

IN THE CIRCUIT COURT OF CALHOUN COUNTY, ALABAMA

Ohio Valley Conference,)	
)	
Plaintiff,)	
)	
v.)	Case No. _____
)	
Jacksonville State University, Randall)	
Jones, individually and in his official)	
capacity as Chair of the Board of)	
Trustees of Jacksonville State University,)	
and Don C. Killingsworth, Jr.,)	
individually and in his official capacity)	
as President of Jacksonville State)	
University,)	
)	
Defendants.)	

COMPLAINT

Plaintiff Ohio Valley Conference (“OVC”), for its Complaint against Defendants Jacksonville State University (“JSU” or the “School”), Randall Jones, individually and in his official capacity as Chair of the School’s Board of Trustees, and Don C. Killingsworth, Jr., individually and in his official capacity as the School’s President, states as follows:

INTRODUCTION

1. This is a straightforward case about contractual provisions that the School agreed to but is now unwilling to honor. Specifically at issue is Article 4.5.3 of the OVC Constitution and bylaws (“OVC Constitution”), by which the School promised to pay an exit fee for resigning its membership in the OVC. Exit fee clauses like the one in the OVC Constitution are common, if not standard, among collegiate athletics conferences. The exit fee clause is effectively a liquidated damages provision contained in the OVC Constitution to compensate the OVC for the effects of a member’s departure. While exit fee provisions vary in their amounts, the OVC’s exit fee is in line with those of its conference peers. Exit fee provisions have been traditionally followed and

enforced and are paramount to protecting the interests of athletics conferences, their members, and student-athletes.

2. The School resigned its membership in the OVC effective June 30, 2021, but has refused to pay the contractually specified exit fee. By failing to pay the exit fee, the School breached the OVC Constitution, which is a contract. The irony of the School breaching the OVC Constitution is inescapable. The School has been receiving goods and services, including monetary benefits, and performing under the OVC Constitution for years. In 2011, 2013, and 2015, the School joined unanimous votes by OVC members to increase the exit fee (voting in 2015 to increase the exit fee to its current amount). In 2017, the School joined a unanimous vote by OVC members to make 50% of the exit fee payable immediately upon an institution's departure. Additionally, like the OVC, the conference that the School joined after departing the OVC—the Atlantic Sun Conference (“ASUN”)—is believed to require an exit fee. While sensitivities and media interest surrounding this case might become heightened, the uncomplicated facts of the case should remain the focus: this is a case about a contractual promise that the School willingly made but is now refusing to keep.

3. It is unfortunate and surprising that the School left the OVC. While an OVC member, the School frequently complimented the OVC and publicly expressed pride in its OVC membership. In his 2016 OVC Hall of Fame induction speech, one of the School's former Presidents confirmed that “the OVC has been a wonderful home for [JSU],” recalling that in deciding to leave the ASUN in 2003, he was “keeping [his] fingers crossed that [JSU] could get into this great conference [the OVC].” According to the same former President, “getting into the OVC was a wonderful accomplishment for [JSU].”

4. The OVC wishes the School well in its future endeavors and regrets having to institute this lawsuit. But by refusing to abide by its contractual obligations, the School left the OVC no choice but to file this lawsuit in order to enforce its contractual interests, serve the remaining members of the OVC and their student-athletes, and hold the School accountable to the voluntary contract that it agreed to and under which the OVC has performed and provided goods and services to the School, including monetary benefits, for years.

PARTIES, JURISDICTION, AND VENUE

5. The OVC is a men's and women's collegiate athletics conference. It is organized as a nonprofit association and has headquarters at 215 Centerview Drive, Suite 115, in Brentwood, Tennessee.

6. The OVC has the following 10 members, all of them institutions of higher education: Austin Peay State University, Belmont University, Eastern Illinois University, Morehead State University, Murray State University, Southeast Missouri University, Southern Illinois University Edwardsville, Tennessee State University, Tennessee Technological University, and University of Tennessee Martin. By virtue of the citizenships of its associational members, for jurisdictional purposes, the OVC is deemed to be a citizen of Illinois, Kentucky, Missouri, and Tennessee.

7. The School is a public university located in Jacksonville, Alabama.

8. Defendant Randall Jones is a resident citizen of the State of Alabama and is the Chairman of the School's Board of Trustees.

