

deference to state high school athletic associations and educational institutions regardless of the adverse effects on students who are deemed ineligible to participate in interscholastic athletics, reflects the judiciary's strong desire to avoid interfering with and micromanaging the high school educational process.⁶⁹ In a forthcoming article Professor Timothy Davis and I have proposed that a high school or college athlete should be denied an opportunity to participate in a sport only if doing so actually furthers a legitimate objective of the governing body or a school such as ensuring academic integrity, maintaining competitive balance and fair play, or promoting appropriate standards of conduct.⁷⁰

In summary, United States law does not establish any constitutionally protected or fundamental right to participate in sports. Nevertheless, Olympic and professional athletes are provided a means to seek independent *de novo* review of eligibility decisions, usually through a system of private arbitration. In contrast, despite the significant benefits of participation in intercollegiate or interscholastic sports competition, U.S. courts almost uniformly refuse to recognize a legally protected interest in interscholastic or intercollegiate athletic participation or apply more than very limited rational basis scrutiny of student-athlete eligibility determinations unless there is exclusion or discrimination prohibited on constitutional or statutory grounds.

69. *Wooten v. Pleasant Hope R-VI Sch. Dist.*, 139 F.Supp.2d 835, 843 (W.D. Mo. 2000); *Jones*, 197 Cal.App.3d 751, 757 (1988) (Stating "schools themselves are far the better agencies to devise rules and restrictions governing extracurricular activities. Judicial intervention into school policy should always be reduced to a minimum").

70. Matthew J. Mitten & Timothy Davis, *Athlete Eligibility Requirements and Legal Protection of Sports Participation Opportunities*, 8 Va. Sports & Ent. L. J. ___ (2009).



Martin Greenberg

Rich Rodriguez – Jumping Has Legal Consequences

By **Martin Greenberg**, Greenberg & Hoeschen, Member, Southeast Wisconsin Professional Baseball Park District, and Member, National Sports Law Institute Board of Advisors

INTRODUCTION

Rich Rodriguez attended West Virginia University (WVU) where he walked on to the football team and later earned a scholarship as a defensive back from 1981 to 1984 under Coach Don Nehlen.¹ Subsequent to his playing days, Rodriguez was the head coach at Glenville State and an assistant coach at Tulane and Clemson.²

On November 26, 2000, WVU announced that Rodriguez would again return to his alma mater to replace retiring Don Nehlen as head football coach. His first year at WVU, 2001, was a disappointment as he compiled a 3–8 record. However, during 2002 he led WVU to the biggest turnaround in Big East history compiling a 9-4 record. The success continued in 2005 when Rodriguez and the Mountaineers won the Big East title, defeated the Georgia Bulldogs in the Nokia Sugar Bowl, and were ranked number 5 by the *Associated Press*, the highest ranking in school history. More success followed in 2006, when WVU went 11-2 and won the Gator Bowl versus Georgia Tech, and in 2007 when the team compiled a 10-2 record.³ Rodriguez, who is one of only two current Hispanic head football coaches in the NCAA,⁴ was one of the most successful coaches in WVU history with a 60-26 overall record.⁵ He

1. *Rich Rodriguez Bio: About His Diverse Background; Plus Key Decisions Ahead*, DETROIT FREE PRESS, Dec. 17, 2007.

2. *Id.*

3. Rich Rodriguez, *Head Coach*, <http://www.mgoblue.com/football/coachbio.aspx?id=42166> (last visited Nov. 4, 2008).

4. *Rich Rodriguez Bio. . .*, *supra* note 1.

5. *Id.*

was credited with the school's first back-to-back Top 10 finishes, 4 consecutive New Year's Day bowl appearances, the school's first BCS bowl win, 3 Big East championships, 8 wins over top 25 teams, 26 straight weeks in the Top 25, a 30-6 record from 2005-2007, and a home-attendance average of 98% of capacity.⁶

On December 16, 2007, Rodriguez informed his players that he was leaving WVU to succeed Lloyd Carr as the head football coach at the University of Michigan. Assistant Coach Bill Stewart coached WVU in the Fiesta Bowl and was subsequently appointed head coach.⁷

Five years earlier Rodriguez entered into an Employment Agreement with WVU to serve as head coach of the football team from January 2002 to January 2010.⁸ On June 24, 2006, Rodriguez agreed to a First Amendment to the Employment Agreement⁹ that increased his compensation and provided he would be responsible for liquidated damages if he terminated the Agreement prior to January 15, 2013.¹⁰

On August 24, 2007, Rodriguez entered into a Second Amendment to his Employment Agreement, which was effective retroactively to December 8, 2006.¹¹ It increased his compensation,¹² extended the term of his employment to January 15, 2014, and increased the amount of liquidated damages for prematurely terminating his contract.¹³ The Second Amendment provided as follows:

(D) Termination by Coach.

