdrawal fee included in a conference's constitution can be read as a specific bargained-for contractual provision, meaning additional damages based on fiduciary principles are unnecessary.²⁶⁵ Thus, if a previously bargained-for withdrawal fee exists, damages the conference or the remaining member schools suffer as a result of school migration should be considered as already remedied through payment of the fee.²⁶⁶ This viewpoint is consistent with the basic concept of a withdrawal fee and may reduce the likelihood that parties will resort to the court system if similar conference migration issues arise in the future.²⁶⁷

CONCLUSION

College football is big business. Revenues from television contracts and other sources have added high stakes to major college football alliances. The history of collegiate athletic conferences demonstrates a tradition of creation, change, movement, and fluidity. The lawsuits between Big East member schools and the defecting schools serve as an example of how concerns about the stability of revenue flow can result in quick resort to the legal system. In any future lawsuits of this type, allegations of breach of fiduciary duties should be approached with the

²⁵⁹ See *supra* notes 144–54 and accompanying text.

²⁶⁰ See Easterbrook & Fischel, *supra* note 144, at 702.

²⁶¹ See *id.*

²⁶² See *id.*

²⁶³ See *supra* notes 144–54 and accompanying text.

²⁶⁴ See *Q&A: Fr. Leahy*, *supra* note 67.

²⁶⁵ See *supra* notes 144–54 and accompanying text.

²⁶⁶ See *supra* notes 144–54 and accompanying text.

²⁶⁷ See *supra* notes 144–54 and accompanying text.

perspective that all members of the conference joined the conference with the understanding that their duties were first to their schools, and then to the conference. Unless any significant dealings between the defecting schools and their new conference can be shown to have been done as part of a plan to cause harm to the old conference, courts should be hesitant to find that representatives from the defecting schools breached any fiduciary duty. In addition, if a withdrawal fee exists in the conference's constitution or a similar agreement, any potential damages should be treated as subsumed into that fee, as the fee constitutes a bargained-for liquidated damages clause that replaces any potential damages resulting from a breach of fiduciary duty. Taking this view of conference migration issues will encourage members to resolve their disputes outside the court system, helping to ensure smoother and quicker conference transitions.

GREGG L. KATZ