9. Defendant Don C. Killingsworth, Jr., is a resident citizen of the State of Alabama and is the President of the School.

10. This Court has jurisdiction pursuant to Alabama Code § 12-11-30, as the matter in controversy exceeds \$20,000, exclusive of interest and costs.

11. The School is subject to the personal jurisdiction of this Court because it is an Alabama citizen, received goods and services and performed under the OVC Constitution in Alabama, and regularly conducts business in Alabama.

12. Venue in Calhoun County is proper because it is the county in which the School has its principal office.

FACTS

Formation of the OVC and the School's Membership

13. The OVC was formed in 1948.

14. Since its inception, the OVC has been governed by a Board of Presidents made up of the Chancellors and Presidents of the OVC's member institutions. The day-to-day operational activities of the OVC are overseen by a commissioner hired by the Board of Presidents. The Commissioner works hand-in-hand with the Board of Presidents to develop and implement the strategic vision of the OVC, including conference expansion and member acquisition.

15. The School joined the OVC in 2003 and remained a member of the conference until it resigned its membership effective June 30, 2021.

16. Prior to joining the OVC, the School competed in the ASUN in some sports. Upon information and belief, the School paid an exit fee to the ASUN in 2003 upon leaving that conference for the OVC.

17. The number of championship competition sports offered by the OVC has increased over the years, but in 2020-2021—the final year of the School's membership—the OVC offered 19 sports and 16 championships.

18. In 2020-2021, the School participated in 17 sports offered by the OVC.

19. Each year of its OVC membership, the School received continuous goods and services, including monetary benefits, as a result of its membership. Many of the goods and services are available only to an institution that is a member of a National Collegiate Athletics Association (“NCAA”) Division I conference. It is nearly impossible for a school to function within the Division I athletics structure without being a member of a conference. In fact, schools transitioning into Division I must now do so through a conference.

20. As a result of its OVC membership, among other goods and services, the School received (a) organized, conference-based athletic competitions; (b) the opportunity to compete for individual and team conference championship titles, prestige, and bragging rights, such as OVC Commissioner’s Cups; (c) the opportunity to compete for NCAA championships automatically by winning OVC conference championships or by receiving an at-large selection, including the NCAA men’s (March Madness) and women’s basketball tournament; (d) access to the NCAA governance structure (which is limited to schools affiliated with NCAA Division I multisport conferences); (e) administrative and legal support, including scheduling and compliance with NCAA and OVC rules; (f) educational seminars and programming; (g) officiating; (h) digital streaming and replay equipment; (i) media exposure through the OVC’s national media partners; (j) the right to market and promote affiliation with the OVC, an esteemed Division I conference; (k) a share of year-end OVC distributions and basketball pool funds; (l) upon approval by the Board of Presidents, a share of revenue from the OVC’s contracts with television broadcasters, including the OVC’s current contract with ESPN (the biggest in the OVC’s history); (m) access to the OVC’s sponsorship partnership with Learfield (previously Learfield IMG College); (n) a share of NCAA year-end funds distributed through the OVC; (o) a share of College Football Playoff

Grant Funds; (p) competition and academic awards and honors; and (q) in 2020, COVID-19 equipment and supplies.

21. In particular, basketball pool funds have been a unique benefit received by the School due to its OVC membership. Division I Basketball Performance Funds are monies that the NCAA distributes to conferences for their members' success in the Division I men's basketball tournament. Each win in the Division I men's basketball tournament equates to a "unit" of Division I Basketball Performance Funds. Conferences—not the NCAA—determine how Division I Basketball Performance Funds received from the NCAA are distributed to their conference members. The OVC distributes Division I Basketball Performance Funds to all its members, regardless which member won the tournament game resulting in the "unit." But not every conference distributes Division I Basketball Performance Funds in this way. Because all OVC members receive a share of Division I Basketball Performance Funds distributed to the OVC, the School has received Division I Basketball Performance Funds regardless of whether it won March Madness tournament games.

The OVC Constitution

22. The OVC's members are subject to the OVC Constitution adopted and approved by the Board of Presidents, which constitutes a valid and binding contract between the OVC and its members. The OVC Constitution is an integral part of the contractual relationship between the OVC and its members.