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

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

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

5. *Id.*

6. *West Virginia's Rich Rodriguez Negotiating to be Michigan Football*, <http://sportswrap.berecruited.com/2007/12/14/west-virginias-rich-rodriguez-negotiating-to-be-michigan-football/> (last visited Oct. 27, 2008).

7. *Id.*

8. Employment Agreement by and between West Virginia Board of Governors for and on behalf of West Virginia University and Richard Rodriguez, Dec. 21, 2002.

9. First Amendment to the Employment Agreement for Richard Rodriguez, June 24, 2006.

10. *Id.* at 2-3.

11. Second Amendment to the Employment Agreement for Richard Rodriguez, Aug. 24, 2007.

12. *Id.* at 1-2.

13. *Id.* at 4-5.

of University to any further payment from Coach. All sums required to be *paid*. by Coach to the University under this Section within two years shall be payable according to the following schedule: one-third due (30) days after termination; one-third due on the one year anniversary of termination; and one-third due on the second anniversary of termination.¹⁴

Before breaking his agreement with WVU, and without the prior knowledge or consent of the university, Rodriguez allegedly engaged in discussions with the University of Michigan regarding their head football coach position employment.¹⁵ As a result of this conduct, West Virginia sued Rodriguez after he accepted the Michigan job.¹⁶ WVU asked the court to find that Rodriguez's contract with WVU was valid, that WVU had not breached that contract, that Rodriguez had breached it by taking the Michigan job, and that he failed to pay the first installment of the \$4 million in liquidated damages he owed to WVU by virtue of his early termination of the Employment Agreement.¹⁷

Initially the parties disputed whether the case should be decided in Michigan or West Virginia. Rodriguez argued that the proper venue for the dispute was in Michigan because he was a domiciled resident of the state prior to the original filing of the lawsuit. WVU ultimately prevailed on this issue as the West Virginia federal court remanded the matter to the West Virginia circuit court.¹⁸

In defense, Rodriguez argued that in August of 2007, just prior to the football season, pressure was put on him to execute the Second Amendment to the Employment Agreement. He claimed that the following promises were made in order to induce him to execute the Second Amendment:

- a. That the major donors to the Athletic Department at WVU insisted upon a \$4,000,000.00 penalty clause in the event that Rodriguez left the employ of WVU.
- b. That he would be given additional monies to pay assistant coaches more money for salary increases.
- c. That he would be given a website to promote the athletic program.
- d. That the students under the athletic program would not be required to return their books at the end of the semester season as was the current practice at that time.
- e. That monies would be made available for the Puskar Center renovation to increase the viability of the football program being coached by Rodriguez.
- f. That Michael Garrison, the incoming President of WVU, indicated that if Rodriguez wanted to leave "the lawyers would get together and reduce the cost of the buyout to \$2,000,000.00."¹⁹

Rodriguez alleged that he relied upon these representations and they were neither kept nor implemented. As a result, he alleged that he was fraudulently induced into signing the Second Amendment.²⁰ In addition, he claimed that on December 15, 2007, Athletic Director Pastilong and President Garrison, in separate meetings, both stated that they would not follow through on these promises.²¹ Thus, Rodriguez believed that WVU breached his employment agreement and specified those breaches in a supplementary resignation letter dated January 10, 2008.

14. *Id.* at 4-5.

15. Complaint, West Virginia University Board of Governors v. Richard Rodriguez, Civil Action No.: 1:08-CV-00041, at ¶20 (N.D. W. Va. 2008).

16. *Id.*

17. *Id.* ¶25.

18. West Virginia University Board of Governors v. Richard Rodriguez, 543 F. Supp. 2d 526, 536 (N.D. W. Va. 2008).

19. Defendant's Answer To Amended Complaint With Affirmative Defenses, Counterclaim and Third-Party Complaint With Jury Demand, West Virginia University Board of Governors v. Richard Rodriguez, Civil Action No.: 1:08-CV-00041, at ¶4 (N.D. W. Va. 2008).