23. The OVC Constitution has contained an exit fee (liquidated damages) provision since at least 1967.

24. Article 4.5.3 of the OVC Constitution addresses resignation of membership, stating:

4.5.3 Resignation of Membership. A member institution desiring to terminate its Conference membership shall provide written notice to the Conference president and commissioner a minimum of two years prior to when the member desires to cease Conference membership. Notification must be made no later than the date of the annual OVC Spring Meetings. The member institution providing notice of its termination need not show cause for its termination to be effective. A member institution providing the requisite notice of its intention to resign from the Conference shall pay a \$750,000 exit fee plus forfeit both its Conference year-end and OVC basketball pool distributions during the final two years of OVC membership. A member institution failing to provide the minimum two years required written notice shall pay the Conference a sum of \$1,000,000 in addition to forfeiting both its Conference year end and OVC Basketball Pool distributions during the final year of OVC membership. A member institution that resigns from the Conference shall pay at least half of the required exit fee at the time of departure from the Conference, no later than June 30 of that year, and the remaining amount within 12-months of the initial payment, not later than June 30 of the next year[.]

A copy of Article 4 of the OVC Constitution is attached hereto as **Exhibit A** and incorporated herein by reference.

25. Over time, OVC members, including the School, have voted to amend Article 4.5.3. For example, in 2004—when the School was an OVC member—the Board of Presidents voted to increase the exit fee to \$200,000. In 2011, the School joined a unanimous vote to add to Article 4.5.3 of the OVC Constitution forfeiture of Conference distributions during the final two years of membership. In 2013, the School joined a unanimous vote to increase the exit fee to \$500,000 upon two years’ notice and \$750,000 with less than two years’ notice. In 2015, the School joined a unanimous vote to increase the exit fee to its current amount. In 2017, the School joined a unanimous vote to make 50% of the exit fee due immediately upon a school’s departure.

26. Additionally, Article 4.5.4 states:

4.5.4 Effect on Pro-Rata Share. A member who resigns or is terminated from the Conference shall forfeit its pro-rata share of the Conference Fund Balance.

27. Exit fee provisions like Article 4.5.3 are common, if not standard, among collegiate athletics conferences. Upon information and belief, many collegiate athletics conferences require

exit fees equal to or greater in amount to the OVC's exit fee. While the amount of exit fees may vary across conferences, withdrawing schools traditionally honor exit fee provisions—due to their contractual nature—without making litigation necessary. Unfortunately, the School has chosen otherwise.

28. Samford University (“Samford”) was a member of the OVC from 2003 to 2008. When Samford resigned its OVC membership to join another conference, it paid the \$200,000 exit fee required at the time.

29. Upon information and belief, it is rare for exiting schools from any athletics conference to refuse to pay a contractually specified exit fee, so litigation of exit fees is infrequent. However, in those instances in which exiting schools have attempted to avoid their contractual obligation to pay conference exit fees, courts uphold and enforce exit fee provisions.

30. Exit fee provisions ensure the vitality and longevity of collegiate athletics conferences. They are a critical component of benefits received by member institutions, and they protect the interests of athletics conferences and their members. As but one important example in this case, the exit fee will help offset costs that the OVC has already incurred due to the School resigning its membership.

31. The School is no stranger to exit fee provisions. First, the OVC Constitution has contained an exit fee provision since at least 1967. At that time, leaving the OVC required a departing member to forfeit its pro rata share of the OVC's year-end budget surplus. But because the costs of operating a collegiate athletics conference have increased over time, on at least six occasions, the Board of Presidents has voted to increase the exit fee amount, including to the amount currently required by Article 4.5.3. The School joined unanimous votes in 2011, 2013, and 2015 to increase the exit fee (in 2015 to amend Article 4.5.3 to its current version). Moreover, the

School was an OVC member when Samford paid the OVC's \$200,000 exit fee in effect in 2008. And upon information and belief, the ASUN, which the School just joined, is believed to require an exit fee.

The School's Resignation of OVC Membership

32. On January 26, 2021, the School's Board of Trustees unanimously approved Resolution 621 authorizing President Killingsworth "to explore opportunities for the University to join another NCAA Division I athletic conference and if, in the exercise of his good faith discretion, he believes a new conference affiliation is in the best interest of the University, to enter into such agreement and to take the necessary steps for the University to resign its membership in the OVC."

33. On February 3, 2021, the School informed the OVC that it intended to resign its OVC membership effective June 30, 2021. A copy of the School's notice of termination letter is attached hereto as **Exhibit B** and incorporated herein by reference.