20. *Id.* ¶5.

21. *Id.* ¶6.

Later in January, Rodriguez posted a \$1.5 million letter of credit with the court which he described as a “gesture of good faith.”²² The letter of credit was designed to secure any payments up to \$1.5 million that the court might order him to pay. He argued that \$1.5 million was the maximum amount of damages that WVU might be entitled under the terms of his employment agreement.²³

On July 9, 2008, Rodriguez and WVU agreed to settle the lawsuit. WVU will receive \$4 million. \$2.5 million will come from the University of Michigan’s Athletic Department using funds from its reserves (annual surpluses from sponsorships, licenses and media rights payments). The University also agreed to pay Rodriguez’s legal fees.²⁴ Rodriguez is responsible for the remaining \$1.5 million, which will be paid in three annual payments of \$500,000 beginning January 10, 2010. Under the terms of the settlement Rodriguez is not required to pay any interest that accrued on the buyout triggered by his departure.²⁵

In an editorial in the *Ann Arbor News* on July 13, 2008, the University of Michigan was severely criticized for the payment of Rodriguez’s buyout.

If anyone is under the illusion that Michigan football is part of the universe of public education, get over it. That’s a quaint notion, but college sports at this level is big business: a farm system for the pros, a money-making enterprise with multimillion-dollar endorsement deals and TV rights, an engine to woo and garner major alumni donations.²⁶

Oddly enough, Rodriguez’s new contract with the University of Michigan also contains a liquidated damage provision in the event of an early departure.²⁷ Rodriguez agreed to pay the University of Michigan \$4 million if he terminates his contract in year one. The buyout amount decreases by \$500,000 each contract year. The contract term is 6 years, from January 2, 2008 to December 31, 2013.²⁸

WVU’s new head football coach Bill Stewart executed an Employment Agreement on September 10, 2008.²⁹ In the event that Stewart terminates his Employment Agreement to take a position in any capacity with a football program at another Division 1 school or a professional football team, he is required to pay WVU liquidated damages in the amount of \$1 million.³⁰ Under a Covenant Not to Compete clause, if Stewart leaves WVU for another Division 1 or professional job, he cannot in the next year “personally contact or otherwise seek to recruit any high school student or transfer a prospective student athlete previously contacted or recruited by the University.”³¹

Interestingly, at the time of Rodriguez’s resignation, it was also alleged that he was recruiting current Ohio State quarterback Terrelle Pryor and that he told Pryor of his move to Michigan before telling West Virginia. Allegedly he also attempted to recruit a handful of WVU prospects including WVU offensive

22. Shawn Windsor, *COMPROMISE? U-M Coach Rich Rodriguez Makes \$1.5-million Offer*, DETROIT FREE PRESS, Jan. 30, 2008.

23. *Id.*

24. Jeff Arnold, *Rodriguez, Michigan move on after agreeing to pay \$4 million buyout*, THE ANN ARBOR NEWS, July 10, 2008.

25. *Rich Rodriguez, WVU Settle Lawsuit for \$4 Mil*, W. VA. UNIV. SPORTS & ENT. L. SOCIETY, July 10, 2008, http://richrodriguezlaw.blogspot.com/2008/07/rich-rodriguez-west-virginia-university_10.html.

26. *Rodriguez settlement is about more than money*, THE ANN ARBOR NEWS, July 13, 2008, http://blog.mlive.com/annarbornews_opinion/2008/07/editorial_rodriguez_settlement.html.

27. Letter of Intent between the Univ. of Michigan and Coach, at §1(C)(6), Dec. 17, 2007.

28. *Id.* at §1(A).

29. Employment Agreement between West Virginia University and William Stewart, Sept. 10, 2008.

30. *Id.* at §V(D)(2).

31. *Id.* at §V(F).

guard Josh Jenkins, to join him at Michigan. Cell phone records showed that he used his WVU cell phone to contact recruits and then took records pertaining to these communication and other documents related to his employment at WVU when he moved out of his office.³²

Stewart's contract language seeks to prevent this type of activity. Upon the termination of the contract by either Stewart or WVU, Stewart is obligated to give WVU "all materials or articles or information, including without limitation, keys, keycards, cell phones, computers, equipment, parking passes, automobiles, personal records, recruiting records, team information, video, statistics or other material documents, correspondence or other data furnished to the coach by the University or developed by the coach."³³

TYPES OF BUY OUTS

Buyouts or back-end agreed-to liquidated damages for early termination by coaches have become popular for universities in the last several years as a deterrent to prevent coaches from leaving. Because a university's judicial remedies are limited to a negative injunction; that is, preventing the coach from working for another employer during the term of an existing contract, back-end agreed-to liquidated damages helps a school prevent a coach from jumping, allows the school to preserve its reputation, and provides it with agreed upon monetary damages in the event of an early termination.