34. On March 15, 2021, the OVC acknowledged receipt of the School's notice and demanded that the School honor its contractual obligation under the OVC Constitution to pay the exit fee. The OVC also reminded the School that by resigning its membership, it forfeited its share of OVC year-end distributions and basketball pool funds.

35. Because the School failed to provide the minimum two years' written notice of its departure from the OVC, it is required by the express language of Article 4.5.3 to pay a \$1,000,000 exit fee. The School was required to pay at least \$500,000 on June 30, 2021, and is required to pay the remaining \$500,000 by June 30, 2022.

36. Even if the School had provided the minimum two years' written notice of its departure, it would still owe an exit fee of \$750,000.

37. Additionally, by resigning its membership, the School forfeited its OVC year-end and basketball pool distributions from July 1, 2020, to June 30, 2021, and its pro rata share of the OVC Conference Fund Balance.

38. Upon information and belief, no OVC member that resigned its membership or who had its membership terminated has ever failed to pay the contractually specified exit fee.

39. The School did not pay the \$500,000 portion of the exit fee due on June 30, 2021. By letter dated June 29, 2021, the School stated it has no intention of paying the exit fee.

40. The School also owes \$15,000 to the OVC for tickets that the OVC provided the School for the OVC's 2021 conference championship basketball tournament. The \$15,000 payment is for a ticket buy-in that all OVC schools owe to help support the conference championship event, regardless of whether they have a team in the tournament. The School received \$15,000 in tickets from the OVC and had both men's and women's teams in the tournament. A copy of the invoice billed to the School is attached hereto as **Exhibit C** and incorporated herein by reference.

41. Even though the School did not pay the \$500,000 portion of the exit fee due on June 30, 2021, or for the tickets it received from the OVC for the OVC's 2021 conference championship basketball tournament, the OVC fully abided by its promises to the School under the OVC Constitution. The OVC distributed to the School shares from the NCAA Academic Enhancement Fund, Academic Performance Fund, Special Assistance Fund, and Student-Athlete Opportunity Fund. On June 28, 2021, the day before the School's letter advising it would not pay the exit fee, the OVC overnighted to the School a check for \$454,095, which the School cashed.

42. As of the filing of this Complaint, the School owes the OVC \$1,015,000.

COUNT I – DECLARATORY JUDGMENT

43. The OVC adopts each of the above averments as if restated in full.

44. Given the School's stated position, an actual controversy exists regarding (a) the applicability and binding nature of Article 4.5.3 of the OVC Constitution and (b) the School's obligation to pay the \$1,000,000 exit fee to the OVC.

45. The School's refusal to pay the exit fee is inconsistent with the express terms of the OVC Constitution and with the steady course of dealing between the OVC and School under the OVC Constitution.

46. Pursuant to Alabama Code Sections 6–6–221 *et seq.*, the OVC is entitled to a declaration that Article 4.5.3 of the OVC Constitution is valid and binding and that the School owes the OVC \$1,000,000 in exit fees.

COUNT II – BREACH OF CONTRACT

47. The OVC adopts each of the above averments as if restated in full.

48. The OVC Constitution constitutes a valid and binding contract between the OVC and the School.

49. The School voluntarily and willingly agreed to the terms of the OVC Constitution by, among other things, receiving goods and services under the OVC Constitution, including monetary benefits, performing under the OVC Constitution, and on numerous occasions, voting to approve and amend the OVC Constitution, including joining multiple unanimous votes to increase the OVC Constitution's exit fee and amend Article 4.5.3 to its current version.

50. The School materially breached the OVC Constitution by failing to pay the \$500,000 portion of the exit fee due on June 30, 2021, and stating its refusal to pay the second \$500,000 portion of the exit fee due by June 30, 2022.

51. The School also breached its contractual obligations by failing to pay \$15,000 for tickets received from the OVC for the OVC's 2021 conference championship basketball tournament.

52. As a result of breaching the OVC Constitution, the School caused damage to the OVC.

WHEREFORE, the premises considered, the OVC demands judgment against the School for \$1,015,000, plus pre-judgment and post-judgment interest at the maximum allowable rates; attorneys' fees, costs, and expenses, where permitted; and all such other and further relief as the Court deems proper.

COUNT III – PROMISSORY ESTOPPEL

53. The OVC adopts each of the above averments as if restated in full.

54. The School promised to pay the exit fee required under Article 4.5.3 of the OVC Constitution in the event it resigned its OVC membership.

55. The School promised to pay \$15,000 for tickets received from the OVC for the OVC's 2021 conference championship basketball tournament.

56. The OVC relied on the School's promise to pay the exit fee required under Article 4.5.3 of the OVC Constitution.

57. The School should have expected the OVC to rely on its promise to pay the exit fee required under Article 4.5.3 of the OVC Constitution.

58. The OVC relied on the School's promise to pay \$15,000 for tickets received from the OVC for the OVC's 2021 conference championship basketball tournament.

59. The School should have expected the OVC to rely on its promise to pay \$15,000 for tickets received from the OVC for the OVC's 2021 conference championship basketball tournament.

60. The OVC reasonably and foreseeably relied on the School's promises to pay the exit fee required under Article 4.5.3 of the OVC Constitution.

61. The OVC reasonably and foreseeably relied on the School's promises to pay \$15,000 for tickets received from the OVC for the OVC's 2021 conference championship basketball tournament.

62. The School injured the OVC by failing to fulfill its promise to pay the exit fee required under Article 4.5.3 of the OVC Constitution. Among other things, the School received goods and services under the OVC Constitution, including monetary benefits and myriad other benefits of OVC membership, without paying the exit fee owed to the OVC.

63. The School injured the OVC by failing to fulfill its promises to pay \$15,000 for tickets received from the OVC for the OVC's 2021 conference championship basketball tournament. Among other things, the School received the tickets as goods and benefits of the tickets without paying for them.

64. A gross injustice to the OVC will result if the School's promise to pay the exit fee is not enforced.

65. A gross injustice to the OVC will result if the School's promises to pay \$15,000 for tickets received from the OVC for the OVC's 2021 conference championship basketball tournament is not enforced.

WHEREFORE, the premises considered, the OVC demands judgment against the School for \$1,015,000, plus pre-judgment and post-judgment interest at the maximum allowable rates;

attorneys' fees, costs, and expenses, where permitted; and all such other and further relief as the Court deems proper.

COUNT IV – UNJUST ENRICHMENT

66. The OVC adopts each of the above averments as if restated in full.

67. The OVC provided goods and services to the School and conferred valuable benefits upon it. The School was an OVC member for years before resigning its membership without paying the exit fee required under Article 4.5.3 of the OVC Constitution.

68. The OVC sold the School goods and conferred valuable benefits upon it by selling tickets to the OVC's 2021 conference championship basketball tournament without the School paying for them.

69. On multiple occasions, including through the OVC Constitution, the OVC unmistakably represented to the School that it expected the exit fee required under Article 4.5.3 of the OVC Constitution to be paid in the event the School resigned its membership in the OVC.

70. The OVC represented to the School that it expected to be paid for the tickets it sold to the School for the OVC's 2021 conference championship basketball tournament.

71. The School agreed to pay the exit fee required under Article 4.5.3 of the OVC Constitution, including by remaining an OVC member until June 30, 2021, receiving goods and services from the OVC for decades, including monetary benefits, performing under the OVC Constitution, joining unanimous votes in 2011, 2013, and 2015 to increase the OVC Constitution's exit fee amount, and voting in 2017 to amend Article 4.5.3 to its current version.

72. The School agreed to pay for tickets for the OVC's 2021 conference championship basketball tournament.

73. The School failed to pay the money that, in equity and justice, belongs to the OVC as payment for the School resigning its membership and payment for tickets for the OVC's 2021 conference championship basketball tournament.

WHEREFORE, the premises considered, the OVC demands judgment against the School for \$1,015,000, plus pre-judgment and post-judgment interest at the maximum allowable rates, attorneys' fees, costs, and expenses where permitted, and all such other and further relief as the Court deems proper.

COUNT V – CONVERSION

74. The OVC adopts each of the above averments as if restated in full.

75. The OVC is legally entitled to payment for the tickets that it provided the School for the OVC's 2021 conference championship basketball tournament.

76. The School is legally obligated to pay for the tickets that it received from the OVC.

77. The OVC demanded payment for the tickets. Despite receiving the tickets and an invoice for the tickets, which is now past due, the School has not paid for the tickets.