Buyouts take a number of forms. Some high profile college coaches have no buyout provisions in their existing and/or amended contracts. Examples include Bob Stoops, University of Oklahoma;³⁴ Nick Saban, University of Alabama;³⁵ Kirk Ferentz, University of Iowa;³⁶ Mack Brown, University of Texas;³⁷ and Bobby Bowden, Florida State University.³⁸

Other coaches' contracts contain a specific buyout number regardless of when they leave. For instance:

- Louisiana State University (LSU) coach Les Miles could owe the university \$500,000 in the event of his early termination; however, if Miles accepts employment at the University of Michigan he is required to pay LSU \$1.2 million for early termination.³⁹
- If Ohio State University's coach Jim Tressl prematurely terminates his contract he has to pay \$500,000 to reimburse Ohio State for expenses "including, but not limited to (i) searching for, recruiting, and hiring a new head football coach and coaching staff, (ii) relocating a new head football coach and coaching staff, and (iii) buying out the contract, if necessary, of the new head coach." In addition, Tressl agrees to reimburse Ohio State for all amounts Ohio State is contractually required to pay coaches, coaching staff if the new head coach does not recommend employment of coaching staff.⁴⁰

32. *Id.*

33. *Id.* at §V(G).

34. Contract of Employment between the University of Oklahoma and Robert Anthony Stoops, Jan. 1, 2002.

35. Head Coach Employment Contract by and between the Board of Trustees of the University of Alabama, for and on behalf of the University of Alabama and Nick L. Saban, June 15, 2007.

36. University of Iowa, Head Coach Contract, by and between The State University of Iowa and Kirk J. Ferentz, June 2, 2006.

37. Head Coach Agreement, between the University of Texas at Austin and William Mack Brown, March 7, 2002.

38. Employment Agreement by and among The Florida State University for and on behalf of the Board of Regents, Robert C. "Bobby" Bowden, and the Seminole Boosters, Inc., Oct. 1, 1999.

39. Contract of Employment by and among the Board of Supervisors of Louisiana State University and Agricultural and Mechanical College and Les Miles, at 10-11, Jan. 21, 2005.

40. Employment Agreement, at 14-15, Feb. 1, 2003.

- Recently hired Coach Bobby Petrino of the University of Arkansas, Fayetteville, has the following termination provision:

In the event that you choose to terminate this employment to accept a college or professional coaching position during the first four years of the initial term of your employment agreement or any extensions thereto, you will be responsible to pay liquidated damages to the University in the amount of \$2,850,000. The liquidated damages provision shall not apply during the fifth year of the initial term of your employment agreement.⁴¹

A third way in which buyout – liquidated damage provisions are negotiated is a de-escalating buyout; i.e., the longer the coach stays, the less the buyout. Examples of de-escalating buyout are:

- Tommy Tuberville, Auburn University:

<u>Contract Calendar Year</u>	<u>Coach's Buyout Amount</u>
2005	\$7,000,000
2006	\$7,000,000
2007	\$6,000,000
2008	\$6,000,000
2009	\$5,000,000
2010	\$4,000,000
2011	\$3,000,000 ⁴²

- Greg Schiano, Rutgers University.

The university is entitled to the following pay schedule based upon the date on which he terminates his employment agreement:

1. \$1,000,000 if terminated prior to the end of the 2007 regular football season.
2. \$750,000 if terminated between the end of the 2007 regular football season and the end of the 2008 regular football season.
3. \$650,000 if terminated between the end of the 2008 regular football season and the end of the 2009 regular football season.
4. \$500,000 if terminated between the end of the 2009 regular football season and the end of the 2013 regular football season.
5. \$450,000 if terminated between the end of the 2013 regular football season and the end of the 2014 regular football season.
6. \$350,000 if terminated between the end of the 2014 regular football season and the end of the 2015 regular football season.
7. \$250,000 if terminated between the end of the 2015 regular football season and December 31, 2016.⁴³

- Tommy Bowden, Clemson University:

41. Letter of Understanding between University of Arkansas and Bobby Petrino, Dec. 11, 2007.

42. Amended and Restated Agreement by and between Auburn University and Thomas Hawley Tuberville, at 17-18, Dec. 31, 2004.