78. The School has not paid for the tickets, thereby depriving the OVC of its use and enjoyment of proceeds from the tickets.

79. The School intended to interfere with the OVC's use and enjoyment of proceeds for the tickets by intentionally refusing to pay for the tickets.

80. As a result of refusing to pay for tickets for the OVC's 2021 conference championship basketball tournament, the School converted money to which the OVC is legally entitled, which has caused property loss and damage to the OVC.

WHEREFORE, the premises considered, the OVC demands judgment against the School for \$15,000, plus pre-judgment and post-judgment interest at the maximum allowable rates;

attorneys' fees, costs, and expenses, where permitted; and all such other and further relief as the Court deems proper.

COUNT VI – INJUNCTIVE RELIEF

81. The OVC adopts each of the above averments as if restated in full.

82. Jones and Killingsworth had the responsibility to follow established procedures for the payment of the School's contractual obligations and debts due and owing, and also to follow guidelines and established accounting procedures to ensure that established obligations, such as those owed to the OVC, were paid. Jones and Killingsworth failed to meet these responsibilities or follow these guidelines and established accounting procedures. These acts and omissions constitute violations of ministerial, rather than discretionary, duties.

83. To the extent that these acts and omissions could conceivably have been done while Jones and Killingsworth were exercising a discretionary function, then the act or omission was done willfully, maliciously, intentionally, in bad faith, beyond the authority of Jones or Killingsworth, or under a mistaken interpretation of the law. Otherwise, the acts or omissions complained of herein involved ministerial acts that were improperly performed by Jones or Killingsworth, or at their direction.

84. The OVC seeks a writ of mandamus, injunctive relief, or other relief to which it may equitably be entitled, including but not limited to:

- a. the enjoinder of the School from leaving the OVC until it has fulfilled its contractual and equitable obligations; and
- b. an order compelling the School, Jones, and Killingsworth to perform the ministerial duty of causing payment to issue to the OVC.

WHEREFORE, the premises considered, the OVC respectfully requests the equitable remedy of enjoining the School, Jones, and Killingsworth to pay the debt owed and compensatory damages in an amount to be determined by the Court, plus pre-judgment and post-judgment interest at the maximum allowable rates; attorneys' fees, costs, and expenses, where permitted; and all such other and further relief as the Court deems proper.

PRAYER FOR RELIEF

WHEREFORE, the OVC respectfully requests:

1. A judgment against the School on Count I declaring that Article 4.5.3 of the OVC Constitution is valid and enforceable and that the School owes the OVC \$1,000,000 in exit fees;
2. A monetary judgment against the School on Counts II-IV for \$1,015,000, plus attorney fees, costs, and expenses, where permitted; plus pre-judgment interest at the maximum allowable rate from a date to be determined until the judgment is paid in full; plus post-judgment interest at the maximum allowable rate from the date of the judgment until the judgment is paid in full; and all such other and further relief as the Court deems proper;
3. A monetary judgment against the School on Count V for \$15,000, plus attorney fees, costs, and expenses, where permitted; plus pre-judgment interest at the maximum allowable rate from a date to be determined until the judgment is paid in full; plus post-judgment interest at the maximum allowable rate from the date of the judgment until the judgment is paid in full; and all such other and further relief as the Court deems proper;
4. On Count VI, the enjoinder of the School from leaving the OVC until it has fulfilled its contractual and equitable obligations and an order compelling the School, Jones, and Killingsworth to perform the ministerial duty of causing payment to issue to the OVC;
5. A bench trial; and

6. All other relief in law or equity to which the OVC may be entitled, including all available relief under the OVC Constitution.

Respectfully submitted August 3, 2021.

s/ R. Bruce Barze, Jr.

Attorney for Plaintiff Ohio Valley Conference

OF COUNSEL:

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Serve Defendants by Certified Mail at the following addresses:

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Randall Jones
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Jacksonville, AL 36265



IN THE CIRCUIT COURT OF CALHOUN COUNTY, ALABAMA

Ohio Valley Conference,)
)
 Plaintiff,)
)
 v.)
)
 Jacksonville State University, Randall)
 Jones, individually and in his official)
 capacity as Chair of the Board of)
 Trustees of Jacksonville State University,)
 and Don C. Killingsworth, Jr.,)
 individually and in his official capacity)
 as President of Jacksonville State)
 University,)
)
 Defendants.)