43. Employment Agreement Extension, Jan. 17, 2003.

1. Four Million Dollars (\$4,000,000) if Coach terminates this Employment Agreement prior to December 1, 2008.
2. Three Million Five Hundred Thousand Dollars (\$3,500,000) if Coach terminates this Employment Agreement on or after December 1, 2008 and before December 1, 2009.
3. Three Million Dollars (\$3,000,000) if Coach terminates this Employment Agreement on or after December 1, 2009 and before December 1, 2010.
4. Two Million Five Hundred Dollars (\$2,500,000) if Coach terminates this Employment Agreement on or after December 1, 2010 and before December 1, 2011.
5. Two Million Dollars (\$2,000,000) if Coach terminates this Employment Agreement on or after December 1, 2011 and before December 1, 2014.⁴⁴

{*Bowden was terminated not for cause by the University during the 2008 football season.*⁴⁵}

Depending upon the agreement, back-end buyout clauses may also contain other covenants and contractual language including:

1. A stipulation that the university will suffer material damages, including, but not limited to, lost revenue from disruption of ticket sales, product endorsement, and/or other promotional activities, additional costs in having to locate, recruit and contract with a replacement coach, disruption within the team, and recruiting activities and other damages.
2. An acknowledgment that the amount is a bargained-for and agreed-to liquidated damage which shall not constitute a penalty.
3. A requirement that the coach should notify the athletic director or chancellor prior to engaging in discussions with other institutions, their representative or agents, including discussions related to offers of administrative opportunities at other educational institutions.
4. An agreement that the payment of the liquidated damage amount be made in lump sum and/or in scheduled installments.
5. A requirement of written notice of the intended early departure.
6. A prohibition against termination during the football season, (i.e. the university's collegiate football season commencing on the first day of the fall training camp for the football team and terminating at the end of the last game played by the football team immediately prior to the first day of the next practice for the football team).
7. A statement that the university shall have no duty to mitigate nor shall the coach have any right of offset.
8. A covenant that if the coach retires, and if the coach resumes any coaching responsibilities with any other institution of higher education within a stated period of his asserted permanent retirement, the coach shall be obligated to pay the University a liquidated damage amount.
9. A right of the university, at its option, to require the coach to coach any post-season games scheduled to be played later than December 15th of the year of coach's termination.

In addition to these examples of contractual language, a final lesson can be learned from *Northeastern University v. Brown*. Soon after signing a contract extension, Donald Brown, former head football coach at Northeastern University, left to become the head football coach at the University of Massachusetts. When Brown left, Northeastern sued to enforce his employment contract. The contract contained two pertinent clauses. The first clause, found in Article VIII, stated that "Coach agrees to devote full time and effort to the university and agrees not to seek, discuss, negotiate for or accept other

44. Employment Agreement by and between Clemson University and Tommy Bowden, at 18, Dec. 1, 2007.

45. *Bowden's Golden Parachute*, CFAA-ELITE-CLIPS, Oct. 15, 2008.

employment during the term of this Agreement without first obtaining the written consent of the president of the University. Such consent shall not be unreasonably withheld.”⁴⁶ The second clause, found in Article IX, stated that if Brown left Northeastern prior to the end of the contract period, then he “shall pay to the University as liquidated damages \$ 25,000” and if the university accepted that amount, it would be deemed to be “adequate and reasonable compensation to the University.”⁴⁷

According to the court, the liquidated damages clause in Article IX did not limit the university’s remedies to mere acceptance of liquidated damages.⁴⁸ Instead, the court construed the contract to mean that if the university accepted the liquidated damages, the coach was free to leave; however, the university could exercise and did not waive other remedies, including injunctive relief.⁴⁹

As a result of this case, to protect the coach when drafting similar liquidated damage clauses, there must be a clear statement that if the coach decides to prematurely terminate his contract, pursuant to the liquidated damages provision, the university must accept the amount of liquidated damages as its sole and exclusive remedy and waives or has no further right to any alternative remedies, including injunctive or other equitable relief.

The *Brown* court also indicated that Article VIII had precedence over the liquidated damages clause and, in effect, the university could trump a buyout by not consenting to or approving other employment.⁵⁰ As a result, contract drafters should include further protective language indicating that if the coach desires to terminate early and pay liquidated damages pursuant to the Employment Agreement, provisions similar to those found in Article VIII of Brown’s contract, should not have the legal effect of negating or having precedence over the liquidated damages clause.⁵¹

Buyouts or back-end agreed-to liquidated damages for early termination by coaches have become popular among universities in the last several years as a deterrent to prevent coaches from leaving

TAX CONSIDERATIONS

Oftentimes these buyout fees are actually paid for by the new employer and/or the new employer reimburses the coach. An interesting article analyzing the tax consequences of such buyouts recently appeared in the *Florida Tax Review*.⁵² According to the authors, “[i]t makes no difference whether the employer makes the buyout payment directly or reimburses the employee for making it since the substance of these two circumstances are identical, i.e. it will be treated as a payment by the employee.”⁵³

Most likely the buyout will be considered to be a personal obligation of the coach and the Internal Revenue Service will contend that “the new employer’s payment of the buyout obligation is additional compensation to the employee and taxable to him.”⁵⁴ Still, the payment of a buyout fee may be

46. *Northeastern Univ. v. Brown*, 17 Mass. L. Rep. 443, *2 (Mass. Super. Ct. 2004).

47. *Id.* at *2-3.

48. *Id.* at *7-8.

49. *Id.* at *8-9.

50. Martin J. Greenberg, *The Donald Brown, Jr. Case – Another Look at Liquidated Damage Provisions*, FOR THE RECORD, Vol. 15, No. 4, at 5 (October/December 2004).

51. *Id.*

52. Douglas A. Kahn and Jeffrey H. Kahn, *Tax Consequences When a New Employer Bears the Cost of the Employee's Terminating a Prior Employment Relationship*, 8 FLA. TAX REV. 539 (2007).

53. *Id.* at 542.

54. *Id.* at 543.

deductible as a business expense for the coach.⁵⁵ However, if the payment were fully deductible by the coach then it would not matter whether the employer's payment or reimbursement constitutes income taxable to the coach as this income would be totally offset by the deduction allowed.⁵⁶

The contract executed by Rodriguez with the University of Michigan dated October 24, 2008, discusses the tax consequences and settlement payment made by Michigan to resolve the WVU lawsuit.⁵⁷ Paragraph 3.02 Compensation, (g) Settlement Payment, indicates as follows:

Rodriguez acknowledges that as of the date of execution of this Agreement, the University has paid the sum of \$2,500,000 to West Virginia University ("WVU") pursuant to the terms of that certain settlement agreement by and among Rodriguez, WVU and the University dated July 31, 2008 (the "Settlement Payment"). The University considers this payment as taxable wages for tax withholding and reporting purposes. Consistent with that determination, the University has made timely deposits with appropriate taxing authorities of all amounts required to be withheld as taxes with respect to Rodriguez as a result of making the Settlement Payment (the "Withheld Taxes"). The University has agreed to neutralize the actual tax impact of the Settlement Payment to Rodriguez, in order that Rodriguez not be unduly burdened or distracted in connection with the performance of his duties hereunder. It is the express intention of the parties that neither party benefit financially to the extent that there is a difference between (i) the amount of the Withheld Taxes, and (ii) the amount of the tax liability incurred by Rodriguez (after claiming all deductions allowable under applicable tax laws) which is attributable to the University having made the Settlement Payment. Therefore, as soon as practicable in 2009, the parties will review Rodriguez's pertinent 2008 tax information, and Rodriguez will pay the University, or the University will pay Rodriguez, as the case may be, such amount as is necessary to effectuate this mutually desired result.⁵⁸

CONCLUSION

The situation involving Rich Rodriguez should serve as a warning for a university with a high profile coach or one who is perceived as a rising star. A liquidated damages clause may provide the jilted university with some monetary relief if a coach leaves before his contract expires, but, it will not prevent the loss of the coach's services. In the end, although the university may receive some sort of compensation, nothing can force a coach to stay.

55. *Id.*

56. *Id.*

57. Letter of Intent between the Univ. of Michigan and Coach, *supra* note 27.

58. *Id.*

{A special thank-you to Ryan Reilly, a third-year law student at Marquette Law School, who was helpful in the drafting, editing, and footnoting of this article.}