Case No. _____

Exhibit A

Constitution

ARTICLE 4: Membership

4.1 OVC Membership. Members of the Ohio Valley Conference are:

Austin Peay State University
Belmont University
Eastern Illinois University
Eastern Kentucky University*
Jacksonville State University*
Morehead State University
Murray State University
Southeast Missouri State University
Southern Illinois University Edwardsville
Tennessee State University
Tennessee Technological University
University of Tennessee at Martin

4.2 General Description of OVC Membership. A voluntary, non-profit association of institutions committed to the conduct and governance of intercollegiate athletics in proper relationship to the mission and values of higher education.

4.3 Sports Sponsorship Qualifications. To be a full member of this Conference, an institution must comply with the following sports sponsorship requirements:

4.3.1 Men's Sports Sponsorships. In men's sports, the institution shall sponsor NCAA basketball and is encouraged to sponsor football. In addition, the institution must compete for Conference championships in a minimum of five of the following sports: baseball, cross country, football, golf, rifle, tennis, indoor track/field or outdoor track/field. A member institution currently sponsoring football may petition the league, through the Board of Presidents, to be waived from the requirement of playing football in the Conference. Such petition may be granted only on the condition that the petitioner will not be awarding any grants-in-aid in the sport or become a member of NCAA Football Bowl Subdivision.

4.3.2 Women's Sports Sponsorships. In women's sports, the institution shall sponsor NCAA basketball and volleyball. In addition, it must compete for championships in a minimum of four of the following sports: cross country, golf, rifle, soccer, softball, tennis, indoor track/field, outdoor track/field or beach volleyball.

4.3.3 Participation in Conference Championships. Each member institution is required to participate in all championships authorized by the Board of Presidents, unless the member institution does not sponsor the sport in question. A Conference school may not participate as a member in any other Conference in a sport recognized and sponsored by the OVC, except in football for a member that has successfully petitioned under Constitution 4.3.1 above.

4.3.4 Compliance with NCAA and OVC Requirements. Member schools must meet the scheduling, minimum number of participants, grant-in-aid minimums and eligibility requirements of the NCAA and OVC in Conference championship sports. An institution shall not be considered eligible to compete for the Conference championship in a particular sport if an NCAA decision or policy renders the institution ineligible for an NCAA Championship in that sport. (amended 2/13/2012)

4.4 Election of Full Members.

4.4.1 Requirements for Consideration for Membership. Formal application for membership in the Conference shall be considered at any regular or called meeting of the Board of Presidents. Before an institution is considered for membership it must: (a) be a member in a recognized educational association of colleges; (b) be a member of the NCAA; (c) meet description and sports sponsorship requirements of OVC Constitution 4.2 and 4.3 above. Prospective members will be evaluated using principles established by the Conference (see Appendix B - "Ohio Valley Conference Prospective Membership Principles").

4.4.2 Required Vote for Full Membership. Applicants to the Conference must be voted in as full members by a three-fourths vote of the membership at a regular or called meeting of the Board of Presidents.

4.4.3 Fee for New Full Membership. A new full member shall pay to the Conference a sum equal to the pro-rata share of the Conference Fund Balance as shown on the year-end audited Financial Statement of the year of admission and an entrance fee of \$250,000 for a current Division I institution and \$300,000 for a transitioning Division II institution. Additionally, a new member will be charged for any necessary expenses incurred by the Conference as a result of the institution's admission to the Conference. For a Division II institution that has elected to transition to Division I, the membership fee shall be paid upon the vote of admission by the OVC Board of Presidents and the acceptance of that admissions offer by the institution. For a current Division I institution that belongs to a Division I multi-sport conference, the membership fee shall be paid to the OVC by July 1 of the fiscal year OVC membership begins. Additionally, by that same date, the institution shall have terminated its membership in its previous multi-sport conference. (amended 5/2015)

4.5 Loss of Membership.

4.5.1 Failure to Attend Meetings. Any member of this Conference failing twice in succession to be represented at a regular Board of Presidents' meeting may be dropped from membership in the Conference.

4.5.2 Termination of Membership. With a minimum three-fourths vote of the Conference membership at a regular or called meeting, a member institution may have its Conference affiliation terminated. For a termination vote to be effective, it must occur a minimum of six months prior to the beginning of the academic year in which the termination is to take effect. Cause need not be shown for termination to be effective under this section.

4.5.3 Resignation of Membership. A member institution desiring to terminate its Conference membership shall provide written notice to the Conference president and commissioner a minimum of two years prior to when the member desires to cease Conference membership. Notification must be made no later than the date of the annual OVC Spring Meetings. The member institution providing notice of its termination need not show cause for its termination to be effective. A member institution providing the requisite notice of its intention to resign from the Conference shall pay a \$750,000 exit fee plus forfeit both its Conference year-end and OVC basketball pool distributions during the final two years of OVC membership. A member institution failing to provide the minimum two years required written notice shall pay the Conference a sum of \$1,000,000 in addition to forfeiting both its Conference year end and OVC Basketball Pool distributions during the final year of OVC membership. A member institution that resigns from the Conference shall pay at least half of the required exit fee at the time of departure from the Conference, no later than June 30 of that year, and the remaining amount within 12-months of the initial payment, not later than June 30 of the next year (amended 6/2017)

4.5.4 Effect on Pro-Rata Share. A member who resigns or is terminated from the Conference shall forfeit its pro-rata share of the Conference Fund Balance.

4.5.5 Participation in Conference Championships. A member institution that provides notice of its intention to resign its OVC membership under the terms of Bylaw 4.5.3 shall remain eligible to qualify for an OVC championship, both in team and individuals sports, provided all other NCAA and OVC rules and qualification standards are met.



IN THE CIRCUIT COURT OF CALHOUN COUNTY, ALABAMA

Ohio Valley Conference,)
)
 Plaintiff,)
)
 v.)
)
 Jacksonville State University, Randall)
 Jones, individually and in his official)
 capacity as Chair of the Board of)
 Trustees of Jacksonville State University,)
 and Don C. Killingsworth, Jr.,)
 individually and in his official capacity)
 as President of Jacksonville State)
 University,)
)
 Defendants.)

Case No. _____

Exhibit B



June 29, 2021

Commissioner Elizabeth DeBauche
Ohio Valley Conference
215 Centerview Drive
Suite 115
Brentwood, TN 37027

Dear Commissioner DeBauche:

I received your letter dated June 3, 2021, regarding Jacksonville State University's alleged obligation to remit to the OVC a \$1,000,000 exit penalty.

Under Alabama law, no money is owed. Among other reasons, the penalty provision is unenforceable as it is in the OVC Constitution, not a valid contract signed by a duly authorized JSU representative. In addition, under Alabama law, penalty provisions, like the one at issue here, are unenforceable.

To the extent the OVC takes a different position, I remind you that the Alabama State Board of Adjustments would have exclusive jurisdiction over any claim against JSU arising out of the penalty provision.

Thank you for your consideration.

Sincerely,

A handwritten signature in black ink, appearing to read 'G. Harley', is written over a horizontal line. The signature is stylized and cursive.

Gregory Harley
University Counsel



IN THE CIRCUIT COURT OF CALHOUN COUNTY, ALABAMA

Ohio Valley Conference,)

Plaintiff,)

v.)

Jacksonville State University, Randall)

Jones, individually and in his official)

capacity as Chair of the Board of)

Trustees of Jacksonville State University,)

and Don C. Killingsworth, Jr.,)

individually and in his official capacity)

as President of Jacksonville State)

University,)

Defendants.)

Case No. _____

Exhibit C

Ohio Valley Conference

215 Centerview Drive
 Suite 115
 Brentwood, TN 37027
 United States

Voice: (615) 371-1698
 Fax: (615) 891-1682

INVOICE

Invoice Number: OVC BKB 2021-005
 Invoice Date: Mar 15, 2021
 Page: 1

Duplicate

Bill To:
Jacksonville State University Department of Athletics 700 Pelham Road North Jacksonville, AL 36265

Ship to:
Jacksonville State University Department of Athletics 700 Pelham Road North Jacksonville, AL 36265

Customer ID	Customer PO	Payment Terms	
jsu		Net 30 Days	
Sales Rep ID	Shipping Method	Ship Date	Due Date
	Courier		4/14/21

Quantity	Item	Description	Unit Price	Amount
		2021 OVC Basketball Championships		15,000.00

Subtotal	15,000.00
Sales Tax	
Total Invoice Amount	15,000.00
Payment/Credit Applied	
TOTAL	15,000.00

Check/Credit Memo No: