

## Athletic Directors

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# REPORT

## ATHLETIC DIRECTORS

MARTIN J. GREENBERG\* & ALEXANDER W. EVRARD\*\*

### I. INTRODUCTION – DEFINITION

An athletic director, more commonly referred to as an “AD,” is the overseer of a university’s athletic enterprise, the chief executive officer (CEO) of the athletic enterprise. In most instances, an athletic director is not a faculty member, but a full-time administrator. In some instances, such as in the case of David Williams at Vanderbilt University, the title is greater than that of athletic director. Williams is not only an athletic director but also the Vice Chancellor for Athletics and University Affairs. The athletic director is probably not as well-known as the university’s head football or basketball coach, but his profile, especially at large revenue producing programs, has been enhanced. In many instances, athletic directors are not compensated as well as some of their head coaches, but the demands of their jobs are similar to the demands of a CEO of a major corporation.

Today, the role of athletic directors has been greatly expanded. Their job is 24/7. No longer do they just manage an athletic enterprise, as their responsibilities may include

#### 1. negotiating multi-million dollar media and licensing rights

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agreements;

2. managing coaches who are “CEOs in Headphones” and the highest paid state employees in a free agent environment;
3. acting as a legal wizard to master the compliance standards expected of him and his programs by the NCAA, conference, and university;
4. acting as a development specialist, dealing with capital projects essential to keeping pace in the arms race of college sports;
5. being a skilled businessman, dealing with balancing budgets, controlling expenses, creating new revenues, and mastering the bottom line;
6. displaying excellence in peer relationships in dealing with his partners in the world of college conferences and what has now become a re-alignment environment;
7. understanding the importance of academics to the athletic enterprise and knowing the place of athletics within the university environment;
8. serving as a master fundraiser, an expert at donor relations, in that fundraising is an intricate component of the revenues generated by universities; and
9. acting as a human resource strategist, in that athletic departments are large employers, having many employees and staff.

## II. JOB ENVIRONMENT

The job itself has become a much more sophisticated and pedigreed job that requires experience and more formalized education. However, most of all, the athletic director of today is the director of a big business. According to a USA Today report, the average conference athletic department revenues for the 2013–2014 academic year were:

Big Ten	\$108.8 million
SEC	\$105.3 million
Big 12	\$100.1 million
Pac-12	\$88.6 million
ACC	\$79 million

American	\$60.6 million
Mountain West	\$38.2 million
Conference USA	\$29.3 million
MAC	\$27.5 million
A-10	\$27.1 million
CAA	\$25.7 million
Sun Belt	\$20.9 million
Big West	\$20.6 million <sup>1</sup>

Revenues can skyrocket into the hundreds of millions. According to the 2013–2014 USA Today report, twenty universities generated more than \$100 million in revenues and sixteen universities spent more than \$100 million in expenses,<sup>2</sup> as shown by the chart below.

SCHOOL	CONFERENCE	REVENUE	EXPENSES
Oregon	Pac-12	\$196,030,398	\$110,378,432
Texas	Big 12	\$161,035,187	\$154,128,877
Michigan	Big Ten	\$157,899,820	\$142,551,994
Alabama	SEC	\$153,234,273	\$120,184,128
Ohio State	Big Ten	\$145,232,681	\$113,937,001
LSU	SEC	\$133,679,256	\$122,945,710
Oklahoma	Big 12	\$129,226,692	\$113,366,698
Wisconsin	Big Ten	\$127,910,918	\$125,096,235
Florida	SEC	\$124,611,305	\$109,690,016

1. See *NCAA Finances*, USA TODAY SPORTS, <http://sports.usatoday.com/ncaa/finances/> (last visited May 8, 2016).

2. *Id.*

Texas A&M	SEC	\$119,475,872	\$95,663,483
Oklahoma State	Big 12	\$117,803,302	\$109,648,000
Penn State	Big Ten	\$117,590,990	\$117,440,639
Auburn	SEC	\$113,716,004	\$126,470,602
Tennessee	SEC	\$107,499,732	\$106,153,854
Minnesota	Big Ten	\$106,176,156	\$106,176,156
Iowa	Big Ten	\$105,958,954	\$102,278,847
Florida State	ACC	\$104,774,474	\$98,866,182
Michigan State	Big Ten	\$104,677,456	\$107,422,832
Georgia	SEC	\$103,495,587	\$92,560,956
Washington	Pac-12	\$100,275,187	\$86,097,137
Arizona	Pac-12	\$99,911,034	\$95,524,260
South Carolina	SEC	\$98,619,479	\$95,762,786
Kansas	Big 12	\$97,681,066	\$90,056,511
Arkansas	SEC	\$96,793,972	\$94,640,408
Kentucky	SEC	\$96,685,489	\$94,612,431

Research identifies several common paths that current athletic directors took to arrive at their positions as head athletic directors.<sup>3</sup> These paths include:

1. Head Coach Path (i.e., from head coach of a sport to athletic director), such as Barry Alvarez of the University of Wisconsin, Mike Holder of Oklahoma State University, Debbie Yow of North Carolina State University, and Ray Tanner of the University of South Carolina;
2. Athletic Administration Path (i.e., working their way up through an athletic department), such as Kirby Hocutt of Texas Tech University, Brad Bates of Boston College, and Bubba Cunningham of the University of North Carolina;
3. Sports Management Education Path (i.e., athletic directors who pursued graduate studies in the field of sports management to prepare for their careers), such as Sandy Barbour of Penn State University, Jeremy Foley of the University of Florida, Ian McCaw of Baylor University, Bob DeCarolis of Oregon State University, and Bernard Muir of Stanford University;
4. Sports Industry Experience Path (i.e., non-college sports industry experience to athletic director), such as Ray Anderson of Arizona State University, Rick George of the University of Colorado, Jack Swarbrick of the University of Notre Dame, and Stephen Patterson formerly of the University of Texas; and
5. Business Experience Path (i.e., major corporate and business experience to athletic director), such as Dave Brandon formerly of the University of Michigan and Pat Haden of the University of Southern California.<sup>4</sup>

“As college sports have become increasingly big businesses, more institutions have made similar assessments and turned to outside business executives to run their programs – but it’s not yet clear that the shift in preferred skill sets is paying off.”<sup>5</sup>

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3. See Glenn M. Wong, *The Path to the Athletic Director’s Office*, SPORTS BUS. J. (June 9, 2014), <http://www.sportsbusinessdaily.com/Journal/Issues/2014/06/09/In-Depth/Wong-column.aspx>.

4. *Id.*

5. Jake New, *What CEOs Don’t Know*, INSIDE HIGHER ED. (Nov. 7, 2014), <https://www.insidehighered.com/news/2014/11/07/colleges-turn-athletics-directors-business-backgrounds-results-vary>.

When the University of Michigan chose David Brandon to be its athletics director in 2010, the university touted his experience as the chief executive officer of Domino's Pizza. At the time, the university saw his understanding of how to run a multibillion-dollar company as a fitting background for running a big-time college sports program.

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About 10 percent of Division I colleges currently have athletic directors with backgrounds in business rather than college sports. Nine out of the 65 institutions that make up the so-called Power 5 conferences have hired executives to run their sports programs. Glenn Wong, a sports management professor at the University of Massachusetts at Amherst, said the number of schools may still be relatively small, but they're part of a larger trend.

"The trend is that schools will now consider athletic director candidates with nontraditional backgrounds," Wong said. "In fact, they may even seek them out. But institutions vary considerably in terms of what they are looking for in an athletic director. It can vary from one hire to the next. For example, an athletic director may be brought in to clean up after an NCAA problem, and the next hire may be someone with strength in fund raising."<sup>6</sup>

A University of Michigan (Michigan) alumnus, David Brandon, played football under Bo Schembechler and was a member of three Big Ten Championship teams.<sup>7</sup> He received

a Bachelor of Arts degree in education and teaching . . . from [Michigan] in 1974. . . . He was elected to the Board of Regents in 1998 and served one eight-year term. In 2007 he received the Distinguished Alumni Service Award from the [Michigan] Alumni Association. In 2008 he received the Bennie Oosterbaan Award for service, dedication and

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6. *Id.*

7. Kim Broekhuizen, *David Brandon Named Director of Intercollegiate Athletics*, U. MICH. OFFICIAL ATHLETIC SITE (Jan. 5, 2010), <http://www.mgoblue.com/genrel/010510aab.html>.

leadership from the Bob Ufer Quarterback Club. Later that year Brandon was honored as national CEO Coach of the Year by the American Football Coaches Association.<sup>8</sup>

Prior to joining the athletic department, Brandon served as Chairman and Chief Executive Officer of Ann Arbor-based Domino's Pizza, Inc. for eleven years, leading the company to the largest initial public offering (IPO) of a restaurant company in history.<sup>9</sup> He continues to serve as non-executive Chairman at Domino's and also serves as a member of the Board of Directors of Herman Miller and DTE Energy. Prior to his role with Domino's, Brandon served as Chairman, President, and CEO of Valassis Communications, Inc.<sup>10</sup>

While Brandon was the athletic director at Michigan, he increased revenues, improved facilities, won games, and consistently brought in a profit for the athletic department, which is rare for collegiate athletics; however, in the end, students and alumni alike called for his dismissal. Why? One contributing factor is that Brandon repeatedly tried to break, and did break, traditions at Michigan in attempts to improve components of the athletic program. In 2011, Brandon "raised ticket prices for the first time in seven years" and altered the traditional football jerseys.<sup>11</sup> He was criticized for trying to bring back retired jersey numbers and put them on special players.<sup>12</sup> Additionally, Brandon made alternate uniforms for the football team to wear to surprise the fans.<sup>13</sup> The Board of Regents criticized Brandon for trying to shoot off fireworks during home games at Michigan Stadium (The Big House), claiming it would cheapen the traditional game-day experience.<sup>14</sup>

Brandon alienated students and other fans by increasing ticket prices and changing student seating arrangements. Instead of running Michigan *like* a business, Brandon was running Michigan *as* a business. Former Michigan athletic director Bill Martin once said to Brandon, "[j]ust because you *can* charge them more . . . doesn't mean you *should*. You're not there to ring up the cash to the nth degree. It's a nonprofit model!"<sup>15</sup> This is illustrated by the wait

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8. *Id.*

9. *Id.*

10. *Id.*

11. David Jesse & Mark Snyder, *Michigan Athletic Director Dave Brandon Resigns*, USA TODAY (Oct. 31, 2014), <http://www.usatoday.com/story/sports/ncaaf/2014/10/31/michigan-athletic-director-dave-brandon/18236245/>.

12. *Id.*

13. *Id.*

14. *Id.*

15. John U. Bacon, *How Michigan's Greed Alienated Fans: A Cautionary Tale for All College*

list for Michigan football tickets.<sup>16</sup> Back when multi-millionaire businessman Don Canham was athletic director at Michigan, he knew that he could maximize revenue by increasing prices to meet demand.<sup>17</sup> However, he did not increase ticket prices “because he believed that would dispel the magic of Michigan Stadium.”<sup>18</sup> Similarly, Brandon’s predecessor Bill Martin actually lowered ticket prices after the 2008 recession, and the wait list held strong even after two terrible losing seasons in 2008 and 2009.<sup>19</sup> As of 2014, after Brandon increased ticket prices and also phased in a personal seat license, which requires every season-ticket holder to pay a fee for the right to buy tickets, the wait list disappeared.<sup>20</sup>

Brandon also created friction with the student body by raising ticket prices from \$195 for six games to \$295 for seven games.<sup>21</sup> Additionally, Brandon broke a decade’s long tradition by rearranging student seating from being based on seniority to a first-come, first-served system.<sup>22</sup> In 2014, Michigan student body president Bobby Dishell stated that, “[d]rastic measures need to be taken to demonstrate the athletic department values its students beyond the revenue dollars they bring in when they purchase tickets.”<sup>23</sup>

Fans prepared an organized protest “White Out, Dave Out,” wearing anti-Brandon T-shirts for Michigan’s 2014 homecoming game against the University of Indiana.<sup>24</sup> Brandon finally resigned in October of 2014, even though his contract was extended through June 2018.<sup>25</sup> Brandon was replaced on an interim basis by Jim Hackett, a 1977 Michigan graduate and former football team member under coach Bo Schembechler, who returned to Michigan after two decades as Chief Executive Officer of Grand Rapids-based SteelCase, Inc., one of the world’s largest office furniture makers.<sup>26</sup>

Hackett’s appointment letter with Michigan is dated October 31, 2014, the

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*Football*, THEPOSTGAME (June 23, 2014), <http://www.thepostgame.com/blog/road-saturday/201406/college-football-fan-stadium-students-business-tv-ncaa-michigan-tickets>.

16. *Id.*

17. *Id.*

18. *Id.*

19. *Id.*

20. *See id.*

21. *Id.*

22. *Id.*

23. Jesse & Snyder, *supra* note 11.

24. *Id.*

25. *See id.*

26. *Id.*

same day as Brandon's resignation.<sup>27</sup> The letter outlines the terms of his indefinite appointment and calls for an annual salary of \$600,000.<sup>28</sup> Meanwhile, Brandon executed a Settlement Agreement and Release of Claims with Michigan, dated October 30, 2014, in which he would be compensated for the remaining term of his contract.<sup>29</sup>

Stephen Patterson (Patterson) obtained his undergraduate and law degrees from the University of Texas (UT or Texas)<sup>30</sup> and experienced first-hand the transformative power of the Forty Acres. "He succeeded DeLoss Dodds who served as UT men's athletics director from 1981-2013."<sup>31</sup> Prior to serving as Athletic Director of Arizona State University (2012–2013),

Patterson worked for more than two decades in professional sports as an executive with the NFL's Houston Texans, the NBA's Houston Rockets and Portland Trail Blazers, as well as the Houston Aeros hockey team. He also served as president of Pro Sports Consulting.

As President of the Portland Trail Blazers, The Rose Garden and Rose City Radio from 2003-07, Patterson was responsible for all business and basketball operations for the team and arena, as well as local media outlets. Patterson engineered a record six draft-day trades that resulted in the selection of NBA Rookie of the Year and three time NBA All-Star Brandon Roy and fellow All-Rookie First Team, NBA All-Star, and All-NBA member LaMarcus Aldridge, a former Longhorn standout.

From 1997-2003, Patterson served as the Senior Vice President and Chief Development Officer of the Houston Texans NFL franchise where he led Bob McNair's successful effort to

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27. *Employment Agreement with James Hackett*, Univ. of Mich. (Oct. 31, 2014); *Settlement Agreement By and Between The University of Michigan and David A. Brandon*, Univ. of Mich. (Oct. 30, 2014).

28. *Employment Agreement with James Hackett*, *supra* note 27.

29. *Settlement Agreement By and Between The University of Michigan and David A. Brandon*, *supra* note 27, ¶ 2.

30. *Athletics Director Steve Patterson*, TEX. LONGHORNS ATHLETICS, [http://www.texassports.com/sports/2013/11/5/GEN\\_1105131632.aspx?id=476](http://www.texassports.com/sports/2013/11/5/GEN_1105131632.aspx?id=476) (last visited May 25, 2016).

31. *Id.*

acquire a National Football League franchise and Super Bowl XXXVIII for Houston, Texas. Patterson was responsible for the establishment of the team's business, legal, media and political operations, as well as the development, design, finance and construction of Reliant Stadium.

Prior to joining the Texans, Patterson was the President, General Manager and Governor of the Houston Aeros hockey team. For his efforts there, he was named the 1995 winner of the Andy Mulligan Trophy as the International Hockey League's Executive of the Year. In addition to his roles with the Aeros, Patterson also acquired and served as President and Partner in Arena Operating Company, which managed and operated Compaq Center, Houston's home of the Rockets, Aeros and Comets.

As General Manager of the Houston Rockets from 1989-93, he was the primary architect of the 1993-1994 Houston Rockets squad that captured the first NBA World Championship in franchise history, signing or trading for all the team's players and coaches. Patterson also led the club's successful bid to host the 1989 NBA All-Star Game, which held the all-time attendance record of 44,735 [fans] for 21 years.<sup>32</sup>

Despite Patterson's impressive track record, there are several explanations for his termination on September 15, 2015. Nearly all of Patterson's long résumé, save for a twenty month tenure at Arizona State University, consisted of positions held in professional sports. Similar to Brandon's attempt to run the Michigan athletic department as a business, Patterson tried to change the unique collegiate athletics environment at Texas. "According to his critics, he turned longtime Longhorns fans, season-ticket holders and boosters into faceless customers, and fired or forced out many veteran athletic department employees, many of whom were proud Texas alumni."<sup>33</sup> This included Rick Barnes, Head Basketball Coach and a

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32. *Id.*

33. Mark Schlabach, *The Steve Patterson Era at Texas: 'He Just Put Us Through Hell,'* ESPN (Sept. 18, 2015), [http://espn.go.com/college-football/story/\\_/id/13683231/the-steve-patterson-era-texas-just-put-us-hell](http://espn.go.com/college-football/story/_/id/13683231/the-steve-patterson-era-texas-just-put-us-hell).

seventeen-year veteran of Texas, and Mack Brown, Head Football Coach and a sixteen-year veteran of Texas. Patterson deviated from the norm, including “rais[ing] ticket prices in men’s basketball and football, mov[ing] the stadium seats of faculty members and former lettermen,” charging fans to use prime tailgating spots around campus, and “eliminat[ing] complimentary meals in dining halls and other perks for coaches and athletic department employees.”<sup>34</sup> After the ticket price increase, about 10,000 football tickets were not renewed for the 2015 season.<sup>35</sup>

Patterson has also been criticized for not settling the lawsuit commenced by Oklahoma State University (Oklahoma State) against Joe Wickline for breach of contract and \$600,000 in damages for making a lateral move to Texas.<sup>36</sup> “Patterson has maintained from the beginning this was an issue between Wickline and Oklahoma State” and Texas was not a named party in the lawsuit.<sup>37</sup> Wickline left Oklahoma State after the 2013 season to become the Co-offensive Coordinator at Texas. Wickline’s contract with Oklahoma State stated that for him to leave the university before the end of his contract, he must either become an NFL coach or a college offensive coordinator with play calling duties.<sup>38</sup> Oklahoma State Athletic Director Mike Holder and Football Coach Mike Gundy did not believe Wickline was calling plays for the Texas Longhorns, thus making a lateral move in going to Texas, and filed suit for damages under the contract with Wickline.<sup>39</sup> Mike Perrin, the new athletic director for Texas said Oklahoma State’s lawsuit against Wickline was a distraction and the same would be settled short of a trial.<sup>40</sup>

University of Texas President Greg Fenves sums up the important role of the athletics department when he refers to it as “the *front door to the university*.”<sup>41</sup> Football and basketball coaches are sometimes the faces of the

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34. *Id.*

35. *Id.*

36. Brian Davis, *Oklahoma State, Wickline Trial Likely to Start After Football Season*, MYSTATESMAN (July 24, 2015), <http://www.mystatesman.com/news/sports/college-football/oklahoma-state-joe-wickline-likely-to-start-trial-/nm6FW/>.

37. *Id.*

38. Tom Fornelli, *Texas Off. Coordinator Wickline Files Lawsuit Against Oklahoma State*, CBS SPORTS (Oct. 23, 2014), <http://www.cbssports.com/collegefootball/eye-on-college-football/24764494/texas-offensive-coordinator-files-a-lawsuit-against-oklahoma-state>.

39. Davis, *supra* note 36.

40. Ryan Autullo, *Mike Perrin Calls Joe Wickline Lawsuit ‘a Distraction,’* HOOKEM (Oct. 3, 2015), <http://www.hookem.com/2015/10/03/mike-perrin-calls-joe-wickline-lawsuit-a-distraction/>.

41. Jori Epstein, *If Texas Athletics Is the Front Door of the University, Steve Patterson Is the Doorman*, DAILY TEXAN (July 20, 2015), <http://www.dailytexanonline.com/2015/07/20/if-texas-athletics-is-the-front-door-of-the-university-steve-patterson-is-the-doorman> (emphasis added).

athletic department and even the university, but Patterson treated them like secondary employees.<sup>42</sup>

The athletic director of today performs many roles other than just managing the athletic department. Patterson did not take on some of the additional roles such as “schmoozing fans to haul in donations,” and it was unclear to multiple athletic officials what Patterson’s primary responsibility actually was.<sup>43</sup> One crucial athletic director attribute that Patterson struggled with was his colleague relationships. Fenves once commented that Patterson was “impersonal or even arrogant.”<sup>44</sup> Patterson also neglected his head football coach by refusing to increase salaries for his analysts; “[s]ix of the eight analysts left for other jobs.”<sup>45</sup> “In Texas . . . [y]ou’ve got to know how to communicate to good ol’ boys . . . .”<sup>46</sup> Fans were upset enough that they even flew a banner over Royal-Texas Memorial Stadium that read “Patterson Must Go.”<sup>47</sup>

In the wake of Patterson’s termination, he will receive a hearty percentage of the remaining compensation on his contract.<sup>48</sup> After serving as the men’s athletic director at Texas for less than two years, Patterson still had about \$4 million left on his contract (\$1.4 million annually).<sup>49</sup> “[T]he University of Texas Board of Regents approved a settlement with Patterson that will, according to reports, pay Patterson up to two full years’ salary, depending on his compensation at his next gig. At least \$1.4 million of the settlement is guaranteed.”<sup>50</sup>

The athletic director of today must have an intricate understanding of the culture of intercollegiate athletics as understood by other university personnel other than the athletic department, a culture that has been suggested to be a highly organized commercial enterprise with a powerhouse mentality that favors entertainment over education and utilizes a corporate model, rather than an educational model. A culture where the primary focus may be athletics, rather than academics, escalates expenditures in the chase for the dollar which ultimately results in the diversion of academic dollars to the sports fields. The

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42. Schlabach, *supra* note 33.

43. Epstein, *supra* note 41 (emphasis added).

44. Schlabach, *supra* note 33.

45. *Id.*

46. *Id.*

47. *Id.*

48. *See id.*

49. Stephen Young, *UT Blows a Couple Million on Athletic Director It Never Should Have Hired*, DALLAS OBSERVER (Sept. 25, 2015), <http://www.dallasobserver.com/news/ut-blows-a-couple-million-on-athletic-director-it-never-should-have-hired-7626658>.

50. *Id.*

athletic department has been characterized by interlocking relationships with private sector companies that result in numerous scandals in the world of amateur sports, and as an enterprise that is non-sustainable and will ultimately put an end to the primary and academic purpose of the university. An athletic director needs specialized skills, not only business skills but also an astute understanding of the university environment, university rules and regulations, the inter-relationship between academics and athletes and must be a team player in understanding the academic environment. In essence, it does not make any difference how much education, business experience, or bottom line success someone has in business, a person must also know and be able to work in and become part of a university system and understand the thinking of not only the administrators but also the academics, as it relates to the athletic enterprise.

### III. ATHLETIC DIRECTOR CONTRACTS – AN INTRODUCTION

Athletic director contracts are agreements that are institutionally produced, most likely, by university counsel. They can be long, they can be sophisticated, they can contain all the legalese of a coach's contract, and in most instances, closely resemble the contracts of coaches representing the university. Because, in most instances, the same counsel is drafting the contract for both the coach and the athletic director, the checklist elements in Author Greenberg's article *Checklist for Negotiating and Drafting of Coaches' Employment Agreements* is a useful tool to assist in negotiating an athletic director's contract.<sup>51</sup> Athletic director contracts are highlighted by a list of duties, a compensation package, and of course, termination provisions.

As previously noted, the athletic director of today is the CEO of the athletic enterprise. An athletic director's duties go way beyond simply managing a university's athletic department: budget management, revenue generation, rules compliance, alumni and donor relations, fundraising, capital improvements, and hiring and firing coaches are just some of the increasing responsibilities that an athletic director now must undertake as part of the job.

There is no standard form athletic director contract, just like there is no standard form for coaches' contracts. This is dissimilar from professional sports leagues, where standard contracts for all players are mutually negotiated between the union and management pursuant to some form of collective bargaining or basic agreement. There are no unions representing athletic directors, although they have formed the National Association of Collegiate

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51. See Martin J. Greenberg, *Checklist for Negotiating and Drafting of Coaches' Employment Agreements*, THE LAW OFF. OF MARTIN J. GREENBERG (Oct. 11, 2014), <http://www.greenberglawoffice.com/checklist-negotiating-drafting-coaches-employment-agreements/>.

Directors of Athletics (NACDA), a professional organization that “provid[es] educational opportunities and serves as a vehicle for networking and the exchange of information to others in the profession.”<sup>52</sup>

Because athletic director contracts are a sophisticated legal endeavor, consultation with a competent attorney who is familiar with the elements of athletic director contracts, familiar with the culture and negotiation of university contracts, and has adept negotiation skills would be most helpful to produce the best contract product.

#### A. *General Duties of an Athletic Director*

A good example of a listing of athletic director duties and responsibilities was found in the contract of former University of Texas Athletic Director Stephen Patterson. Patterson’s Employment Agreement with Texas recites the following duties and responsibilities:

- A. Recognition of Duties. Subject to the other provisions of this Agreement, the Athletics Director shall devote his best efforts full-time to leadership, supervision, and promotion of the Program. Athletics Director will report directly to, and act and perform to the reasonable satisfaction of the President of The University of Texas at Austin, who will determine Athletics Director’s duties and responsibilities.
  
- B. General Duties and Responsibilities. In his position as Athletics Director, he is responsible for the duties normally associated with an athletics director at a Division I university including: maintaining a high level of leadership, having a strong commitment to the University’s expectations for an athletics program run with integrity, student-athlete academic success and progress to graduation, high athletic achievement, financial solvency, student-athlete conduct and welfare, compliance with the Governing Athletic Rules and University Rules, personnel supervision and evaluation, scheduling assistance, promotions, public relations, development activities, and the overall effective performance of the Program’s

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<sup>52</sup>. *What Is NACDA and What Does It Do?*, NACDA, <http://www.nacda.com/nacda/nacda-over-view.html> (last visited May 25, 2016).

student-athletes and coaching staff.

C. Specific Duties and Responsibilities. Duties and responsibilities assigned to the Athletics Director in connection with the Program are set forth below. The list of specific duties and responsibilities supplements, and is not exclusive of, other general duties and responsibilities provided for elsewhere in this Agreement. The specific responsibilities of the position include, but are not limited to, the following:

- (1) Be responsible for, along with University's Women's Athletics Director, creating, enforcing, interpreting, and reviewing University's intercollegiate athletics policies, procedures, and strategic plan;
- (2) Assure that the Program has plans, policies, procedures, and programs that comply with the Governing Athletics Rules and University Rules, and that promote the mission of the University, the University's high standard of academic excellence, and the general welfare of student-athletes;
- (3) Understand, observe, and uphold all academic standards and requirements of the University, including the University Rules, Governing Athletic Rules, and all state and federal laws, and ensure compliance by coaches and other personnel in the Program;
- (4) Use his best efforts to ensure that all academic standards, requirements, University Rules, and Governing Athletic Rules are observed, including those in connection with recruiting and eligibility of prospective and current student-athletes who are academically qualified;
- (5) Develop procedures and programs that assure the welfare of student-athletes; ensure that coaching and

administrative staff actively support the Program's and the University's joint commitment to academic achievement for each student-athlete, to include promoting academic advising and counseling services; maintain an environment in which the pursuit of higher education is a priority as reflected by class attendance, grade point averages, the NCAA academic progress rates (APR), and the NCAA and federal graduation rates;

- (6) Promote athletic excellence and a competitive program for men's intercollegiate varsity sports programs;
- (7) Be responsible for the recruitment, hiring, and the terms and conditions of employment of all men's head coaches, with consultation and approval by the President;
- (8) Maintain responsibility for the supervision and conduct of the head coaches and their activities; this responsibility shall include, without limitation, providing annual evaluations of such head coaches;
- (9) Maintain responsibility for hiring and supervising all administrative and other personnel as deemed appropriate for the proper and effective functioning of the Program;
- (10) Maintain effective working relationships with relevant constituencies, including associations, conferences, committees, alumni, students, faculty, administrators, and staff;
- (11) Ensure the fiscal integrity of the Program; develop plans and budgets; raise private funds; and, monitor the expenditure of all funds in the Program consistent with all state and federal laws, University Rules, and Governing Athletic Rules;

- (12) Identify needs for capital construction, renovation and repairs; negotiate and recommend appropriate broadcast, sports marketing, apparel, shoe, and other sponsorship arrangements, etc.;
  - (13) Consult regularly with athletics compliance staff regarding the interpretation of applicable rules, and bring any differences of opinion to the President for resolution; assist the athletics compliance staff or other designated individuals in reviewing and/or investigating alleged violations of a University Rule or Governing Athletic Rule;
  - (14) Promote the University's commitment to equal opportunity and compliance with Title IX;
  - (15) Maintain responsibility for overseeing all aspects of the administration of the varsity sports in the Program; and
  - (16) Perform such other duties as assigned by the President.
- D. NCAA and Other Governing Athletic Rules and University Rules.
- (1) Athletics Director agrees to know, recognize, and comply in all respects with NCAA and other Governing Athletic Rules and University Rules. In the performance of his duties and obligations under this Agreement, Athletics Director will abide by and comply with all Governing Athletic Rules and University Rules and all decisions of the President. Violations of any Governing Athletic Rules or University Rules by Athletics Director will be sufficient cause for disciplinary action.
  - (2) It shall be the responsibility of Athletics Director to promote an atmosphere of compliance within the Program and to monitor the activities regarding

compliance of all coaches and other administrators involved with the Program who report directly or indirectly to Athletics Director. If, at any time during the Term of this Agreement, Athletics Director knows, or has reasonable cause to believe, that any coach, student-athlete, student, faculty member, or agent or employee of the University, or any outside individual has violated, or allowed or caused to be violated, any Governing Athletic Rules or University Rules, or if Athletics Director receives notice or information that the NCAA or the Conference intends to investigate or to review any alleged violations of Governing Athletic Rules or University Rules, or if Athletics Director receives notice or information that any law is alleged to have been violated by any student-athlete, coach, administrator, or staff member, including himself, he must immediately report such information, knowledge, or belief to the athletics compliance staff and to the President as appropriate.

- (3) If Athletics Director is found to be in violation of Governing Athletic Rules, whether while employed by the University or during prior employment at another NCAA member institution, Athletics Director shall be subject to disciplinary or corrective action as set forth in the provisions of the NCAA enforcement procedures, including suspension without pay, or the employment of Athletics Director may be terminated as provided in Section 7.A of this Agreement.<sup>53</sup>

By way of comparison, what follows is a position summary outlining the duties and responsibilities for the position of athletic director posted by the University of Louisville:

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53. *Athletics Director Employment Agreement with Stephen Patterson*, ¶ 4, Univ. of Tex. at Austin (Nov. 25, 2013), <http://projects.statesman.com/documents/?doc=2161183-steve-patterson-contract>.

## I. Position Summary

The Vice President for Athletics reports directly to the President. This position is the responsible officer for the University of Louisville Athletic Association., and serves as athletic director. The VP for Athletics is authorized to act for the ULAA, in carrying out the functions according to the terms and conditions of the Management Agreement and Agency Agreement between the University and the ULAA. The Vice President shall advise the president on all matters relating to the university's strategic objectives in the areas of intercollegiate athletics.

## II. Individual Responsibilities

1. Integrate the Athletic Department and University into a more cohesive environment and improve communication and maximize public perception.
2. Ensure a total emphasis and focus on improving graduation rates and academic success of the student-athletes.
3. Recommend an annual budget for approval by the ULAA board[.]
4. Manage the operational, financial and personnel activities of Intercollegiate Athletics[.]
5. Make arrangements for all intercollegiate contests including game contracts, facilities contracts and all usual and customary duties ordinarily undertaken by the home team[.]
6. Contract for all services for Intercollegiate Athletics through normal University of Louisville business procedures[.]

7. Recommend to the ULAA Board of Directors new policies and programs for Intercollegiate Athletics[.]
8. Evaluate existing athletic facilities and recommend improvements as needed[.]
9. Advance UofL's commitment to gender equity under Title IX—particularly through fundraising and planning.
10. Promote student, faculty, staff and public interest in Intercollegiate Athletics[.]
11. Build upon successful marketing relationships to promote the marketing, licensing, and merchandising associated with UofL sports[.]
12. Raise endowments and other private financial support for Intercollegiate Athletics pursuant to the policies of ULAA[.]
13. Maintain current knowledge of NCAA and applicable conference regulations and promote “zero tolerance” for infractions through education and enforcement[.]
14. Assure effective communications with FAR and all Board committees[.]
15. Make recommendations to the Board of Directors of ULAA with respect to appointment and retention of all associate athletic directors and conduct annual performance evaluations thereof[.]
16. Make recommendations to the Personnel Committee of the Board of Directors with respect to employment of all full-time head coaches and to conduct annual performance evaluations of said coaches taking action to adjust salary, renew contract, or terminate employment, provided that any compensation arrangements for coaches which require

action of the Board of Directors for safe harbor treatment under IRS intermediate sanctions regulations shall be referred to the full Board for prior approval[.]

17. Interview, select and evaluate the performance of all assistant athletic directors, part-time head coaches, and support staff[.]

18. Review and approve or disapprove the selection, retention and evaluation of all assistant coaches by the head coach of the sport[.]

19. Ensure that the operation of the unit fulfills the academic mission of the University.<sup>54</sup>

In conclusion, and based upon a review of numerous athletic director contracts, athletic director duties and responsibilities encompass some or all of the following:

1. Budget and fiscal management of the athletic department;
2. Revenue generation;
3. Arrange for athletic contests;
4. Contract for services;
5. Rules compliance;
6. Hire and fire head collegiate coaches;
7. Representing the athletic department to external constituents;
8. Fundraising;
9. Alumni relations; and
10. Capital projects.

#### *B. Term of Athletic Director Contracts*

Colleges and universities are making long term commitments to individuals they choose as their athletic directors. The standard term in the industry today

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54. VICE PRESIDENT FOR ATHLETICS POSITION DESCRIPTION, LOUISVILLE ATHLETICS (n.d.), <http://louisville.edu/athletics/vpathjobdescription.pdf>.

is somewhere in the area of a five-year initial term. What follows are some examples of contract terms in various athletic director contracts:

<b>Athletic Director</b>	<b>University</b>	<b>Original Term Length (years)</b>
Barry Alvarez	University of Wisconsin	Feb. 2006 – Jan. 2011 (5) <sup>55</sup>
Shawn M. Eichorst	University of Nebraska	Jan. 2013 – Dec. 2017 (5) <sup>56</sup>
Kevin Anderson	University of Maryland	Oct. 2010 – Sept. 2015 (5) <sup>57</sup>
Michael J. Thomas	University of Illinois	Aug. 2011 – Aug. 2016 (5) <sup>58</sup>
Oliver Luck	West Virginia University	June 2010 – June 2015 (5) <sup>59</sup>
Mark Coyle	Boise State University	Jan. 2012 – Dec. 2016 (5) <sup>60</sup>
Pedro A. Garcia	Florida International University	Oct. 2011 – Oct. 2016 (5) <sup>61</sup>
C. Jeffrey Compher	East Carolina University	Apr. 2013 – Apr. 2018 (5) <sup>62</sup>
Heather Lyke	Eastern Michigan University	July 2013 – July 2018 (5) <sup>63</sup>

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55. *Employment Agreement Between Division of Intercollegiate Athletics University of Wisconsin-Madison and Barry Alvarez (Athletic Director)*, ¶ II(A), Univ. of Wis.-Madison (Feb. 1, 2006).

56. *Contract of Employment Director of Athletics Department of Intercollegiate Athletics University of Nebraska-Lincoln with Shawn M. Eichorst*, § 1, Univ. of Neb.-Lincoln (Jan. 1, 2013).

57. *University of Maryland Athletic Director Agreement with Kevin Anderson*, ¶ 2, Univ. of Md. (Oct. 1, 2010).

58. *Employment Agreement with Michael J. Thomas*, ¶ 3, Univ. of Ill. (Aug. 29, 2011).

59. *Employment Agreement with Oliver Luck*, W. Va. Univ. (June 30, 2010).

60. *Employment Agreement with Mark Coyle*, art. 2.1, Boise State Univ. (Dec. 1, 2011).

61. *Florida International University Employment Contract with Pedro A. Garcia*, ¶ I(k), Fla. Int'l Univ. (Oct. 16, 2011).

62. *Employment Agreement Director of Athletics with C. Jeffrey Compher*, ¶ I, A., E. Carolina Univ. (Apr. 30, 2013).

63. *Eastern Michigan University Vice President/Athletic Director Employment Agreement with Heather Lyke*, ¶ 2.1, E. Mich. Univ. (June 28, 2013).

Michael O'Brien	University of Toledo	July 2007 – July 2010 (3) <sup>64</sup>
Thomas Wistrucill	University of Akron	Sept. 2009 – Sept. 2014 (5) <sup>65</sup>
Jeremy N. Foley	University of Florida	Feb. 1997 – Jan. 2002 (5) <sup>66</sup>
Joseph L. Alleva	Louisiana State University	July 2008 – June 2013 (5) <sup>67</sup>
William R. Battle III	University of Alabama	Mar. 2013 – June 2017 (4) <sup>68</sup>
Donald Ray Tanner Jr.	University of South Carolina	Aug. 2012 – June 2017 (5) <sup>69</sup>
Michael A. Bobinski	Georgia Tech University	Apr. 2013 – June 2018 (5) <sup>70</sup>
Julie K. Hermann	Rutgers University	June 2013 – June 2018 (5) <sup>71</sup>
Stephen Patterson	University of Texas at Austin	Nov. 2013 – Aug. 2019 (6) <sup>72</sup>
Mike Holder	Oklahoma State University	July 2011 – June 2016 (5) <sup>73</sup>
Joseph R. Castiglione	University of Oklahoma	July 2011 – June 2017 (6) <sup>74</sup>
Michael F. Alden	University of Missouri	July 2009 – June 2019 (10) <sup>75</sup>

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64. *Employment Contract with Michael O'Brien*, Univ. of Toledo (July 27, 2007).

65. *Employment Agreement with Thomas Wistrucill*, ¶ 4.1, Univ. of Akron (Sept. 9, 2010).

66. *University of Florida Employment Contract Athletic Director with Jeremy N. Foley*, ¶ 4(A), Univ. of Fla. (Feb. 1, 1997).

67. *Employment Agreement with Joseph L. Alleva*, ¶ 3, La. State Univ. (Apr. 28, 2008).

68. *Employment Contract with William R. Battle, III*, art. III, Univ. of Ala. (Mar. 21, 2013).

69. *Employment Agreement with Donald Ray Tanner, Jr.*, ¶ 3.01, Univ. of S.C. (Aug. 2, 2012).

70. *Employment Contract with Michael A. Bobinski*, art I, Ga. Tech Athletic Ass'n (Apr. 1, 2013).

71. *Employment Contract with Julie K. Hermann*, ¶ 1, State Univ. of N.J. (June 16, 2013).

72. *Athletics Director Employment Agreement with Stephen Patterson*, *supra* note 53, ¶ 3.

73. *Employment Contract with Mike Holder*, ¶ 1, Okla. State Univ. (July 1, 2011).

74. *Employment Agreement with Joseph R. Castiglione*, ¶ 3, Univ. of Okla. (July 1, 2011).

75. *Restated Contract for Employment with Michael F. Alden*, ¶ 1, Univ. of Mo. (Aug. 28, 2012).

Stan Wilcox	Florida State University	Aug. 2013 – Aug. 2018 (5) <sup>76</sup>
Raymond Anderson	Arizona State University	Feb. 2014 – Feb. 2019 (5) <sup>77</sup>
David Heeke	Central Michigan University	Nov. 2013 – Dec. 2017 (4) <sup>78</sup>
Daniel J. Schumacher	Chicago State University	June 2012 – June 2016 (4) <sup>79</sup>
Daniel Radakovich, Jr.	Clemson University	Dec. 2012 – June 2018 (5.5) <sup>80</sup>
Josiah C. Hull, Jr.	College of Charleston	Jan. 2008 – Dec. 2012 (5) <sup>81</sup>
Mark Sandy	Eastern Kentucky University	July 2005 – June 2009 (4) <sup>82</sup>
William Chaves, Jr.	Eastern Washington University	July 2013 – June 2018 (5) <sup>83</sup>
Cheryl Levick	Georgia State University	Mar. 2009 – June 2014 (5) <sup>84</sup>
Jeffrey K. Tingey	Idaho State University	July 2011 – June 2014 (3) <sup>85</sup>
Ronald Prettyman	Indiana State University	Mar. 2011 – June 2016 (5) <sup>86</sup>

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76. *2013 Employment Agreement with Stan Wilcox*, ¶ II(A), Fla. State Univ. (Aug. 20, 2013).

77. *Multiple-Year Vice President for University Athletics Contract with Raymond Anderson*, ¶ 1, Ariz. State Univ. (Feb. 5, 2014).

78. *Central Michigan University Associate Vice President/Athletic Director Employment Agreement with David Heeke*, ¶ 3.0, Cent. Mich. Univ. (Nov. 21, 2013).

79. *Executive Employment Agreement with Daniel J. Schumacher*, ¶ 2.1, Chi. State Univ. (June 10, 2012).

80. *Employment Agreement with Daniel Radakovich, Jr.*, ¶ 4.1, Clemson Univ. (Dec. 1, 2012).

81. *Employment Contract with Josiah C. Hull, Jr.*, ¶ 2.1, Coll. of Charleston (Jan. 1, 2008).

82. *Employment Agreement with Mark Sandy*, ¶ 3.1, E. Ky. Univ. (May 30, 2005).

83. *Administrative Employment Contract Eastern Washington University Director of Intercollegiate Athletics with William Chaves, Jr.*, ¶ II, E. Wash. Univ. (July 1, 2013).

84. *Georgia State University Athletic Association, Inc. Director of Athletics Agreement with Cheryl L. Levick*, ¶ 1, Ga. State Univ. (Mar. 30, 2009).

85. *Employment Agreement with Jeffrey K. Tingey*, art. 2.1, Idaho State Univ. (July 1, 2011).

86. *Indiana State University Employment Contract for Director of Intercollegiate Athletics with Ronald Prettyman*, ¶ 2.0, Ind. State Univ. (Mar. 11, 2011).

John Currie	Kansas State University	July 2010 – June 2016 (6) <sup>87</sup>
Robert De Carolis	Oregon State University	July 2011 – June 2016 (5) <sup>88</sup>
Morgan J. Burke	Purdue University	July 2010 – June 2017 (7) <sup>89</sup>
Eric C. Hyman	Texas A&M University	Aug. 2012 – July 2017 (5) <sup>90</sup>
David A. Brandon	University of Michigan	Mar. 2010 – Mar. 2015 (5) <sup>91</sup>
Lawrence “Bubba” Cunningham	University of North Carolina – Chapel Hill	Nov. 2011 – June 2017 (5.5) <sup>92</sup>
Eugene D. Smith	Ohio State University	Apr. 2005 – Apr. 2012 (7) <sup>93</sup>
Mitchell Barnhart	University of Kentucky	July 2007 – June 2012 (5) <sup>94</sup>
Sheahon Zenger	University of Kansas	Feb. 2011 – June 2015 (4) <sup>95</sup>
Gregory Byrne	University of Arizona	July 2014 – May 2019 (5) <sup>96</sup>
Richard L. George	University of Colorado	Sept. 2013 – Aug. 2018 (5) <sup>97</sup>
Warde Manuel	University of Connecticut	Mar. 2012 – June 2017 (5) <sup>98</sup>

87. *Employment Agreement with John Currie*, ¶ 1, Kan. State Univ. (July 1, 2010).

88. *Employment Agreement and Notice of Appointment Director, Oregon State University Department of Intercollegiate Athletics with Robert De Carolis*, ¶ 1, Or. State Univ. (July 1, 2011).

89. *Director of Intercollegiate Athletics Employment Agreement with Morgan J. Burke*, ¶ 1, Purdue Univ. (July 1, 2010).

90. *Employment Agreement with Eric C. Hyman*, ¶ 1, Tex. A&M Univ. (Aug. 1, 2012).

91. *University of Michigan Athletic Director Employment Agreement with David A. Brandon*, ¶ 2, Univ. of Mich. (Mar. 8, 2010).

92. *Employment Agreement with Lawrence (Bubba) Cunningham*, ¶ 1, Univ. of N.C. at Chapel Hill (Nov. 14, 2011).

93. *Employment Agreement with Eugene D. Smith*, ¶ 2.1, Ohio State Univ. (Apr. 15, 2005).

94. *Employment Agreement with Mitchell Barnhart*, ¶ 1, Univ. of Ky. (July 1, 2007).

95. *Employment Agreement with Sheahon Zenger*, ¶ 1, Univ. of Kan. (Jan. 1, 2011).

96. *Multiple-Year Employment Contract for Vice President for Athletics and Director of Athletics with Gregory Byrne*, ¶ 1, Univ. of Ariz. (July 15, 2014).

97. *Employment Agreement Between Richard L. George and the Regents of the University of Colorado*, ¶ 1(a), Univ. of Colo. (Aug. 23, 2013).

98. *University of Connecticut Director of Athletics Agreement with Warde Manuel*, ¶ 2, Univ. of

Anne “Sandy” Barbour	Pennsylvania State University	Aug. 2014 – Aug. 2019 (5) <sup>99</sup>
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### C. Athletic Directors’ Compensation

The best study done to date with respect to athletic directors’ compensation was undertaken by USA Today in an article posted on March 6, 2013, entitled *Athletic Director Salary Database*.<sup>100</sup>

The compensation packages will greatly differ for athletic directors employed by Division I Football Bowl Subdivision FBS Power 5 conferences, Division I Football Bowl Subdivision FBS Non-Power 5 conferences, and Division I Champion (FCS Non-football playing schools). Although the study reports compensation packages for 2013, the range of compensation is indicative of the difference in pay based on the status of the university and the conference in which the university participates.<sup>101</sup> What follows are the top twenty-five paid NCAA athletic directors pursuant to the 2013 USA Today study.<sup>102</sup>

RK	SCHOOL	CONF	ATHLETICS DIRECTORS	SCHOOL PAY
1	Vanderbilt	SEC	David Williams	\$3,239,678
2	Louisville	Big East	Tom Jurich	\$1,401,915
3	Florida	SEC	Jeremy Foley	\$1,233,250
4	Wisconsin	Big Ten	Barry Alvarez	\$1,143,500
5	Nebraska	Big Ten	Shawn Eichorst	\$1,123,000
6	Texas	Big 12	DeLoss Dodds	\$1,107,391
7	Ohio State	Big Ten	Gene Smith	\$1,099,030

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Conn. (Mar. 19, 2012).

99. *Director of Intercollegiate Athletics Appointment Terms with Anne “Sandy” Barbour*, Univ. of Penn State (July 26, 2014).

100. Jodi Upton & Steve Berkowitz, *Athletic Director Salary Database*, USA TODAY (Mar. 6, 2013), <http://www.usatoday.com/story/sports/college/2013/03/06/athletic-director-salary-database-methodology/1968783/>. In an email received on October 23, 2015, from Steve Berkowitz, USA Today Sports Projects Reporter, he indicated that USA Today would be revisiting the *Athletic Director Salary Database* during the summer or fall of 2016 if USA Today decides to go ahead with a revised study.

101. *See id.*

102. *See id.*

8	Notre Dame	Big East	Jack Swarbrick	\$1,026,942
9	Oklahoma	Big 12	Joe Castiglione	\$1,000,000
10	Duke	ACC	Kevin White	\$906,536
11	Arkansas	SEC	Jeff Long	\$900,000
12	Michigan	Big Ten	Dave Brandon	\$900,000
13	Iowa State	Big 12	Jamie Pollard	\$900,000
14	Tennessee	SEC	Dave Hart Jr.	\$817,250
15	Texas A&M	SEC	Eric Hyman	\$800,000
16	LSU	SEC	Joe Alleva	\$725,000
17	Clemson	ACC	Dan Radakovich	\$725,000
18	UCLA	PAC-12	Dan Guerrero	\$715,211
19	Michigan State	Big Ten	Mark Hollis	\$700,000
20	Texas Christian	Mt. West	Chris Del Conte	\$695,769
21	Wake Forest	ACC	Ron Wellman	\$688,000
22	South Carolina	SEC	Ray Tanner	\$675,000
23	Missouri	SEC	Mike Alden	\$651,917
24	Kentucky	SEC	Mitch Barnhart	\$650,000
25	Navy	Patriot	Chet Gladchuk	\$637,897

By way of comparison, what follows are the compensation packages for athletic directors listed as the 50th through 69th highest paid athletic directors in the 2013 USA Today study:<sup>103</sup>

50	South Florida	Big East	Doug Woolard	\$479,657
51	Iowa	Big Ten	Gary Barta	\$487,842
52	Purdue	Big Ten	Morgan Burke	\$464,437
53	Washington State	PAC-12	Bill Moos	\$455,000

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103. *See id.*

54	Connecticut	Big East	Warde Manuel	\$450,000
55	Utah	PAC-12	Chris Hill	\$450,000
56	Kansas	Big 12	Sheahon Zenger	\$450,000
57	Mississippi State	SEC	Scott Stricklin	\$182,000
58	Florida International	Sun Belt	Pete Garcia	\$441,832
59	Indiana	Big Ten	Fred Glass	\$430,746
60	New Mexico	Mt. West	Paul Krebs	\$408,391
61	Rutgers	Big East	Tim Perneti	\$410,000
62	Memphis	CUSA	Tom Bowen	\$400,000
63	Mississippi	SEC	Ross Bjork	\$400,000
64	Penn State	Big Ten	David Joyner	\$396,000
65	Central Florida	CUSA	Todd Stansbury	\$375,000
66	Arizona State	PAC-12	Stephen Patterson	\$365,000
67	Cincinnati	Big East	Whit Babcock	\$364,000
68	East Carolina	CUSA	Terry Holland	\$361,400
69	Utah State	WAC	Scott Barnes	\$350,108

Finally, what follows are the compensation packages for athletic directors listed as numbers 90th through 113th highest paid athletic directors in the 2013 USA Today study:<sup>104</sup>

90	New Mexico State	WAC	McKinley Boston	\$239,128
91	Wyoming	Mt. West	Tom Burman	\$236,004
92	Florida Atlantic	Sun Belt	Patrick Chun	\$235,000

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104. *See id.*

93	Akron	MAC	Tom Wistrill	\$229,500
94	Army	Patriot	Boo Corrigan	\$233,500
95	Texas State	WAC	Larry Teis	\$225,000
96	Miami (Ohio)	MAC	David Saylor	\$220,000
97	Central Michigan	MAC	Dave Heeke	\$219,838
98	Texas-San Antonio	WAC	Lynn Hickey	\$215,000
99	Middle Tennessee State	Sun Belt	Chris Massaro	\$210,215
100	Troy	Sun Belt	John Hartwell	\$210,000
101	Toledo	MAC	Mike O'Brien	\$208,855
102	Massachusetts	A-10	John McCutcheon	\$207,442
103	Eastern Michigan	MAC	Derrick Gragg	\$200,011
104	Southern Mississippi	CUSA	Jeff Hammond	\$200,000
105	South Alabama	Sun Belt	Joel Erdmann	\$197,825
106	Arkansas State	Sun Belt	Terry Mohajir	\$190,000
107	Idaho	WAC	Rob Spear	\$189,866
108	Western Kentucky	Sun Belt	Todd Stewart	\$186,012
109	Bowling Green	MAC	Greg Christopher	\$185,402
110	Western Michigan	MAC	Kathy Beauregard	\$171,458
111	Air Force	Mt. West	Hans Mueh	\$165,300
112	Louisiana-Lafayette	Sun Belt	Scott Farmer	\$150,000
113	Louisiana-Monroe	Sun Belt	Bobby Staub	\$109,923

Not surprisingly, the median salary for athletic directors at universities that are part of what are referred to as the BCS schools (i.e., members of the ACC,

Big Ten, Big East, SEC, Big 12, and Pac 12) is more than two and a half times larger than their non-BCS counterparts.<sup>105</sup> In fact, the highest paid non-BCS athletic director still earns less than the average salary among BCS athletic directors according to the 2013 USA Today study.<sup>106</sup>

#### *D. Bonuses*

Much like college coaches' contracts, athletic director contracts are designed to encourage and incentivize achievement. In reviewing numerous athletic director contracts, bonuses are awarded for

- Academics:
  - Graduation rate
  - Number of students on honor roll
  - Grade Point Average (GPA)
  - GPA compared against the conference
  - GPA increase from previous year
  - Percentage of scholar athletes
  - Academic Progress Rate (APR)
- Athletics:
  - Percent of coach's incentives
  - Winning division
  - Winning conference
  - Achievement of top seed in conference tournament
  - Participation in conference championship
  - Achievement of conference championship game
  - Appearance in postseason
  - Advancement in postseason
  - Appearance in title game
  - Winning title game
  - Directors' cup ranking
  - Win percentage
- Financial:
  - Revenue increase over previous year

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105. *See id.*

106. *See id.*

- Fiscal management
- Club membership growth
- Amount of contributions to the program
- Meeting fund raising objectives
- Longevity and Retention
- Signing bonuses
- Overall performance bonus
- Compliance bonus
- Attendance bonus
- Project completion

What follows are some examples of the bonus clauses itemized above:

1. Academic

University of Louisville – Thomas M. Jurich

(d)The following bonus based on the graduation rate of the University student athletes which shall be non-cumulative:

- i. \$12,000 for any year in which the 6-year graduation rate for University student athletes is equal to or greater than 60%, or
- ii. \$24,000 for any year in which the 6-year graduation rate for University student athletes is equal to or greater than 65%, or
- iii. \$36,000 for any year in which the 6-year graduation rate for University student athletes is equal to or greater than 70%, or
- iv. \$48,000 for any year in which the 6-year graduation rate for University student athletes is equal to or greater than 75%.

(e)\$20,000 for the Employer's being a member of among the Big East public universities, with the highest average GPA for the academic year for all student athletes in conference sports or for the Employer's being the member among the Big East public universities with the highest GPA for the academic year for all student athletes in Division I-A football playing Big East

member schools;

(f)\$15,000 for an Institutional Student Athlete average GPA of 3.0 for all University student athletes and conference sports;

(g)\$1,000 per team GPA of 3.0 for student-athletes for an academic year;

(h)An annual bonus in an amount equal to one hundred sixty percent (160%) of the annual premium to be paid on the insurance policy described in Section 4.7.<sup>107</sup>

### University of Arizona – Gregory Byrne

#### A. Academic Performance

Director may receive additional compensation following completion of a particular Academic Year for promoting academic success by the University's student-athletes as measured by the following Student-Athlete Graduation Success Rate ("SAGSR") and Student-Athlete Cumulative Grade Point Average ("SACGPA") achievements, as defined and calculated by University or NCAA rules. "Academic Year" shall mean each respective twelve consecutive-month period beginning each August on the first day of classes at the University. SAGSR and SACGPA payments are for the highest ranked achievement in each category and are not cumulative in either category unless otherwise specified:

##### 1.SAGSR

Director will receive the Additional Compensation specified below if the SAGSR exceeds the General University Graduation Success Rate (GUGSR) as follows (no rounding off):

SAGSR exceeds GUGSR by 5%: 1 week of Base Salary

SAGSR exceeds GUGSR by 10%: 2 weeks of Base Salary

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<sup>107</sup>. *Employment Contract with Thomas M. Jurich*, ¶ 3.2(d)–(g), Univ. of Louisville (Oct. 1, 2007).

SAGSR exceeds GUGSR by 15%: 3 weeks of Base Salary

SAGSR exceeds GUGSR by 20%: 4 weeks of Base Salary

2.SACGPA (cumulative)

Director will receive the Additional Compensation specified below if the SACGPA for male and female student-athletes exceeds the CGPA of comparable non-student-athletes enrolled in the University:

Male SACGPA exceeds the general

University male CGPA

(no rounding off): 2 weeks of Base Salary  
and

Female SACGPA exceeds the

University female CGPA

(no rounding off): 2 weeks of Base Salary

If none of the SAGSR or SACGPA achievements set forth above are satisfied in a given Academic Year, no amount will be paid to Director for such year. In no event shall Director receive more than eight weeks of Base Salary in any given Academic Year for the academic performance achievements listed above. Additional compensation under this Section accrues and is payable only if Director was employed by the University as Director for the entire Academic Year in which the academic achievements were accomplished.<sup>108</sup>

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108. *Multiple-Year Employment Contract for Vice President for Athletics and Director of Athletics with Gregory Byrne, supra* note 96, ¶ III(A).

University of Colorado – Richard L. George

**5. Incentive Salary for Meeting Performance Goals.** In addition to his Base Salary and Supplemental Salary, George may earn incentive compensation for meeting performance goals (“Incentive Salary for Performance”) as set forth below. George may earn Incentive Salary for Performance for reaching a goal only if he has met or exceeded the goal on or before the end of the period specified for meeting the goal.

(a) Academic Goals: In each Contract Year, George may earn Incentive Salary for Performance as follows:

- (i) Ten Thousand Dollars (\$10,000) for each UCB varsity team that scores an academic progress rate (“APR”), as defined in NCAA legislation, of One Thousand (1000) for the current academic year as of the end of the UCB Spring Semester of the Contract Year.
- (ii) Fifty Thousand Dollars (\$50,000) if the average grade point average for all varsity student athletes equals or exceeds the average grade point average for all UCB undergraduate students. The average grade point averages shall be determined by the UCB Registrar as of the end of the UCB Spring Semester of the Contract Year.<sup>109</sup>

## 2. Athletic

University of Alabama – William R. Battle, III

“Wins BCS National Championship	\$50,000
Wins SEC Championship Game	\$40,000

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109. *Employment Agreement Between Richard L. George and the Regents of the University of Colorado*, *supra* note 97, ¶ 5(a).

Wins SEC West Championship and participates in SEC Championship Game	\$20,000 <sup>110</sup>
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Texas A&M University – Eric C Hyman

(a)Football

Win National Championship	\$100,000;
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Appearance in a [sic] NCAA sanctioned post-season bowl other than the Cotton Bowl, Chick-fil-A Bowl, Capital One Bowl, or the Outback Bowl (inclusive of any successors thereto that is not a Bowl Championship Series (“BCS”) Bowl game	\$30,000;
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Appearance in the Cotton Bowl, Chick-fil-A Bowl, Capital One Bowl, or the Outback Bowl (inclusive of any successors thereto)	\$60,000;
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Appearance in Conference Championship Game	\$60,000;
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Appearance in BCS Bowl (or replacement such as a Playoff Bowl Game) or Championship Bowl (SEC v. Big 12)	\$90,000.
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(b)Men’s Basketball

CONFERENCE Regular Season or

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110. *Employment Contract with William R. Battle, III, supra* note 68, art. 4.05(a)(1)(i).

Tournament Champion	\$25,000;
Appearance NCAA Tournament	\$25,000;
Appearance Sweet Sixteen	\$50,000;
Appearance Final Four	\$75,000;
National Champion	\$100,000.

(c) Women's Basketball

CONFERENCE Regular Season or Tournament Champion	\$25,000;
Appearance NCAA Tournament	\$25,000;
Appearance Sweet Sixteen	\$50,000;
Appearance Final Four	\$75,000;
National Champion	\$100,000.

(d) Other NCAA or CONFERENCE Sports

CONFERENCE Regular Season or Tournament Champion	\$10,000;
Team National Champion	\$25,000;
Appearance NCAA Post Season Competition or any individual	

National Champion \$5,000.<sup>111</sup>

### 3. Financial Success

#### University of Illinois – Michael J. Thomas

##### **Fundraising/Public Relations**

- 10% increase over previous years I-Fund annual gifts (annual fund, endowment, capital, other) \$20,000
- **25% increase over previous years I-fund annual gifts** \$32,500
- \$50M or greater in pledges/gifts for Assembly Hall project \$25,000
- 50-75 public speaking engagements \$10,000
- More than 75 public speaking engagements \$10,000
- **Excluding press-conferences and pre-game appearances at campuses of University sponsored receptions.**

A multimedia clause will be added to this section for FY 2012-2013.

Maximum cumulative payment  
for Fundraising/Public Relations \$60,000<sup>112</sup>

#### University of Maryland – Kevin Anderson

7.4 Beginning with the Year July 1, 2010 - June 30, 2011, a payment of Seven Thousand Five Hundred Dollars (\$7,500) at the end of each Year the Terrapin Club membership has

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111. *Employment Agreement with Eric C. Hyman, supra* note 90, ¶ 4.03(a)–(d).

112. *Employment Agreement with Michael J. Thomas, supra* note 58, Ex. A.

exceeded the previous year's total by five percent (5%).

7.5 Beginning with the Year July 1, 2010 - 2011, a payment of Seven Thousand Five Hundred Dollars (\$7,500) at the end of each Year that the total contributions made for the benefit of the Intercollegiate Athletic Program (including donations to the University of Maryland, the University of Maryland College Park Foundation, the University of Maryland Educational Foundation, and the Terrapin Club) exceeds by five percent (5%) the total of such contributions made in the prior Year. The sum of contributions for the Year will be governed by CASE accounting standards as interpreted by the University of Maryland College Park Foundation.<sup>113</sup>

University of Colorado – Richard L. George

**5. Incentive Salary for Meeting Performance Goals.** In addition to his Base Salary and Supplemental Salary, George may earn incentive compensation for meeting performance goals (“Incentive Salary for Performance”) as set forth below. George may earn Incentive Salary for Performance for reaching a goal only if he has met or exceeded to goal on or before the end of the period specified for meeting the goal.

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(b) Fundraising Goals: George may earn Incentive Salary for Performance for meeting fundraising goals as follows. “Fundraising” as used in this section means gifts and donations designated or earmarked for the Athletics Departments (as determined by the UCB Vice Chancellor for Advancement) and booked after the effective date of this Agreement and before the end of each specified period.

- (i) Incentive Salary for Performance of Fifty Thousand Dollars (\$50,000) for Fundraising as total of Fifteen Million Dollars (\$15,000,000) on

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113. *University of Maryland Athletic Director Agreement with Kevin Anderson*, *supra* note 57, ¶¶ 7.4–7.5.

or before June 30, 2014.

- (ii) Incentive Salary for Performance of One Hundred Thousand Dollars (\$100,000) for Fundraising a total of Twenty-five Million Dollars (\$25,000,000) on or before June 30, 2015.
- (iii) Incentive Salary for Performance of One Hundred Fifty Thousand Dollars (\$150,000) for Fundraising a total of Fifty Million Dollars (\$50,000,000) on or before June 30, 2016.
- (iv) Incentive Salary for Performance of Two Hundred Thousand Dollars (\$200,000) for Fundraising a total of Seventy-five Million Dollars (\$75,000,000) on or before June 30, 2017.
- (v) Incentive Salary for Performance of Two Hundred Fifty Thousand Dollars (\$250,000) for Fundraising a total of One Hundred Million Dollars (\$100,000,000) on or before June 30, 2018.

(c) License and Sponsorship Revenue Goals: George may earn Incentive Salary for Performance for Generating Licensing and Sponsorship Revenue as follows. For purposes of this section “Licensing and Sponsorship Revenue” means net revenue received by UCB from licensing of University trademarks and sponsorships, including, but not limited to, net revenue received from the Collegiate Licensing Company[,], the Nike Sponsorship Agreement, and Learfield Sports (or the successor or assign of any of them) as of June 30<sup>th</sup> of each Contract Year. “Fiscal Year 2013” means the State of Colorado fiscal year which began July 1, 2012 and ended June 30, 2013.

- (i) Incentive Salary for Performance of Fifty Thousand Dollars (\$50,000) for generating Licensing and Sponsorship Revenue in the first Contract Year of at least 1.5 times the amount of Licensing and Sponsorship Revenue in Fiscal Year 2013.
- (ii) Incentive Salary for Performance of One Hundred Thousand Dollars (\$100,000) for generating Licensing and Sponsorship Revenue in the second

- Contract Year of at least 2 times the amount of Licensing and Sponsorship Revenue in Fiscal Year 2013.
- (iii) Incentive Salary for Performance of One Hundred Fifty Thousand Dollars (\$150,000) for generating Licensing and Sponsorship Revenue in the third Contract Year of at least 3 times the amount of Licensing and Sponsorship Revenue in Fiscal Year 2013.
  - (iv) Incentive Salary for Performance of Two Hundred Twenty-five Thousand Dollars (\$200,000) [sic] for generating Licensing and Sponsorship Revenue in the fourth Contract Year of at least 4 times the amount of Licensing and Sponsorship Revenue in Fiscal Year 2013.
  - (v) Incentive Salary for Performance of Two Hundred Fifty Thousand Dollars (\$250,000) for generating Licensing and Sponsorship Revenue in the fifth Contract Year of at least 5 times the amount of Licensing and Sponsorship Revenue in Fiscal Year 2013.

(d) Attendance Goals: In each Contract Year, George may earn Incentive Salary for Performance in connection with Attendance at games as follows. For purposes of this section, "Attendance" means the paid game attendance, which includes students, as determined by the UCB Athletics Department Ticketing Office.

- (i) Incentive Salary for Performance of Fifty Thousand Dollars (\$50,000) if the average Attendance at Folsom Stadium for regular season football games for the Contract Year is at least Fifty Thousand (50,000) individuals.
- (ii) Incentive Salary for Performance of Fifty Thousand Dollars (\$50,000) if the average Attendance at the Coors Event Center for regular season Men's Basketball games for the Contract Year is at least Ten Thousand Seven Hundred Fifty (10,750) individuals.

- (iii) Incentive Salary for Performance of Fifty Thousand Dollars (\$50,000) if the average Attendance at the Coors Event Center for regular season Women's Basketball games for the Contract Year increases at least 10% over the previous Contract year.

The parties agree that any payment under this paragraph 5 is expressly conditioned on George being employed as the Athletic Director on the date the performance goal is achieved. If, as of the date of the achievement of any performance goal, George has been suspended pending the outcome of an investigation by the University, the Conference, and/or the NCAA, compensation under this paragraph 5 for achievement of such goal shall not be due unless George is reinstated as the Athletic Director. Incentive Salary for Performance under this section shall be payable in a lump sum on or before sixty (60) days after the achievement of the goal.<sup>114</sup>

#### 4. Longevity or Retention Bonus

##### UCLA – Daniel G. Guerrero

If Director completes the five full years of service contemplated under this contract, Director shall be paid a Retention Bonus of \$750,000 payable at the end of the fifth year of the contract. None of this Retention Bonus shall vest or be payable if Director does not complete such five full years of service through March 31, 2013, except that if Director is terminated by the University without cause prior to March 31, 2013, or in the event of Director's earlier death or a full disability that prevents Director from performing under this Agreement, Director or, in this case of Director's death, Director's heirs or estate shall be paid \$150,000 for each year of service completed or pro-rated on a monthly basis for the actual number of months of any such year of service that has been completed. The payment of this bonus or pro-rated bonus is to be made not later

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<sup>114</sup> *Employment Agreement Between Richard L. George and the Regents of the University of Colorado*, *supra* note 97, ¶ 5(b)–(c).

than April 30, 2013 or within 60 days of the death or a determination of full disability of Director if such death or disability should occur earlier than April 1, 2013.<sup>115</sup>

Iowa State University – Jamie Pollard

If Pollard is still employed by University on June 30, 2018, Pollard will receive a retention payment of \$500,000, payable on June 31, 2018. Said payment is forfeited by Pollard if Pollard voluntarily leaves employment with Iowa State University or is terminated with cause, as provided by Section IV, prior to June 30, 2018. If Pollard is terminated by the University without cause prior to June 30, 2018, Pollard shall receive entire payment of \$500,000 on July 31, 2018.<sup>116</sup>

University of Purdue – Morgan J. Burke

**V. RETENTION BONUS**

To incent Burke to remain at Purdue in his role as Director until such time as he is slated to retire Purdue will pay Burke a Retention Bonus if Burke remains employed as Director by Purdue according to the following schedule:

1. If Burke remains employed as Director through June 30, 2012, Purdue will pay Burke a Retention Bonus of \$100,000.00 on that date;
2. If Burke remains employed as Director through June 30, 2015, Purdue will pay Burke a Retention Bonus of \$150,000.00 on that date; and

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115. *Employment Agreement UCLA Athletic Director with Daniel G. Guerrero*, ¶ D(5), Univ. of Cal. L.A. (Apr. 1, 2008).

116. *Amended and Restated Employment Agreement with Jamie Pollard*, ¶ V(2), Iowa State Univ. (Sept. 1, 2012).

3. If Burke remains employed as Purdue's Director through June 30, 2017, Purdue will pay Burke a Retention Bonus of \$100,000.00 on that date.<sup>117</sup>

Pennsylvania State University – Sandy Barbour

“Retention Bonus                      \$100,000 per contract year if AD remains employed as athletic director on the last day of such contract year.”<sup>118</sup>

5. Signing or Extension Bonus

Boise State University – Mark Coyle (\$75,000)

“In addition to the Base Salary, the University shall make a one-time payment to Athletic Director in the amount of \$75,000 . . . .”<sup>119</sup>

6. Compliance Bonus

University of Iowa – Gary Barta (\$15,000)

“Exemplary compliance with NCAA, Big Ten and University Rules governing athletics operations                      \$5,000.”<sup>120</sup>

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117. *Director of Intercollegiate Athletics Employment Agreement with Morgan J. Burke*, *supra* note 89, ¶ V.

118. *Director of Intercollegiate Athletics Appointment Terms with Anne “Sandy” Barbour*, *supra* note 99.

119. *Employment Agreement with Mark Coyle*, *supra* note 60, art. 3.1.6.

120. *The University of Iowa Amendment to Contract Director of Intercollegiate Athletics with Gary Barta*, ¶ 4, b.(3), Univ. of Iowa (Nov. 18, 2013).

## 7. Attendance Bonus

### Florida International University – Pedro A. Garcia

#### Attendance for Football Games:

- i. “Two percent (2%) of base salary for average regular season attendance between 15,000 and 15,499; or
- ii. Five percent (5%) of base salary for average regular season attendance between 15,500 and 15,999; or
- iii. Ten percent (10%) of base salary for average regular season attendance 16,000 or [sic] above.”

#### Attendance for Men’s Basketball Games:

- i. “Two percent (2%) of base salary for average regular season attendance between 1,000 and [sic] 1,999; or
- ii. Five percent (5%) of base salary for average regular season attendance between 2,000 and 2,999 [sic]; or
- iii. Ten percent (10%) of base salary for average regular season attendance 3,000 or above.”<sup>121</sup>

### *E. Perquisites*

Much like college coaches’ contracts, athletic directors are given benefits and perquisites that come with the job. In summary, an athletic director’s benefits and perquisites entail

- Automobile
- Country Club Memberships
- Tickets
- Media/Promotions/Public Relations Compensation

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<sup>121</sup> *Florida International University Employment Contract with Pedro A. Garcia*, *supra* note 61, ¶ IX(b)(i)(5)a–b.

- Leave/Sick/Vacation Days
- Spouse and Family Travel
- Private Aircraft
- Moving Expenses
- Apparel
- Housing
- Travel
- Temporary Housing
- Term Life Insurance
- Supplemental Pay
- Golf Privileges
- Course Fee Courtesy (Tuition)
- Medical Physical Examination
- Appointment as Professor
- Entertainment Reimbursement
- Financial Planning Reimbursement
- Expense Account
- Telephone

What follows are some examples of perquisites clauses in athletic directors' contracts:

1. Automobile

University of Nebraska – Shawn M. Eichorst

“A monthly allowance of the \$800 per month in lieu of any benefit that might otherwise be included in this Contract related to the provision of an automobile for Mr. Eichorst’s personal use.”<sup>122</sup>

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122. *Contract of Employment Director of Athletics Department of Intercollegiate Athletics University of Nebraska-Lincoln with Shawn M. Eichorst, supra* note 56, § 4(a)(1).

University of Utah – Chris Hill

The University, at its sole expense, shall provide to HILL for his use during the Term of this Agreement an automobile that is mutually acceptable to the Parties for use by HILL. The University shall pay for insurance for this automobile. The University shall reimburse HILL for gasoline for expenses. To obtain and retain this benefit, HILL must maintain a current and valid Utah driver's license.<sup>123</sup>

North Carolina State University – Deborah A. Yow

D.NC STATE shall make arrangements for and provide one (1) courtesy or leased vehicle for the ATHLETICS DIRECTOR to use, contingent upon and while performing her duties under this Agreement. NC STATE shall be responsible for maintaining collision and comprehensive liability insurance on the vehicle. Alternatively, NC STATE may provide an annual automobile allowance in the amount of \$7,500. ATHLETICS DIRECTOR shall be responsible for providing maintenance on any vehicle.<sup>124</sup>

## 2. Country Club Memberships

Ohio State University – Eugene D. Smith

Ohio State shall

[p]rovide to the Director, while the Director is employed as the Director of Athletics, a full family membership at a mutually agreed-upon local country club, a social family membership at a mutually agreed-upon local country club, and a full membership at the University Faculty Club; however, personal expenses associated with such country club memberships will

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123. *Employment Agreement with Chris Hill*, ¶ 6(B), Univ. of Utah (July 1, 2011).

124. *Employment Agreement Director of Athletics with Deborah A. Yow*, ¶ IV, D., N.C. State Univ. (July 15, 2010).

be paid by the Director.<sup>125</sup>

Michigan State University – Mark Hollis

The University will reimburse the Athletic Director for dues in one (1) country club selected by the Athletic Director (which does not engage in discriminatory practices in violation of applicable federal and state laws), which membership is required for the conduct of development activities and entertainment associated with the Athletic Director's official responsibilities.<sup>126</sup>

University of Kentucky – Mitchell Barnhart

The University will continue to provide or make arrangements for membership and initiation fees, if any, at a mutually agreed upon golf or country club. AD shall be responsible for payment of all expenses and costs associated with using the membership excluding monthly dues, which shall be paid by University.<sup>127</sup>

3. Tickets

University of Kansas – Sheahon Zenger

g. Season Tickets. Athletics Director shall receive six season tickets to men's and women's basketball games in Allen Field House and to home football games in Memorial Stadium. Two tickets for each sport shall be for business use by Athletics Director in his capacity as Director of Intercollegiate Athletics, and four tickets for each sport shall be considered compensation to Athletics Director. For the 2010–2011 men's basketball season only, such tickets to men's basketball games shall be limited to four tickets to games remaining at the time Athletics Director assumes duties, and shall consist of two

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125. *Employment Agreement with Eugene D. Smith, supra* note 93, ¶ 3.8(c).

126. *Michigan State University Department of Intercollegiate Athletics Employment Agreement with Mark Hollis*, § 4.2, Mich. State Univ. (June 1, 2012).

127. *Employment Agreement with Mitchell Barnhart, supra* note 94, ¶ 6(d).

tickets for business use and two tickets for personal use.

h. Scholarship Suite in Memorial Stadium. Athletics Director shall have the use for business purposes only, consistent with IRS law and regulations, of a scholarship suite in the Kansas Memorial Football Stadium during home football games. Such use must include a clearly established business purpose, and in any event at least 50 percent of attendees/occupants of the suite must be present for official business purposes.<sup>128</sup>

Florida International University – Pedro A. Garcia

Garcia shall receive, without charge, twenty (20) tickets to every home football and men's and women's basketball games, five (5) tickets to every football and men's and women's basketball away games, and ten (10) post season tickets to football and men's and women's basketball games for business use. In addition, Garcia shall be entitled to official team transportation for up to five (5) people for away football games.<sup>129</sup>

4. Housing Allowance

University of Purdue – Morgan J. Burke

“Effective July 1, 2010 and for the period that Burke is Director, Purdue will provide Burke with a housing allowance of \$24,257.00, payable in 12 monthly installments. The housing allowance shall be adjusted on an annual basis for cost of living as determined by the Consumer Price Index.”<sup>130</sup>

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128. *Employment Agreement with Sheahon Zenger*, *supra* note 95, ¶ 3(j)—(k).

129. *Florida International University Employment Contract with Pedro A. Garcia*, *supra* note 61, ¶ IX, a.

130. *Director of Intercollegiate Athletics Employment Agreement with Morgan J. Burke*, *supra* note 89, ¶ IV(E).

Eastern Carolina University – Jeffrey Compher

UNIVERSITY shall make temporary housing available for ATHLETICS DIRECTOR for a period of up to six months from the effective date of this Agreement. At UNIVERSITY'S election and with reasonable notice to ATHLETICS DIRECTOR, UNIVERSITY may in its sole discretion, choose to pay ATHLETICS DIRECTOR a housing allowance not to exceed \$1,500 per month instead of making housing directly available to him.<sup>131</sup>

University of Connecticut – Warde Manuel

**3.4 Housing Advance.** Rather than provide for the accrual of deferred compensation by MANUEL for the period from the Effective Date through March 18, 2014 as contemplated by the parties in the Offer and Letter Agreement dated February 11, 2012, within thirty (30) days of the execution of this Agreement by the University and MANUEL, the University will pay to MANUEL the sum of Two Hundred Thousand and 00/100 Dollars (\$200,000) as an advance to assist MANUEL in connection with the acquisition of a personal residence in, or within a 50 mile vicinity of, Storrs, Connecticut (“Housing Advance”). It is acknowledged by the University and MANUEL that the Housing Advance is being paid on the mutual expectation of MANUEL and the University that MANUEL will complete the Initial Term and, therefore, if MANUEL does not complete the Initial Term, MANUEL has agreed to repay all or a portion of the Housing Advance (and potentially additional amounts), subject to and in accordance with the terms and conditions of Section 10.<sup>132</sup>

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131. *Employment Agreement Director of Athletics with C. Jeffrey Compher, supra* note 62, ¶ IV(C).

132. *University of Connecticut Director of Athletics Agreement with Warde Manuel, supra* note 98, ¶ 3.4.

## 5. Spouse and Family Travel

Ohio State University – Eugene D. Smith

Ohio State shall “[p]rovide for the travel costs of the Director’s spouse in attending away athletic contests. In no event shall such travel costs exceed \$5,000 in any contract year.”<sup>133</sup>

University of Michigan – David Brandon (Terminated)

For Bowl games, Men’s Basketball Final Four and other significant sports events, the University shall pay for or reimburse the Director for the reasonable travel expenses of his spouse. Four other games and events, the University shall cover the travel expenses of the Director’s spouse if there is no significant incremental costs to the University. If commercial carriers are used for travel not in the context of NCAA business travel or significant athletic events, the Director shall be responsible for his spouse’s travel expenses. Notwithstanding the foregoing, the Director shall be responsible for all taxes on imputed income that he and/or his spouse may incur from travel described herein.<sup>134</sup>

Texas A&M University – Eric C. Hyman

It is understood by the parties that from time to time HYMAN’s spouse may be called upon to travel to and/or attend various functions on behalf of UNIVERSITY. When engaged in such activities, HYMAN’s spouse shall be entitled to payment for travel and other expenses incurred in such official activities.<sup>135</sup>

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133. *Employment Agreement with Eugene D. Smith*, *supra* note 93, ¶ 3.6(b).

134. *University of Michigan Athletic Director Employment Agreement with David A. Brandon*, *supra* note 91, Ex. B, 4.

135. *Employment Agreement with Eric C. Hyman*, *supra* note 90, ¶ 4.04.

## 6. Moving Expenses

### Eastern Carolina University – Jeffrey Compher

“UNIVERSITY shall reimburse ATHLETICS DIRECTOR for documented personal moving expenses of up to \$18,000 reasonably incurred by ATHLETICS DIRECTOR within twelve months of the effective date of this Agreement, in accordance with standard procedures and applicable policies of the UNIVERSITY.”<sup>136</sup>

### Eastern Michigan University – Heather Lyke

Upon submission of appropriate invoices, the University shall pay Employee’s moving company the standard costs associated with her moving from her current residence to the Ypsilanti, Michigan area. University’s payment shall include packing and unpacking fees. The moving company must be selected based on two competitive bids. Preapproval from the University must be obtained before the moving company is hired.<sup>137</sup>

### Texas A&M University – Eric C. Hyman

“HYMAN shall be reimbursed by UNIVERSITY up to an amount not to exceed \$50,000, upon presentation of appropriate documentation and in accordance with UNIVERSITY policy and procedure, for reasonable and customary [out-of-pocket] expenses, including packing and unpacking charges, incurred by HYMAN in moving to College Station, Texas.”<sup>138</sup>

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136. *Employment Agreement Director of Athletics with C. Jeffrey Compher*, *supra* note 62, ¶ IV(B).

137. *Eastern Michigan University Vice President/Athletic Director Employment Agreement with Heather Lyke*, *supra* note 63, ¶ 3.1.20.

138. *Employment Agreement with Eric C. Hyman*, *supra* note 90, ¶ 4.06.

## 7. Private Aircraft

Ohio State University – Eugene D. Smith

Ohio State agrees to fly the Director by private (not commercial) aircraft for business purposes only, not to exceed fifteen (15) hours each contract year during the term of the agreement. Each hour the aircraft is contracted for such use, including but not limited to, empty “deadhead” legs of the flight, will count toward the fifteen (15) hours per year (except Ohio State shall only count the “deadhead” hours if Ohio State is charged for such “deadhead” hours).<sup>139</sup>

University of Alabama – William R Battle, III

As additional compensation to Employee, upon reasonable advance notice, the University shall furnish or otherwise make available to Employee a non-commercial airline airplane for Employees’ personal, non-business travel for a maximum of twenty-five (25) hours of flight time per Contract Year. Flight time, for purposes of the 25 hour maximum, shall not include return trips without Employee, members of Employee’s family, or guests of Employee aboard the aircraft in conjunction with Employee’s use of the aircraft for personal, non-business travel. Flight time not used in a Contract Year may not be carried over for use in the next Contract Year.<sup>140</sup>

## 8. Leave/Sick/Vacation Days

University of California – Anne Barbour

“Director shall be entitled to vacation leave as set forth in the Contract Addendum. The leave shall be taken at a time or times approved by the Associate Chancellor - Chief of Staff and the Chancellor.”<sup>141</sup>

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139. *Employment Agreement with Eugene D. Smith*, *supra* note 93, ¶ 3.7.

140. *Employment Contract with William R. Battle, III*, *supra* note 68, art IV, § 4.05(j).

141. *Director Personnel Policies for Staff Members Employment Contract with Anne “Sandy” Barbour*, ¶ 5(b), Univ. of Cal. (Oct. 1, 2004).

Director shall be entitled to 20 working days of vacation leave at the beginning of each contract year of this Employment Contract. Director's accrued vacation balance may not exceed 40 working days at any time during the period of this Employment Contract. If Director's accrued vacation balance reaches 40 working days, Director will not be entitled to accrue additional vacation leave under this provision until the leave balance is reduced below 40 working days.<sup>142</sup>

“Director shall be entitled to sick leave for absences due to illness as set forth in the Contract Addendum. In addition, the Associate Chancellor – Chief of Staff and the Chancellor may grant leave to Director with or without pay for other reasons, including illness.”<sup>143</sup>

“Director shall be entitled to use up to 12 days of sick leave during each contract year of this Employment Contract.”<sup>144</sup>

Louisville University – Thomas M. Jurich

“The employee will receive one-month annual leave with pay and medical and administrative leave with pay on the same basis as other University administrators.”<sup>145</sup>

9. Life Insurance

University of Kentucky – Mitchell Barnhart

“In addition to any amounts of life insurance provided through the University's standard benefit package, University agrees to continue to provide AD with an additional term life insurance policy in the amount of One Million Dollars

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142. *Id.* at Cont. Add. ¶ 3.

143. *Id.* ¶ 5(c).

144. *Id.* at Cont. Add. ¶ 4.

145. *Employment Contract with Thomas M. Jurich, supra* note 107, ¶ 4.8.

(\$1,000,000.00).”<sup>146</sup>

South Carolina University – Donald Ray Tanner, Jr.

“During the term of this Employment Agreement, the University shall pay the premiums necessary to provide Employee with term life insurance benefits totaling Five Hundred Thousand (\$500,000) Dollars. Employee shall have the sole and exclusive right to designate any beneficiary.”<sup>147</sup>

Georgia Technical University – Michael A. Bobinski

“Bobinski shall be provided, at no charge, the PPO family medical insurance, dental and life insurance (up to three times the value of the annual salary amount up to a maximum of one million dollars) normally made available to employees of the Institute.”<sup>148</sup>

University of Illinois – Michael Thomas

“The University will reimburse Thomas on an annual basis for the premium cost of term life insurance with a death benefit of \$1,000,000.00 upon presentation of billings for purchase of such insurance by Thomas, up to a maximum cost of \$100.00 per month (\$1,200.00 per year).”<sup>149</sup>

10. Miscellaneous

*a. Course fee courtesy (Tuition)*

Michigan State University – Mark Hollis

“The Athletic Director shall be eligible for course fee courtesy

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146. *Employment Agreement with Mitchell Barnhart*, *supra* note 94, ¶ 6(e).

147. *Employment Agreement with Donald Ray Tanner, Jr.*, *supra* note 69, ¶ 4.04.

148. *Employment Contract with Michael A. Bobinski*, *supra* note 70, art. IV(A).

149. *Employment Agreement with Michael J. Thomas*, *supra* note 58, ¶ 4(h).

credit for the Athletic Director's spouse and children, as described in and subject to the University's Course Fee Courtesy Policy."<sup>150</sup>

*b. Medical Physical Examination*

UCLA – Daniel G. Guerrero

By exception to policy, Director shall be eligible for a comprehensive annual physical examination at a cost not to exceed \$3,500 per year to be paid by department recharge from the Athletic Department to the UCLA School of Medicine's Comprehensive Health Program. Director's participation in this physical is entirely voluntary, University shall observe all State and federal regulatory requirements concerning the protection of Director's health information, and the results of such a physical shall not serve as a condition of employment.<sup>151</sup>

*c. Appointment as Professor*

University of Utah – Chris Hill

Upon resignation as the Athletics Director or termination without cause, HILL shall be entitled to receive a tenure-track faculty appointment in the College of Health, or such other college as deemed appropriate by the President . . . . Compensation for HILL's faculty position shall be commensurate with other similarly situated faculty members in the College of Health and shall be determined by the President in consultation with the Dean of the College of Health. The faculty appointment will not be available to HILL in the event he is terminated by the University for cause.<sup>152</sup>

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150. *Michigan State University Department of Intercollegiate Athletics Employment Agreement with Mark Hollis*, *supra* note 126, § 3.7.

151. *Employment Agreement UCLA Athletic Director with Daniel G. Guerrero*, *supra* note 115, ¶ E(6).

152. *Employment Agreement with Chris Hill*, *supra* note 123, ¶ 6(D).

*d. Entertainment Reimbursement*

Michigan State University – Mark Hollis

The University will reimburse the Athletic Director for personal and spousal travel and out-of-pocket expenses the Athletic Director reasonably incurs in the course of the performance of duties under this Agreement. Expenses of entertaining, including home entertaining as appropriate, may be reimbursed through discretionary and other Department funds. Reimbursements shall be made only pursuant to University policies and procedures.<sup>153</sup>

Louisville University – Thomas M. Jurich

The Employee is encouraged and expected to incur reasonable and necessary business and entertainment expenses consistent with the responsibilities and duties of the Employees' [sic] position. All business related expenses shall be reimbursed according to customary practice consistent with normal business standards, the Association Travel and Expense Policy, and consistent with the responsibilities and duties of the Employee's position.<sup>154</sup>

*e. Financial Planning Reimbursement*

Louisville University – Thomas M. Jurich

“The Employer agrees to reimburse Employee for reasonable expenses associated with financial planning, not to exceed \$15,000 per annum.”<sup>155</sup>

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153. *Michigan State University Department of Intercollegiate Athletics Employment Agreement with Mark Hollis*, *supra* note 126, § 4.1.

154. *Employment Contract with Thomas M. Jurich*, *supra* note 107, ¶ 5.3.

155. *Id.* ¶ 5.5.

*f. Expense Account*

University of Florida – Jeremy Foley

In addition to normal reimbursement for business travel pursuant to University regulations, Association agrees to provide as part of his compensation as Athletic Director, a personal expense account for Foley at the rate of \$15,000.00 per annum net of applicable Federal and State withholding taxes.<sup>156</sup>

University of Alabama – William R Battle, III

“The University shall arrange and provide for Employee through supporting foundation of the University an expense allowance in the amount of Twelve Thousand Dollars (\$12,000) annually.”<sup>157</sup>

*g. Telephone*

Louisiana State University – Joe Alleva

Alleva will receive “[a]ppropriate mobile communications device and service.”<sup>158</sup>

*F. Termination*

Athletic director contracts are similar to those of college coaches’ contracts in that they provide for different formats of termination, including termination for cause, termination without cause, termination for death or disability, and termination by an athletic director. For example purposes, the Authors have used Stephen Patterson’s employment agreement with the University of Texas at Austin, Julie Herman’s employment contract with Rutgers State University of New Jersey, and Shawn Eichorst’s employment contract with the University of Nebraska.

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156. *University of Florida Employment Contract Athletic Director with Jeremy N. Foley*, *supra* note 66, ¶ 11.

157. *Employment Contract with William R. Battle, III*, *supra* note 68, art. 4.05(c).

158. *Employment Agreement with Joseph L. Alleva*, *supra* note 67, ¶ 5(B).

## 1. Termination for Cause

Stephen Patterson, University of Texas, November 25, 2013 (Terminated)

**A. Suspension or Termination by the University for Cause.**

The University shall have the right and option to either suspend Athletics Director for a period of time with or without pay or to terminate Athletics Director's employment and this Agreement for cause prior to the termination date stated in Section 3 above. In the event this Agreement is terminated for cause, all obligations of the University to make further payment or provide any other consideration hereunder shall cease as of the date of termination. In no case shall the University be liable to Athletics Director for the loss of any collateral business opportunities, or any benefits, perquisites, income, or consequential damages suffered by Athletics Director as a result of the University's termination of his employment. In addition to its normally understood meaning in employment contracts, the term "cause" shall include, without limitation, any of the following:

- (1) Failure or refusal by Athletics Director to perform any of the obligations, duties, or responsibilities outlined in Section 4 or any refusal or unwillingness to perform any of such obligations, duties, or responsibilities in good faith and to the best of Athletics Director's abilities; or
- (2) A serious or major violation or a pattern of violations, whether intentional or negligent, by Athletics Director of any Governing Athletic Rules or University Rules, which violation may, in the sole judgment and discretion of the President, reflect adversely upon the University, or the Program; or
- (3) A serious or major violation or a pattern of violations of any Governing Athletic Rules or University Rules, whether intentional or negligent, or the allowing or condoning, whether directly or by negligent supervision, of any such violation or pattern of violations, by Athletics Director or any coaching staff or other person under

Athletics Director's supervision and direction, including student-athletes in the Program, which violation was known (or reasonably should have been known) by Athletics Director in the course of his normal duties, and which may, in the sole judgment and discretion of the President, reflect adversely upon the University or the Program; or

(4) Failure by Athletics Director to report immediately to the athletics compliance staff and, as appropriate, to the President or other responsible University officer, any alleged violations of the Governing Athletic Rules or University Rules by Athletics Director or by members of Athletics Director's coaching staffs, student-athletes, or other persons under Athletics Director's direct control or authority that become known to Athletics Director; or

(5) Failure or refusal to provide information or documents in response to any reasonable requests or inquires by the NCAA, the Conference, or any other relevant governing body concerning or related to the supervision of the Program; or directing or otherwise instructing any coach, student-athlete, or any other individual to fail or to refuse to provide such information or documents; or

(6) Any fraud or dishonesty by Athletics Director while performing the duties required by this Agreement, including, but not limited to, falsifying, altering, or otherwise fraudulently preparing any documents(s) or record(s) of, or required by the University, the NCAA, or the Conference pertaining to the Program, recruits, or student-athletes, transcripts, eligibility forms, compliance reports, expense reports, or any other document pertaining or related to any sanction of the Program; or

(7) Any conduct, including acts or omissions, that misleads the University about any matters related to the Program, including matters related to any coaches or other staff members or any student-athletes; or

(8) Any prolonged absence from the performance of Athletics Director's obligations, duties, and responsibilities under this Agreement without prior consent of the President; or

(9) Engaging in, assisting, encouraging, or soliciting others to engage in bookmaking, illegal gambling, or betting of any type involving any intercollegiate or professional athletic contest; or

(10) Possession, use, sale, or manufacture of any narcotics, drugs, or other controlled substances, steroids, or other chemicals in a manner that is prohibited by the University Rules or Governing Athletic Rules, or allowing, encouraging, or condoning the possession, use, sale, or manufacture of any narcotics, drugs, alcohol, controlled substances, steroids or other chemicals by any student-athlete in a manner that is prohibited by the University Rules or Governing Athletic Rules, or failure or refusal to fully participate and cooperate in the University's implementation and enforcement of any narcotic, drug, alcohol, controlled substance, steroid, or other chemical testing program(s); or

(11) Any conduct (a) that the President reasonably determines is unbecoming to the Athletics Director, or which reasonably brings into question the integrity of the Athletics Director, or that would render Athletics Director unfit to serve in the position of Athletics Director; or (b) resulting in a criminal charge being brought against Athletics Director involving a felony or any crime involving theft, dishonesty, or moral turpitude; or

(12) Misconduct by associate or assistant athletics directors or other senior staff or by a coach or his or her staff of which the Athletics Director knew, had reason to know, or should have known through the exercise of reasonable diligence or which Athletics Director condoned, of such a nature, as reasonably determined in the discretion of the President, that brings serious discredit to or hams the

reputation of the University or the Program; or

(13) Any other cause adequate to sustain the termination of any regular administrative and professional employee of the University.

The University shall have no obligation to use progressive discipline regarding Athletics Director's misconduct. Any University decision to utilize progressive discipline shall not create any future obligation for the University to use progressive discipline.<sup>159</sup>

Julie K. Hermann, Rutgers State University of New Jersey, June 17, 2013  
(Terminated)

## XII. Discipline and Termination for Cause

A. If Hermann is found to have violated NCAA rules or regulations, whether while employed by Rutgers or prior to employment by Rutgers, or to have failed to report or failed to take all reasonable means to prevent or stop a violation of which she knew or knows or reasonably should have known, she shall be subject to disciplinary or corrective action, including termination of employment or suspension without pay for significant or repetitive violations.

B. The University may terminate Hermann for cause, or impose other discipline for cause, for (i) material breach of this Employment Contract; (ii) neglect of duty; (iii) willful misconduct; (iv) act of moral turpitude; (v) disregard of duty to take all reasonable actions to ensure all staff under your supervision and student-athletes abide by Academic Integrity policy; (vi) conduct tending to bring shame or disgrace to the University, or otherwise detrimental to the University's good name and reputation as a public institution of higher education respectful of individuals and the rule of law, as determined in

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159. *Athletics Director Employment Agreement with Stephen Patterson*, *supra* note 53, ¶ 7(A).

good faith by the President; (vii) violation of University regulations, policies, procedures or directives not remedied after thirty (30) days written notice to Hermann; (viii) violation of your responsibilities related to the requirements and standards referenced in Section X above and to cooperate with any compliance effort or investigation; (ix) a criminal conviction; or (x) unapproved absence from duty, other than for a bona fide use of sick leave in accordance with University policy, without the consent of the President.

C. Failure to impose disciplinary or corrective actions in any particular instance of breach or violation, or with respect to any particular conduct or incident, shall not act as a waiver of the University's right to later discipline or correct Hermann in connection with any breach, violation, conduct or incident, whether the same or different in degree or type, nor shall any single or partial exercise of any right, power or privilege preclude any further or other exercise thereof.

D. If the University terminates Hermann for cause, the University shall not be liable for payment of salary or benefits after the date of termination.<sup>160</sup>

## 2. Termination Without Cause

Julie K. Hermann, Rutgers State University of New Jersey, June 17, 2013  
(Terminated)

### XIII. Termination Without Cause

The University may terminate Hermann without cause, as cause is defined in Section XII above, as it deems necessary, in the sole discretion and judgment of the University, to further the best interests of the University. In such an event, the University shall continue to pay Hermann her full base salary and health and pension benefits, but no other amount or item, as of the date of termination until the expiration date of this Employment

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160. *Employment Contract with Julie K. Hermann, supra* note 71, ¶ XII.

Contract (including any extensions, if any) or the date on which Hermann secures other employment, whichever date shall first occur. Hermann shall notify Rutgers promptly of her securing other employment. Hermann agrees to accept this payment of full base salary and health and pension benefits in full settlement of all claims and demands which may accrue to Hermann under this Employment Contract and Rutgers shall not be liable to Hermann for any other damage, loss or amount.<sup>161</sup>

Shawn M. Eichorst, University of Nebraska-Lincoln, January 1, 2013

Section 13. Termination of Employment for Reasons Other than for Cause; Liquidated Damages; Mitigation of Damages.

(a) The position of Athletic Director is unique and requires special talents and skills. As such, it is the only position for which Mr. Eichorst is being employed, and the University shall not have the right to reassign Mr. Eichorst to any other position. The parties agree that the University shall, at any time, have the right to terminate Mr. Eichorst's employment hereunder for reasons other than for cause upon giving Mr. Eichorst reasonable written or verbal notice of termination, as such reasonableness, may be determined by the University in its discretion and exercise of good faith. Notwithstanding any Contract provision which might be interpreted to the contrary or unless otherwise specifically agreed to in writing, Mr. Eichorst's employment relationship with the University as Athletic Director shall terminate effective upon delivery of the notice of termination or as otherwise set forth in the notice of termination, in the event of such termination, the parties further agree that the damages incurred by Mr. Eichorst would be uncertain and not susceptible to exact computation. Accordingly, it is understood and agreed that any and all claims which may arise in Mr. Eichorst's favor against the University and its Board members, employees and agents by reason of such termination shall be strictly and solely limited to an

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161. *Id.* ¶ XIII.

amount of liquidated damages to be determined by multiplying the number of full months remaining in the Term immediately prior to the termination (such period of time to be referred to herein as the "LD Term") by the amount of \$81,083.83. Except as otherwise set forth in this section below with respect to mitigation, the liquidated damages shall be paid in equal monthly installments over the course of the LD Term. In case of Mr. Eichorst's death, the University's obligations under this section 13 shall cease, effective on the last day of the month in which Mr. Eichorst dies. The obligations of the University under this subsection shall survive termination of this Contract.

(b) Mr. Eichorst hereby acknowledges and agrees to accept the duty to mitigate the liquidated damages described in this section, as well as any other damages Mr. Eichorst may sustain upon termination of this Contract, whether such termination be one for cause or without cause. More specifically, within a reasonably brief period following termination, Mr. Eichorst shall use his best efforts to seek and secure substantially comparable employment, including the customary and reasonable terms and conditions of compensation at the new employment, without structuring or timing compensation to avoid mitigation. If Mr. Eichorst obtains other employment during the LD Term, and such employment guarantees Mr. Eichorst cash compensation of \$973,000.00 or more, then the monthly payments described in this section at (a) above shall cease. However, if Mr. Eichorst obtains such other employment and the guaranteed cash compensation for the employment is less than \$973,000.00 per year, then all University obligations to Mr. Eichorst for payments under this section 13 shall cease upon payment of a lump sum to Mr. Eichorst from the University, or other party designated by the University,

computed as follows: the present value of a stream of payments over the remaining LD Term in an amount equal to the difference between \$81,083.33 and Mr. Eichorst's monthly prorated amount of his annual gross cash salary at the new employment, discounted at the 3-year Treasury Constant Maturity Rate. [For purposes of illustration, assume Mr. Eichorst secures employment following a termination without

cause. Upon the commencement of his new employment, fifteen months remain in the LD Term. Mr. Eichorst's new employment guarantees that he receives cash salary of \$600,000.00 a year (a monthly prorated amount of \$50,000.00.) The University's obligations under this section would be fulfilled upon payment to Mr. Eichorst of a lump sum equal to the present value of a stream of fifteen monthly payments of \$31,083.83 (\$81,083.33 less \$50,000.00), discounted at the rate stated above.]

(c) The parties have, bargained for and agreed to the foregoing liquidated damages provisions, giving consideration to the fact that Mr. Eichorst will lose certain benefits, supplemental compensation or outside compensation related to employment as Athletic Director, which damages are extremely difficult to determine with certainty. The parties agree that payment to Mr. Eichorst of the liquidated damages provided in subsections (a) and/or (b) of this section shall constitute adequate and reasonable compensation to Mr. Eichorst for the damages and injury suffered by Mr. Eichorst as a result of the termination of this Contract by University. Upon payment of such liquidated damages to Mr. Eichorst, Mr. Eichorst does hereby waive and release the University, its Board members, administrators, employees and agents, from any and all claims of any nature whatsoever, which may arise by reason of such termination, including, but not limited to any benefits of employment or other income which may accrue to Mr. Eichorst by reason of Mr. Eichorst's position as Athletic Director.

(d) Should the University, based upon advice of legal counsel or for any other reason the University in its discretion deems is appropriate, determine that the payments, provided for in this section are to be paid from resources other than resources of the State of Nebraska, then the University promises that it will secure funds from non-public funds for the satisfaction of the obligation described in this section.<sup>162</sup>

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162. *Contract of Employment Director of Athletics Department of Intercollegiate Athletics University of Nebraska-Lincoln with Shawn M. Eichorst, supra* note 56, § 13.

## 3. Termination for Death and Disability

Stephen Patterson, University of Texas, November 25, 2013 (Terminated)

**D. Termination for Disability/Death.** If Athletics Director dies or becomes permanently disabled to the extent that, in the judgment of the President, Athletics Director cannot satisfactorily perform the duties of Athletics Director, this Agreement shall terminate and all obligations of the University to compensate Athletics Director pursuant to this Agreement shall cease as of the date of such death or disability. The University shall be obligated to compensate Athletics Director or Athletics Director's estate in accordance with this Agreement for services performed prior to the termination date and, Athletics Director or Athletics Director's estate shall be entitled to those benefits, if any, that are payable under any University sponsored group employee insurance or benefit plan in which Athletics Director is or was enrolled.<sup>163</sup>

Julie K. Hermann, Rutgers State University of New Jersey, June 17, 2013 (Terminated)

## XIV. Termination upon Death or Disability

This Employment Contract will terminate upon the death of Hermann or upon her total and permanent disability. Total and permanent disability shall mean physical or mental incapacity of a nature which prevents Hermann, in the sole judgment of Rutgers, from performing her duties under this Employment Contract for a period of ninety (90) consecutive days. In case of death or disability, as described above, death or disability benefits contained in benefit plans in which Hermann participates shall be paid to her personal representative or other designated beneficiaries, or to Hermann, as the case may be.<sup>164</sup>

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163. *Athletics Director Employment Agreement with Stephen Patterson*, *supra* note 53, ¶ 7(D).

164. *Employment Contract with Julie K. Hermann*, *supra* note 71, ¶ XIV.

## 4. Termination by an Athletic Director

Julie K. Hermann, Rutgers State University of New Jersey, June 17, 2013  
(Terminated)

## XV. Termination by Hermann

Hermann may terminate this Employment Contract by providing the University ninety (90) days advance written notice to the President. In such event, Rutgers' obligations under this Employment Contract shall terminate upon the effective date of termination. Upon receipt of such notice from Hermann, Rutgers may, in its sole discretion, relieve Hermann of her duties as Director of Intercollegiate Athletics at any time after receiving such notice. In such event, Rutgers may, in its reasonable discretion, which shall not be unreasonably exercised, treat such termination as for cause and shall not be liable for payment of salary or any benefits after the date it has relieved Hermann of her duties.<sup>165</sup>

Shawn M. Eichorst, University of Nebraska-Lincoln, January 1, 2013

Section 9. Discussion of Other Prospective Employment;  
Resignation.

...

(b) Except as more specifically described in this subsection (b), there shall be no penalty to Mr. Eichorst for resignation from employment pursuant to this Contract; provided however, in the event that Mr. Eichorst resigns for any reason other than pursuant to Section 9(c) prior to December 31, 2017 the parties further agree that the damages incurred by the University would be uncertain and not susceptible to exact computation. Accordingly, it is understood and agreed that any and all claims which may arise in the University's favor against Mr. Eichorst as a result of his resignation shall be strictly and solely limited to liquidated damages in the following amounts which sum shall be paid by Mr. Eichorst, or on his behalf, to Athletics

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165. *Id.* ¶ XV.

within sixty (60) days following the effective date of Mr. Eichorst's resignation:

<u>Effective January 1</u>	<u>Liquidated Damages</u>
2013	\$2,000,000
2014	\$1,500,000
2015	\$1,000,000
2016	\$500,000
2017	None

The parties have bargained for and agreed to the foregoing liquidated damages provision, giving consideration to the significant costs of conducting an employment search for an Athletic Director; the serious and substantial disruption to Athletics and the University; and the serious and substantial devotion of administrative resources in relation to a change of Athletics leadership; all these result in damages extremely difficult to determine with certainty. The parties agree that payment to the University of the liquidated damages provided above shall constitute adequate and reasonable compensation to the University for the damages and injury suffered by University as a result of Mr. Eichorst's departure.

(c) The parties have bargained for and agreed that there shall be no liquidated damages under this section 9 in the event that prior to December 31, 2017 the current UNL Chancellor resigns or retires and Mr. Eichorst resigns within 90 days of such resignation or retirement.<sup>166</sup>

#### IV. CHALLENGES MOVING FORWARD

As the overseer of an athletic enterprise, an athletic director is responsible for upholding the best interests of a university's athletic programs and its student-athletes. This section discusses the challenges that athletic directors currently face and may face in the future, possible outcomes or consequences,

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166. *Contract of Employment Director of Athletics Department of Intercollegiate Athletics University of Nebraska-Lincoln with Shawn M. Eichorst*, *supra* note 56, § 9(b)-(c).

and steps that other athletic directors have already taken to address certain issues. In recent years, this balancing act has become more difficult as a result of uncertainty in the legal landscape of college athletics. Athletic directors must prepare for multifaceted challenges in key areas of college athletics, such as amateurism, conference autonomy, budget management, and institutional control. It is difficult to predict the consequences of ongoing legal battles and future legislation; thus, a successful athletic director must be flexible and adaptive and prepare for many possible outcomes.

A. *The Principle of Amateurism - Introduction*

The Principle of Amateurism states that

[s]tudent-athletes shall be amateurs in an intercollegiate sport, and their participation should be *motivated [primarily] by education* and by the physical, mental and social benefits to be derived. Student participation in [intercollegiate] athletics is an avocation, and *student-athletes should be protected from exploitation by professional and commercial enterprises.*<sup>167</sup>

The athletic director of today must be familiar with, understand, and know how to apply rules and regulations to fulfill his or her duty of oversight and compliance. These rules and regulations, such as amateurism, are what make college athletics unique. From the viewpoint of an athletic director, amateurism is what separates the athletic program from the corporate boardroom.

The concept of amateurism is constantly challenged. Recent developments call into question the legal status of NCAA rules that seek to protect amateurism. In *O'Bannon v. NCAA*, the United States Court of Appeals for the Ninth Circuit held that, although amateurism rules are likely procompetitive, the NCAA's amateurism rules are not exempt from antitrust scrutiny.<sup>168</sup> The court held that by applying the Rule of Reason, one proper alternative to NCAA compensation rules is to permit NCAA member universities to pay student-athletes up to the full cost of attendance.<sup>169</sup>

Another challenge to the concept of amateurism was a decision made by the National Labor Relations Board (NLRB) Region 13 Director who found that

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167. 2015-16 NCAA DIVISION I MANUAL art. 2.9 (2015) [hereinafter NCAA MANUAL] (emphasis added).

168. *O'Bannon v. NCAA*, 802 F.3d 1049, 1053 (9th Cir. 2015).

169. *Id.*

grant-in-aid scholarship football players at Northwestern University were employees under section 2(3) of the National Labor Relations Act's broad definition of employee.<sup>170</sup> However, this ruling was later overturned by the NLRB, stating that it lacked jurisdiction regarding Northwestern University's grant-in-aid scholarship football players.<sup>171</sup> Although the NLRB declined jurisdiction, it did not preclude itself from reconsidering the issue in the future.<sup>172</sup> Thus, student-athlete amateurism reform is still possible in the labor arena. Similarly, the court in *O'Bannon* allowed NCAA amateurism rules to be subject to antitrust scrutiny.<sup>173</sup> The athletic director of today must anticipate these possible changes because they will affect the budget, revenues, expenses, and the relationship between student-athletes and the university. Moreover, planning ahead is beneficial because not all reform in college athletics depends on prolonged litigation or judicial decisions as evidenced by those proactive universities that voted to allow athletic scholarships to cover the full cost of attendance.<sup>174</sup>

### 1. Athletic Scholarships

Before the approval of athletic scholarships up to the full cost of attendance, student-athletes were actually able to receive financial aid in excess of an athletic scholarship. All student-athletes could receive athletic scholarships capped at the amount of "full 'grant in aid.'"<sup>175</sup> Full grant-in-aid consists of "tuition and fees, room and board, and required course-related books."<sup>176</sup> Student-athletes could then request to receive financial aid beyond the amount of full grant-in-aid by applying for additional funds through programs such as the NCAA's Division I Student-Athlete Opportunity Fund and need-based federal Pell Grants.

Now, universities are allowed to award athletic scholarships that cover the "full cost of attendance."<sup>177</sup> Full cost of attendance consists of all the items included in full "grant in aid *plus* '[non-required] books and supplies,

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170. Nw. Univ. & Coll. Athletes Players Ass'n, 362 N.L.R.B. No. 167, \*8 (. 2015).

171. *Id.* at \*1.

172. *Id.*

173. *O'Bannon*, 802 F.3d at 1053.

174. Michelle Brutlag Hosick, *Autonomy Schools Adopt Cost of Attendance Scholarships*, NCAA.ORG (Jan. 18, 2015), <http://www.ncaa.org/about/resources/media-center/autonomy-schools-adopt-cost-attendance-scholarships>.

175. *O'Bannon*, 802 F.3d at 1054.

176. *Id.*

177. Hosick, *supra* note 174.

transportation, and other expenses related to attendance at the institution.”<sup>178</sup>

As of January 2015, student-athletes are able to receive, but are not entitled to receive, the full cost of attendance as part of their athletic scholarships.<sup>179</sup> The difference between full grant-in-aid and full cost of attendance will be given to student-athletes in the form of a stipend.<sup>180</sup> Although this is a great benefit to student-athletes, several burdens fall on athletic directors, their universities, and their budgets.

One difficulty arising from paying the full cost of attendance for athletic scholarships is that athletic directors must find ways to obtain the additional amount of money needed to pay student-athletes, which can be difficult. Within the Big 12 Conference, the additional full cost of attendance value per student-athlete ranges from \$2,700 to \$5,100 per year.<sup>181</sup> The average gap across all FBS universities is about \$3,500.<sup>182</sup> The highest and lowest full cost of attendance values among the Power 5 Conferences are \$6,018 and \$1,400, respectively.<sup>183</sup> Although this may not seem like much money compared to the millions of dollars in revenue generated by athletic programs, the total sum of money given to male and female student-athletes will noticeably drive up the cost of doing business for each university. Only twenty FBS universities actually made a profit from their athletic programs in 2013.<sup>184</sup> Athletic programs like the University of Texas might be able to afford to accommodate an additional \$5,750 per student-athlete, totaling approximately \$1.5 million.<sup>185</sup> Similarly, the Ohio State University Athletic Director Gene Smith already worked \$1.65 million into his budget to cover the full cost of attendance scholarships.<sup>186</sup> On the other hand, most athletic programs do not have the discretionary funds or the luxury to simply reallocate the budget. At the

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178. *O'Bannon*, 802 F.3d at 1054 n.3 (alteration in original) (emphasis added); see also NCAA MANUAL, *supra* note 184, art. 15.02.2.

179. Hosick, *supra* note 174.

180. See generally John Charles Bradbury & Joshua Pitts, *Full Cost of Attendance Scholarships and College Choice: Evidence from NCAA Football*, KENNESAW STATE UNIV., 1 (2015), <http://ssrn.com/abstract=2656409>.

181. *Id.* at 4.

182. *Id.* at 5.

183. *Id.* at 4.

184. John Powers, *Paying Stipends to College Athletes Remains a Divisive Issue*, BOS. GLOBE (Sep. 2, 2015), <https://www.bostonglobe.com/sports/2015/09/01/paying-stipends-college-athletes-remains-divisive-issue/eQV4hEW5A0wbTfw3S1KkKO/story.html>.

185. Epstein, *supra* note 41.

186. Todd Jones, *College Athletics | Ohio State's Gene Smith Sees 'Watershed Moment,'* BUCKEYE XTRA SPORTS (May 31, 2015), <http://buckeyextra.dispatch.com/content/stories/2015/05/31/smith-sees-watershed-moment.html>.

University of North Carolina, Athletic Director Bubba Cunningham has the challenge of generating approximately \$1.8 million in additional funds to cover the full cost of attendance for all current student-athletes.<sup>187</sup>

Another difficulty that athletic directors face is that not all universities can afford to pay the full cost of attendance to every student-athlete; however, they must do so to compete with other universities in the recruitment of potential student-athletes.<sup>188</sup> Now, a new element, or luxury, that athletic directors must compete with is the full cost of attendance stipend. The full cost of attendance value differs from campus to campus, creating an opportunity for universities to differentiate themselves in the eyes of recruits.<sup>189</sup> North Carolina State University Athletic Director Debbie Yow stated that a competitive advantage could be gained when a recruit “counts up how much cash he could make by going to school A versus school B.”<sup>190</sup> Universities with higher cost of attendance values can use it as an advantage. James Franklin, head football coach at Penn State University, said that having one of the highest cost of attendance values in the country is now something he can use in recruiting.<sup>191</sup> Many other university athletic department officials suggest that full cost of attendance values are being used as a recruiting tool.<sup>192</sup>

The NCAA requires that cost of attendance for student-athletes must be calculated “in accordance with the cost-of-attendance policies and procedures that are used for students in general.”<sup>193</sup> Thus, cost of attendance is calculated differently by each university’s financial aid office using federal regulations.<sup>194</sup> The calculations are significant because they have an effect on all students, not just student-athletes. Usually, universities are pressured to keep the cost of attendance amount low in an attempt to limit borrowing by its students and also

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187. Andrew Carter, *An Interview with UNC Athletic Director Bubba Cunningham on Changes in College Sports, the Reopening of an NCAA Investigation, Roy Williams Future and More*, CHARLOTTE OBSERVER (Aug. 29, 2014), <http://www.charlotteobserver.com/sports/college/football/article9158777.html>.

188. Jay Drew, *BYU Athletics Will Pay \$4,500 for Cost of Attendance, Among Highest in Country*, SALT LAKE TRIB. (May 3, 2015), <http://www.sltrib.com/sports/2465529-155/byu-athletics-will-pay-4500-for>.

189. Hosick, *supra* note 174.

190. Eric Prisbell, *What Is Full Cost of Attendance for NCAA Athletes?*, USA TODAY (Aug. 17, 2014), <http://www.usatoday.com/story/sports/college/2014/08/17/ncaa-full-cost-of-attendance/14200387/>.

191. Jake New, *More Money . . . If You Can Play Ball*, INSIDE HIGHER ED (Aug. 12, 2015), <https://www.insidehighered.com/news/2015/08/12/colleges-inflate-full-cost-attendance-numbers-increasing-stipends-athletes>.

192. *See* Powers, *supra* note 184.

193. NCAA MANUAL, *supra* note 167, art. 15.02.2.1.

194. *Id.* art. 15.02.2.

to avoid deterring potential students as a result of high costs.<sup>195</sup> However, athletic directors and coaches may now want to be involved in the decision-making to increase the full cost of attendance amount. Changes in the full cost of attendance values of universities in the Power 5 Conferences should be observed over the next few years to determine if, and by how much, university financial aid departments adjust their numbers in the wake of the full cost of attendance era. Failure to comply with financial aid regulations can result in financial liabilities, fines against a university, limitations on a university's Title IV program participation, or even elimination of a university's eligibility to participate in one or more of the Title IV programs.<sup>196</sup> Simply because universities are now allowed to award student-athletes scholarships up to the full cost of attendance, does not mean that all universities will. Athletic directors are faced with tough decisions if their universities cannot afford to award every student-athlete a scholarship up to the full cost of attendance. For some athletic directors, equality comes into play. Former Syracuse University Athletic Director Mark Coyle thinks that full cost of attendance scholarships should apply to all student-athletes because it is the "fair and right thing to do."<sup>197</sup> For athletic directors who cannot easily obtain funds from the operating budget or boosters, other means must be used to fund the new athletic scholarships. One possibility is to cut costs by eliminating non-revenue producing sports.<sup>198</sup>

Another difficult issue that athletic directors must balance if they pay full cost of attendance scholarships is compliance with Title IX. Applied to college athletics, "Title IX requires that female and male student-athletes receive athletics scholarship dollars proportional to their participation . . . ."<sup>199</sup> The dollar amount of full cost of attendance scholarships must be equal between male and female student-athletes.<sup>200</sup> This is unlike Title IX's equitable treatment and benefits requirements, which pertain to non-gender related differences such as the costs of different equipment used by male and female student-athletes (i.e., football helmets for male student-athletes will cost more

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195. Drew, *supra* note 188.

196. NAT'L ASS'N OF STUDENT FIN. AID ADMIN'S (NASFAA), POLICIES & PROCEDURES TOOLS: READING & INTERPRETING REGULATION & STATUTE 2 (2010), [https://www.kctcs.edu/en/Faculty\\_and\\_Staff/~media/B62359988720472ABE36AABDAF00A8D6.ashx](https://www.kctcs.edu/en/Faculty_and_Staff/~media/B62359988720472ABE36AABDAF00A8D6.ashx).

197. Prisbell, *supra* note 190.

198. Powers, *supra* note 184.

199. *Title IX Frequently Asked Questions*, NCAA.ORG, <http://www.ncaa.org/about/resources/inclusion/title-ix-frequently-asked-questions#how> (last visited May 25, 2016).

200. *Id.*

than equal quality shin guards for female student-athletes).<sup>201</sup>

When deciding how to distribute the new full cost of attendance scholarships, University of North Dakota's (North Dakota) Deputy Director of Athletics Daniella Irle illustrates the process of balancing Title IX rules with competitive recruiting.<sup>202</sup> To compete with Big Ten universities at recruiting men's hockey players, North Dakota had to adopt the full cost of attendance scholarship.<sup>203</sup> However, once adopted, Irle had to figure out how to allocate a proportional scholarship amount to female student-athletes.<sup>204</sup> In doing so, athletic directors need to worry about only the dollar amount being equal between male and female student-athletes.<sup>205</sup>

## 2. Profiting from Names, Images, and Likenesses of Student-Athletes

Before the Ninth Circuit Court of Appeals decided *O'Bannon*, United States District Court Judge Claudia Wilken ruled that restraints on the amount of compensation that student-athletes can receive for playing sports and for the use of their names, images, and likenesses (NILs) are a violation of section 1 of the Sherman Act.<sup>206</sup> On appeal, the Ninth Circuit affirmed that NCAA amateurism rules are not exempt from antitrust scrutiny and that universities should not be restricted from providing scholarships up to the full cost of attendance.<sup>207</sup> However, the Ninth Circuit did not require that student-athletes be paid for the use of their NILs.<sup>208</sup> Instead, it explained that

the district court identified two procompetitive purposes served by the NCAA's current rules: "preserving the popularity of the NCAA's product by promoting its current understanding of amateurism" and "integrating academics and athletics" . . . The question is whether the alternative of allowing students to be paid NIL compensation unrelated to their education expenses, is "virtually as effective" in preserving amateurism as *not*

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201. *Id.*

202. Stefanie Loh, *Stipends, Title IX Debated at NCAA Forum*, SAN DIEGO UNION-TRIB. (Apr. 25, 2015), <http://www.utsandiego.com/news/2015/apr/25/ncaa-inclusion-forum-cost-living-stipend-title-ix/>.

203. *Id.*

204. *Id.*

205. *Id.*

206. *O'Bannon v. NCAA*, 802 F.3d 1049, 1056 (9th Cir. 2015).

207. *Id.* at 1053.

208. *Id.* at 1076.

allowing compensation.

We cannot agree that a rule permitting schools to pay students pure cash compensation and a rule forbidding them from paying NIL compensation are both *equally* effective in promoting amateurism and preserving consumer demand.<sup>209</sup>

*O'Bannon* is a significant driver that lead to the creation of autonomy for the Power 5 Conferences and the approval to pay student-athletes the full cost of attendance. As athletic directors calculate how they will allocate and market full cost of attendance to student-athletes, they also need to prepare for the possibility of having to pay student-athletes for their NILs. Despite the Ninth Circuit's ruling, it is unlikely that the debate over student-athlete compensation for their NILs is finished. Successful athletic directors should still have contingency plans in place for the possibility of student-athlete compensation beyond full cost of attendance in the future.

### 3. Unionization

On March 26, 2014, the NLRB Region 13 Director issued a decision that Northwestern University grant-in-aid scholarship football players are employees of Northwestern University.<sup>210</sup> The Region 13 Director based his decision on an analysis of grant-in-aid scholarship football players and their relationships with Northwestern University under the common law definition of employee, which "is a person who performs services for another under a contract of hire, subject to the other's control or right of control, and in return for payment."<sup>211</sup>

In the director's analysis, the services that grant-in-aid scholarship football players performed were described simply as athletic services performed for Northwestern University.<sup>212</sup> Some of the benefits that Northwestern University received were revenues from ticket sales and television contracts and other benefits such as a positive reputation, media exposure, and increased applicants.<sup>213</sup> The compensation that grant-in-aid scholarship football players

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209. *Id.* (footnote omitted) (citations omitted) (quoting *O'Bannon v. NCAA*, 7 F. Supp. 3d 955, 1005 (N.D. Cal. 2014)) (citing *NCAA v. Bd. of Regents of the Univ. of Okla.*, 468 U.S. 85, 117 (1984); *Cnty. Of Tuolumne*, 236 F.3d 1148, 1159 (9th Cir. 2001)).

210. *Nw. Univ. & Coll. Athletes Players Ass'n.*, 362 N.L.R.B. No. 167, at \*8 (2015).

211. *Id.* at \*19.

212. *Id.*

213. *Id.*

received were economic benefits in the form of a scholarship, which covered tuition, fees, room, board, and books.<sup>214</sup> The controls that Northwestern University exerted over grant-in-aid scholarship football players were itineraries for training camp and away games, and the monitoring by coaches of adherence to NCAA and team rules.<sup>215</sup>

Supporters of college athletes being considered employees include the College Athletes Players Association (CAPA) and the players unions of five major professional sports leagues (NBA, NFL, NHL, MLB, and MLS).<sup>216</sup> Positive aspects of college athlete unionization are that the members of a team may gain a sense of ownership and create a close bond with teammates.<sup>217</sup> On the other hand, opponents of the NLRB Region 13 decision include the NCAA and six leaders in Congress.<sup>218</sup> NCAA president Mark Emmert described the “effort to unionize players a ‘grossly inappropriate’ way [of resolving issues] in college sports.”<sup>219</sup> There are many negative ways that unionization can impact college athletes. One negative impact of unionization is that the bargained-for benefits college athletes receive will likely violate NCAA rules.<sup>220</sup> The NCAA claimed that declaring college athletes employees will “[u]surp the responsibilities entrusted to our academic leaders to determine what priority and role athletics should play in the educational development of the college students placed in their care.”<sup>221</sup> If true, employee status of college athletes may therefore usurp the responsibilities of athletic directors. Some of the main responsibilities of athletic directors are to support and encourage the education of athletes and to uphold university and NCAA policies.

On August 17, 2015, the NLRB dismissed the Region 13 Director’s decision.<sup>222</sup> In the NLRB’s decision and review, it concluded that it should not assert jurisdiction over only the case involving Northwestern University

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214. *Id.*

215. *Id.* at \*20–21.

216. Jon Solomon, *NCAA and Others File Briefs in Northwestern Football Union Effort*, CBSSPORTS (July 3, 2014), <http://www.cbssports.com/collegefootball/writer/jon-solomon/24606865/ncaa-and-others-file-briefs-in-northwestern-football-union-effort>.

217. Todd Jones, *College Athletics | Northwestern: ‘Cats See On-Field Benefits from Union Talk*, BUCKEYE XTRA SPORTS (Aug. 3, 2014), <http://buckeyextra.dispatch.com/content/stories/2014/08/03/cats-see-on-field-benefits-from-union-talk.html>.

218. Solomon, *supra* note 216.

219. Eddie Pells, *NCAA President Mark Emmert Says Unionization Won’t Solve Problems*, NCAA.COM (Apr. 8, 2014), <http://www.ncaa.com/news/ncaa/article/2014-04-06/ncaa-president-mark-emmert-says-unionization-wont-solve-problems>.

220. Solomon, *supra* note 216.

221. *Id.* (emphasis added).

222. Nw. Univ. & Coll. Athletes Players Ass’n, 362 N.L.R.B. No. 167, at \*7 (2015).

grant-in-aid scholarship football players.<sup>223</sup> The NLRB reasoned that asserting jurisdiction “would not promote stability in labor relations.”<sup>224</sup> Specifically, the Northwestern University football team was just one of many other teams governed by the same rules to generate their success.<sup>225</sup> Terms applied to Northwestern University would disrupt its relations with other teams and create “[in]stability in labor relations.”<sup>226</sup> The NLRB emphasized that it had never before been asked to assert jurisdiction in a case involving college athletes of any kind, making the case “novel and unique.”<sup>227</sup> It discussed how college athletes are dissimilar from graduate student assistants, student employees, such as janitors or cafeteria workers, and professional athletes.<sup>228</sup>

Near the end of its decision, the NLRB made specific note that its order “does not preclude a reconsideration of this issue in the future.”<sup>229</sup> Just as athletic directors should develop a contingency plan for compensating athletes for their NILs, athletic directors should prepare for possible student-athlete unions in the future.

If, in the end, grant-in-aid scholarship football players are considered employees and are able to unionize, athletic directors will likely have to consider Title IX implications. Title IX may entitle female student-athletes to similar benefits even if they are not considered employees and do not participate in the bargaining process.<sup>230</sup>

Sexism in the marketplace, such as football generating more revenue than women’s sports, does not excuse discrimination by universities based on sex.<sup>231</sup> Athletic directors cannot allow their athletic departments to provide a higher quality athletic experience to one sex, even if the higher quality experience is obtained through collective bargaining.<sup>232</sup> If grant-in-aid scholarship football players are allowed to unionize and obtain benefits such as health insurance through collective bargaining, then that same benefit must be extended to a proportionate number of female student-athletes.<sup>233</sup> Thus, athletic directors

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223. *Id.* at \*3.

224. *Id.*

225. *Id.* at \*5.

226. *Id.*

227. *Id.* at \*4.

228. *Id.*

229. *Id.* at \*6.

230. Erin E. Buzuvis, *Athletic Compensation for Women Too? Title IX Implications of Northwestern and O’Bannon*, 41 J.C. & U.L. 297, 327–28 (2015).

231. *Id.* at 326.

232. *See id.* at 321–31.

233. *Id.*

must prepare for the possibility of deciding which female athletes will receive benefits that are bargained for by grant-in-aid scholarship football players.<sup>234</sup>

### B. Conference Autonomy

The NCAA Division I Board of Directors adopted a new Division I governance structure on August 7, 2014.<sup>235</sup> Under this new structure, athletic directors have an increased impact on decision making and additional responsibilities.<sup>236</sup> Athletic directors now make up 60% of the new Division I Board of Directors and will have a vote on the Board for the first time.<sup>237</sup> This Division I Board of Directors gave sixty-five universities that make up the Power Five Conferences (SEC, ACC, Big Ten, Pac-12, and Big 12) autonomy to create their own legislation.<sup>238</sup> A proposal goes through four stages before it becomes legislation.<sup>239</sup> First, a concept must be developed and proposed.<sup>240</sup> Second, the NCAA Division I Board of Directors, NCAA Division I Council, or any Division I conference must sponsor the proposal.<sup>241</sup> For a proposal related to Division I football, the proposal can be sponsored by only the Division I council or an FBS or FCS conference.<sup>242</sup> Third, the proposal must be drafted.<sup>243</sup> Fourth, the proposal then goes through a timeline unique to autonomy universities where the drafted proposal is discussed, reviewed, and modified before it is finally voted on.<sup>244</sup> Each university has one vote; three student-athletes from each of the Power 5 Conferences are also able to vote.<sup>245</sup> The legislation is adopted if one of two scenarios exists.<sup>246</sup> The first scenario requires majority vote of three of the five conferences *and* 60% of total votes.<sup>247</sup> The second scenario requires majority vote of four of the five conferences *and*

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234. *Id.*

235. Michelle Brutlag Hosick, *ADs Key to Restructuring Success*, NCAA.ORG (Oct. 13, 2014), <http://www.ncaa.org/champion/ads-key-restructuring-success>.

236. *Id.*

237. *Id.*

238. Jon Solomon, *NCAA Adopts New Division I Model Giving Power 5 Autonomy*, CBSSPORTS (Aug. 7, 2014), <http://www.cbssports.com/collegefootball/writer/jon-solomon/24651709/ncaa-adopts-new-division-i-model-giving-power-5-autonomy>.

239. NCAA MANUAL, *supra* note 167, art. 5.3.2.

240. *Id.*

241. *Id.* art. 5.3.2.2.2.1.

242. *Id.*

243. *Id.* art. 5.3.2.

244. *Id.*

245. *Id.* art. 5.3.2.1.7.1.

246. *Id.* art. 5.3.2.1.7.2.

247. *Id.*

a simple majority of total votes.<sup>248</sup>

The inherent control of the new governance structure does not give the Power 5 Conferences absolute authority to do whatever they wish, rather they are given “authority to adopt or amend legislation *that is identified as an area of autonomy.*”<sup>249</sup> Areas of autonomy include: Athletics Personnel, Insurance and Career Transition, Promotional Activities Unrelated to Athletics Participation, Recruiting Restrictions, Pre-enrollment Expenses and Support, Financial Aid, Awards, Benefits and Expenses, Academic Support, Health and Wellness, Meals and Nutrition, and finally, Time Demands.<sup>250</sup> Autonomy is a step toward more balanced and more efficient NCAA governance; athletic directors and other voting members of the Power 5 Conferences must make decisions that are within the scope and nature of the relevant area of autonomy.<sup>251</sup>

In January 2015, universities in the Power 5 Conferences first voted to approve increasing scholarship amounts for student-athletes to include the full cost of attendance.<sup>252</sup> Second, they adopted legislation not to cut a student-athlete’s scholarship for athletic reasons.<sup>253</sup> Third, they adopted legislation to permit student-athletes to borrow against their future earnings potential through loss-of-value insurance.<sup>254</sup>

With great power comes great responsibility. In just the first year since the Power 5 Conferences created the first official proposal to become autonomous in December of 2014, the group has already created at least twenty-four additional proposals to amend the NCAA Bylaws.<sup>255</sup> The Power 5 Conferences have not yet been able to evaluate the effects of their first adopted amendments over the course of one year. Although adopted legislation that allows student-athletes to receive scholarships up to the full cost of attendance is within the scope of the financial aid area of autonomy, athletic directors might experience unintended, negative consequences in the form of discontinued

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248. *Id.* art. 5.3.2.1.7.2.

249. NCAA MANUAL, *supra* note 167, art. 5.3.2.1.1 (emphasis added).

250. *Id.* art. 5.3.2.1.2 (a)–(k).

251. *Id.* art. 4.2.2 (j).

252. Hosick, *supra* note 174.

253. *Id.*

254. *Id.*

255. See NCAA, OFFICIAL NOTICE OF AUTONOMY PROPOSALS – DIVISION I (2014) (including Proposals 2014-11 through 2014-14); NCAA, 2015-16 DIVISION I AUTONOMY PUBLICATION OF PROPOSED LEGISLATION (2015), [https://www.ncaa.org/sites/default/files/2015-16%20NCAA%20Division%20I%20Autonomy%20POPL\\_92515.pdf](https://www.ncaa.org/sites/default/files/2015-16%20NCAA%20Division%20I%20Autonomy%20POPL_92515.pdf) (including Proposals 2015-15 through 2015-28).

non-revenue producing sports.<sup>256</sup> The millions of dollars that are now used to cover full cost of attendance must come from somewhere.<sup>257</sup>

### C. Budget Management and Revenue Generation

The athletic director of today must find ways to generate revenue to keep pace with rising expenses in university athletic programs. This task is difficult amidst financially struggling universities. Universities, in general, nearly doubled the amount of debt that they incurred in the last decade.<sup>258</sup> One reason why universities incur additional debt is because they want to maintain high levels of spending to increase brand recognition, student demand, and donor support.<sup>259</sup> However, most universities are unable to keep up with their spending because their revenues are down due to shrinking state educational funds and declines in attendance.<sup>260</sup>

Another contributor to this phenomenon is university spending on athletic programs. Because the vast majority of university athletic programs operate at a loss, universities contribute subsidies to their respective athletic programs.<sup>261</sup> Similar to increasing spending on the academic side of higher education, an arms race occurs on the athletic side as university athletic programs create new facilities and upgrade existing ones.<sup>262</sup> Syracuse University Athletic Director Mark Coyle is tasked with updating the aging Carrier Dome.<sup>263</sup> Unfortunately, his budget is tighter than most because private universities, such as Syracuse, receive little or no state funds for facility upgrades.<sup>264</sup>

More expenses exist from the costs of students. Unlike the spending on the academic side of higher education, the ratio of money spent on student-athletes

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256. Carter, *supra* note 187.

257. Powers, *supra* note 184.

258. Jeffrey J. Selingo, *Colleges Struggling to Stay Afloat*, N.Y. TIMES (Apr. 12, 2013), <http://www.nytimes.com/2013/04/14/education/edlife/many-colleges-and-universities-face-financial-problems.html>.

259. Tyler Kingkade, *College Sports Spending Poses Big Risk to University Budgets, Moody's Warns*, HUFFINGTON POST (Oct. 15, 2013), [http://www.huffingtonpost.com/2013/10/15/college-sports-budgets\\_n\\_4099324.html](http://www.huffingtonpost.com/2013/10/15/college-sports-budgets_n_4099324.html).

260. Selingo, *supra* note 259.

261. Kingkade, *supra* note 260.

262. KNIGHT COMM'N ON INTERCOLLEGIATE ATHLETICS, *COLLEGE SPORTS 101: A PRIMER ON MONEY, ATHLETICS, AND HIGHER EDUCATION IN THE 21ST CENTURY* 16 (2009), [http://www.knight-foundation.org/media/uploads/publication\\_pdfs/2009\\_KCIA\\_College\\_Sports\\_101.pdf](http://www.knight-foundation.org/media/uploads/publication_pdfs/2009_KCIA_College_Sports_101.pdf).

263. Chris Carlson, *The 7 Biggest Challenges Facing Syracuse's New Athletic Director*, SYRACUSE (June 18, 2015), [http://www.syracuse.com/orangesports/index.ssf/2015/06/7\\_reasons\\_potential\\_athletic\\_directors\\_might\\_not\\_want\\_the\\_syracuse\\_job.html](http://www.syracuse.com/orangesports/index.ssf/2015/06/7_reasons_potential_athletic_directors_might_not_want_the_syracuse_job.html).

264. *Id.*

to regular students is lopsided. “The Knight Commission says Division I schools with football spent \$91,936 per athlete in 2010, seven times the spending per student of \$13,628. Division I universities without football spent \$39,201 per athlete, more than triple the average student spending.”<sup>265</sup> NCAA data shows that only 16.2% of spending at Division I football universities goes to student aid; the rest is disbursed to salaries, game expenses, and facilities.<sup>266</sup> With the approval of athletic scholarships up to the full cost of attendance, the 16.2% of Division I spending on student aid will increase.

Taxes are another expense that should concern athletic directors, especially athletic directors at private universities that are not exempt from income tax under the broad constitutional doctrine of inter-governmental tax immunity or section 115 of the Internal Revenue Code (IRC) like public universities are.<sup>267</sup> Private universities and their athletic departments are exempt from paying corporate income tax under section 501(c)(3) of the IRC.<sup>268</sup> Section 501(c)(3) protects organizations that are both charitable and educational.<sup>269</sup> Universities, by virtue of being educational institutions, fall under a category of organizations presumed to be charitable by section 501(c)(3).<sup>270</sup> Notably, the NCAA is also exempt because it is an organization that operates in educational activities by promoting amateur athletics.<sup>271</sup> Although the NCAA and university athletic programs are defined as exempt organizations, there are three operational limitations that create concern as applied to college athletics.<sup>272</sup>

The first limitation is unreasonable “private inurement,” which prohibits an organization from paying unreasonable compensation to members inside the organization.<sup>273</sup> When applying private inurement to college sports, the compensation received by athletic directors and college coaches is a red flag. In 2013, David Williams of Vanderbilt University (Vanderbilt) was the highest paid athletic director in the country; he received \$3.23 million from Vanderbilt.<sup>274</sup> Williams’ payout was 629% higher than the average of Division

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265. Cliff Peale, *Athletics Cost Colleges, Students Millions*, USA TODAY (Sept. 15, 2013), <http://www.usatoday.com/story/news/nation/2013/09/15/athletics-cost-colleges-students-millions/2814455/>.

266. *Id.*

267. John D. Colombo, *The NCAA, Tax Exemption and College Athletics*, 2010 ILL. L. REV. 109, 134 (2010).

268. *Id.* at 113.

269. *Id.*

270. *Id.* at 113–14.

271. *Id.* at 119.

272. *Id.*

273. *Id.*

274. Upton & Berkowitz, *supra* note 100.

I athletic directors.<sup>275</sup> Also, it was more than twice as much as the second highest paid athletic director.<sup>276</sup> The highest salary for a college basketball coach for the 2014–2015 season was \$6.55 million paid to John Calipari by Kentucky, which is 888% higher than the NCAA average of approximately \$737,392.<sup>277</sup> Similarly, the highest salary for a college football coach for the 2014–2015 season was \$6.9 million paid to Nick Saban by the University of Alabama, which is 394% higher than the FBS average of approximately \$1.75 million.<sup>278</sup> “In most instances the college coach is the highest paid state employee of a public institution . . . .”<sup>279</sup> Although earnings of university athletic program employees seem unjustifiably excessive, they are the market prices for demanding positions, and therefore, not unreasonable.<sup>280</sup>

The second limitation is “private benefit,” which can actually apply to individuals or entities outside the organization or to transactions entered into at fair market value; the key question is whether or not the benefits to private individuals or entities excessively outweigh the charitable benefits.<sup>281</sup> Applying the private benefit limitation to college sports, one view is that television networks receive a benefit that greatly exceeds the benefit received by student-athletes.<sup>282</sup> This is unlikely because the television networks’ benefit comes after the significant price it negotiates for and pays to the NCAA and university athletic programs. The value received by the NCAA and university athletic programs is then distributed among the athletes in the form of scholarships and improved facilities, equipment, or athletic opportunities.

The third limitation is “commerciality,” which may prevent an organization, even a charity, from receiving the tax exemption if it runs a “significant commercial business.”<sup>283</sup> The key questions related to whether or not a

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275. Erik Brady et al., *Major College ADs Averaging More than \$500,000 in Pay*, USA TODAY (Mar. 6, 2013), <http://www.usatoday.com/story/sports/college/2013/03/06/college-athletics-directors-salaries-increase/1964239/>.

276. Upton & Berkowitz, *supra* note 100.

277. Jim Baumbach, *Huge Performance Bonuses Commonplace for NCAA Basketball Coaches*, NEWSDAY (Mar. 21, 2015), <http://www.newsday.com/sports/college/college-basketball/huge-performance-bonuses-commonplace-for-ncaa-basketball-coaches-1.10095574>.

278. Jim Baumbach, *Special Report: College Football Coaches' Salaries and Perks Are Soaring*, NEWSDAY (Oct. 4, 2014), <http://www.newsday.com/sports/college/college-football/fbs-college-football-coaches-salaries-are-perks-are-soaring-newsday-special-report-1.9461669>.

279. Martin J. Greenberg & Thom Park, *CEOs in Headphones—Financial Engineering* 3 (2013), <https://law.marquette.edu/assets/sports-law/pdf/CEOs-in-Headphones.pdf>.

280. Colombo, *supra* note 268, at 120–21.

281. *Id.* at 122.

282. *Id.* at 125.

283. *Id.* at 126.

commercial business is charitable are, whether or not its business is substantial and if so, whether or not it is in furtherance of an exempt purpose.<sup>284</sup> Applied to college athletics, it is likely that college athletics can be considered substantial given the media packages, coach and athletic director compensation, time spent on athletic activities, and hundreds of millions of dollars that flow through the industry.<sup>285</sup> However, whether or not a private university athletic program is a business in furtherance of the exempt purpose of charity or for education is less clear because neither the courts nor the IRS provide a clear explanation of what “in furtherance of” means. One viewpoint is that university athletic programs and the NCAA are commercial organizations because they price their products to maximize profits and purchase commercial advertisements.<sup>286</sup> But an opposing viewpoint is that these same profits fund non-revenue generating sports and student-athlete scholarships.<sup>287</sup>

There are two pending cases that could also impact costs to university athletic programs via payments to student-athletes. The first case *In re NCAA Student-Athlete Concussion Injury Litigation*<sup>288</sup> is in settlement discussions at the time this Article was written. The plaintiffs in this multidistrict litigation are current and former collegiate athletes who sued the NCAA on a class action basis, claiming that the NCAA breached certain contractual obligations and common law duties to the plaintiffs in the way it handled student-athlete concussions and concussion-related risks.<sup>289</sup> After conducting extensive discovery, the parties engaged in a lengthy mediation process.<sup>290</sup> A proposed settlement of \$75 million was rejected by the lead plaintiff Adrian Arrington.<sup>291</sup>

The second case *Jenkins v. NCAA*<sup>292</sup> is collecting support for a class action at the time this Article was written. Jenkins contends that any cap on student-athlete compensation, including up to the full cost of attendance, is unlawful.<sup>293</sup> United States District Court Judge Claudia Wilken, who ruled

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284. *Id.* at 127.

285. *See id.* at 131.

286. *Id.* at 127.

287. *See id.* at 128–29.

288. *See generally In re Nat'l Collegiate Athletic Ass'n Student-Athlete Concussion Injury Litig.*, No. 13 C 9116, 2014 WL 7237208 (N.D. Ill. Dec. 17, 2014).

289. *Id.* at \*1.

290. *Id.*

291. Jon Solomon, *NCPA: Lead Plaintiff in NCAA Concussion Case Opposes Settlement*, CBSSPORTS (June 9, 2015), <http://www.cbssports.com/collegefootball/writer/jon-solomon/25209963/ncpa-lead-plaintiff-in-ncaa-concussion-case-opposes-settlement>.

292. *See generally Jenkins v. NCAA*, 311 F.R.D. 532 (N.D. Cal. Dec. 4, 2015).

293. Daniel A. Kaufman & John G. Long, *Keeping Score on NCAA Student-Athlete Rules: Can Student-Athletes Receive Pay to Play and for Use of Their Names, Images and Likenesses?*, NAT'L L.

against the NCAA in *O'Bannon*, was assigned to this case.<sup>294</sup>

In light of current rising costs and threats of future costs looming, successful athletic directors will find a way to offset the difference. Some strategies are to slow down facility growth or decrease salaries; however, sometimes those options are just not realistic.<sup>295</sup> An increasing trend is cutting non-revenue generating sports teams from athletic programs.<sup>296</sup> However, this contradicts an athletic director's duties to ensure the fiscal integrity of the program and uphold NCAA principles that promote opportunities for student-athletes, not take them away.<sup>297</sup>

Alternatively, the following is a list of suggested revenue generating ideas by various athletic directors:

### 1. Group Funds

Some athletic directors propose expansion of the NCAA Student Assistance Fund.<sup>298</sup> The purpose of this fund is to provide student-athletes with up to \$500 per semester for minor expenses.<sup>299</sup> Most of the money in the fund emanates from the NCAA's \$10.8 billion media rights contract with CBS.<sup>300</sup> Expanding this fund is a reasonable method for athletic directors to increase revenue to help cover part of the full cost of attendance because the NCAA Student Assistance Fund is a system that is already in place.<sup>301</sup> Similarly, Conference USA created a \$6.3 million pool from which its members may take out up to \$450,000 each at any time over the next three years.<sup>302</sup>

### 2. Social Media

The University of Southern California (USC) found success using social

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REV. (Oct. 6, 2015), <http://www.natlawreview.com/article/keeping-score-ncaa-student-athlete-rules-can-student-athletes-receive-pay-to-play>.

294. *See generally Jenkins*, 311 F.R.D. 532.

295. Carter, *supra* note 187.

296. Michael Sanserino & Sam Werner, *Cost of College Athletics May Rise amid Challenges*, PITTSBURGH POST-GAZETTE (June 9, 2014), <http://www.post-gazette.com/sports/2014/06/10/Cost-of-college-athletics-may-rise-amid-challenges/stories/201406100048>.

297. *See id.*

298. *Id.*

299. *Id.*

300. *Id.*

301. *Id.*

302. Steve Berkowitz & Andrew Kreighbaum, *College Athletes Cashing in with Millions in New Benefits*, USA TODAY (Aug. 19, 2015), <http://www.usatoday.com/story/sports/college/2015/08/18/ncaa-cost--attendance-meals-2015/31904839/>.

media sponsorships in its social media accounts (i.e., Facebook, Twitter, Instagram, etc.).<sup>303</sup> USC's media rights holder Fox Sports said that the revenue received from these new social media sponsorship agreements is approaching the "mid-six figures" on an annual basis.<sup>304</sup> Although this seems like easy, sustainable money considering the popularity of social media, IMG College, the largest college sports marketing company, says that it is still too early to tell.<sup>305</sup> However, keeping in mind the uniqueness of college sports and fans' attitudes towards tradition, some athletic programs might remain at arms-length from social media; too much publicity could dilute their brands.

### 3. Fundraising

It is no secret that athletic directors engage with alumni and donors to maintain a positive relationship with some of the biggest supporters of the university athletic program. Athletic directors implement other ways to raise funds, too. At larger universities, where there is high demand for tickets to football and basketball games, athletic directors can charge for ticket priority.<sup>306</sup> Ticket priority is a payment in the form of a donation by a fan seeking season tickets; it is paid on top of the normal season ticket price to increase the likelihood of receiving a premium seat.<sup>307</sup> A fair number of fans are willing to pay the ticket priority price because the extra payment is a donation and it is 80% tax deductible, per IRS guidelines.<sup>308</sup>

### 4. Raised Prices:

San Diego State University Athletic Director Jim Sterk decided to raise ticket prices.<sup>309</sup> He informed season ticket holders that basketball ticket prices would increase to help the athletic program cover the new full cost of attendance payments.<sup>310</sup> Most of the hikes in price were in donor sections increasing price by 20%.<sup>311</sup> Other sections were re-classified to a more expensive section and

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303. Michael Smith, *Colleges Find Revenue Stream in Social Media*, SPORTS BUS. J. (Oct. 12, 2015), <http://www.sportsbusinessdaily.com/Journal/Issues/2015/10/12/Colleges/College-social-media.aspx>.

304. *Id.*

305. *Id.*

306. KNIGHT COMMISSION ON INTERCOLLEGIATE ATHLETICS, *supra* note 263, at 14.

307. *Id.*

308. *Id.*

309. Mark Zeigler, *SDSU Ups Cost of Hoops Season Tickets*, SAN DIEGO UNION-TRIB. (Apr. 1, 2015), <http://www.sandiegouniontribune.com/news/2015/apr/01/cost-increase-sdsu-basketball/>.

310. *Id.*

311. *Id.*

increased by 68%.<sup>312</sup> Athletic directors should be cautious to avoid upsetting donors if they use this method. Smaller universities that rarely have the opportunity to charge a ticket priority fee use more direct methods. In 2015, Georgia State charged students an athletics fee of \$554.<sup>313</sup> Student fees are a practice that athletic directors should tread lightly on.

#### D. Institutional Control

It seems like we can count on a new major university athletic scandal emerging every few years or so. Scandals are extremely harmful to all stakeholders involved because reputations of individuals and the university involved may be severely damaged.<sup>314</sup> As overseers of their athletic programs, athletic directors must do all they can to prevent scandals from occurring. Scandals vary in subject matter, people involved, length of time over which they occurred, and sanctions imposed.<sup>315</sup> This section focuses on major scandals involving more than just a few rogue individuals. The common denominator of scandals is that they each violate at least one subsection of the NCAA principle of Institutional Control and Responsibility, or Bylaw 2.1.<sup>316</sup> The principle broadly states that “[i]t is the responsibility of each member institution to control its intercollegiate athletics program in compliance with the rules and regulations of the [NCAA].”<sup>317</sup> Furthermore, each institution is responsible “for the actions of its staff members and for the actions of any other individual or organization engaged in activities promoting the athletics interest of the

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312. *Id.*

313. Brad Wolverton et al., *The \$10-Billion Sports Tab: How College Students Are Funding the Athletics Arms Race*, CHRON. OF HIGHER EDUC. (Nov. 15, 2015), [http://chronicle.com/interactives/ncaa-subsidies-main#id=table\\_2014](http://chronicle.com/interactives/ncaa-subsidies-main#id=table_2014).

314. Andy Clayton, *Penn State Has Paid More than \$92M as a Result of Jerry Sandusky Child Sex Abuse Scandal: Report*, N.Y. DAILY NEWS (Nov. 26, 2015), <http://www.nydailynews.com/sports/college/penn-state-paid-92m-result-jerry-sandusky-scandal-article-1.2447621>.

315. See generally FREEH SPORKIN & SULLIVAN, LLP, REPORT OF THE SPECIAL INVESTIGATIVE COUNSEL REGARDING THE ACTIONS OF THE PENNSYLVANIA STATE UNIVERSITY RELATED TO THE CHILD SEXUAL ABUSE COMMITTED BY GERALD A. SANDUSKY (2012), [http://progress.psu.edu/assets/content/REPORT\\_FINAL\\_071212.pdf](http://progress.psu.edu/assets/content/REPORT_FINAL_071212.pdf); NCAA, UNIVERSITY OF SOUTHERN CALIFORNIA PUBLIC INFRACTIONS REPORT (2010), <https://web1.ncaa.org/LSDBi/exec/miSearch?miSearchSubmit=public-Report&key=691>; NCAA, UNIVERSITY OF MIAMI PUBLIC INFRACTIONS REPORT (2013), <http://www.ncaa.org/sites/default/files/Miami%20Public%20Inf%20Rpt.pdf>; NCAA, NOTICE OF ALLEGATIONS, UNIVERSITY OF NORTH CAROLINA, CHAPEL HILL, CASE NO. 00231 (2015), <http://www.usatoday.com/story/sports/ncaaf/acc/2015/06/04/north-carolina-tar-heels-ncaa-notice-allegations-football-basketball/28474945/>.

316. NCAA MANUAL, *supra* note 167, art. 2.1.

317. *Id.* art. 2.1.1.

institution.”<sup>318</sup> University presidents and chancellors are recognized as the ultimate authorities of the athletic programs of their institutions.<sup>319</sup> However, athletic directors can be given institutional control alone or shared with the president or chancellor.<sup>320</sup>

When athletic directors and compliance personnel do not actively watch for signs of possible violations, they can unintentionally enable an environment for scandal. This is exactly what happened at the University of Miami (Miami).<sup>321</sup> The story originally surfaced in a *Yahoo! Sports* article; the article was based on an interview with Nevin Shapiro, who was a party to a \$930 million Ponzi scheme.<sup>322</sup> Shapiro claimed to have provided all types of illegal benefits like cash, prostitution, jewelry, electronics, nights out at strip clubs, and access to houses and yachts to student-athletes at Miami.<sup>323</sup> In the past, the NCAA noted that “institutions have a greater responsibility to monitor athletics representatives with ‘insider’ or favored status.”<sup>324</sup> Here, this applied to Miami because of its relationship with Shapiro, which involved the institution naming a student-athlete lounge after him, allowing him to lead the football team out of the locker room, and granting him access to the sidelines during football games.<sup>325</sup> Assessing whether or not the institution lacked control, the NCAA considered the overall “culture” of the athletic program.<sup>326</sup> It considered whether or not

- i. adequate compliance measures exist;
- ii. those compliance measures were appropriately conveyed to those who need to be aware of them;
- iii. the compliance measures are monitored to ensure they are followed; and
- iv. upon learning that a violation may have occurred, the

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318. *Id.* art. 2.1.2.

319. *Id.* art. 2.1.1.

320. *Id.* art. 6.01.1.

321. Charles Robinson, *Renegade Miami Football Booster Spells Out Illicit Benefits to Players*, YAHOO (Aug. 16, 2011), <http://sports.yahoo.com/news/renegade-miami-football-booster-spells-213700753--spt.html>.

322. *Id.*

323. *Id.*

324. *See* UNIVERSITY OF MIAMI PUBLIC INFRACTIONS REPORT, *supra* note 316, at 60.

325. *Id.* at 62.

326. *Id.* at 56.

institution takes timely and appropriate action.<sup>327</sup>

Ultimately, the NCAA determined that Miami lacked institutional control.<sup>328</sup> The NCAA stated that Miami's compliance measures were insufficient because many staff members, mainly coaches, reported inconsistent understanding of several policies, such as how and when to document phone calls or visits with recruits.<sup>329</sup> The continuous lack of proper communication of policies and lack of monitoring conduct lead to the growth of a culture that did not value compliance policies and procedures.<sup>330</sup> However, Miami claims that it "went to great lengths" to foster a culture of compliance through rules education.<sup>331</sup> Unfortunately, rules education alone is not enough; several members of the institution provided a poor understanding of the rules.<sup>332</sup> The culture at Miami seems to suggest that compliance rules were not valued, as evidenced by the fact that none of the thirty-eight program members involved in the violations took any steps to report any of the violations.<sup>333</sup> In its report, the NCAA noted that if effective compliance measures were monitored, the violations could have been prevented or deterred.<sup>334</sup> Some specific compliance measures, mentioned only briefly by the NCAA, included more frequent documentation of interactions with boosters and recruits, and better systems to monitor text messages and phone calls.<sup>335</sup>

In the Miami infractions report, the NCAA mentioned multiple ways in which athletic program leaders could have taken better steps to create a pro-compliance culture, mainly by being proactive while monitoring institution compliance.<sup>336</sup> One example is using strategy, such as anticipating where violations are most likely to occur.<sup>337</sup> Another example is following through with information about a potential violation.<sup>338</sup> Advances in technology also provide easy ways for university athletic programs to monitor themselves.

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327. *Id.* at 57.

328. *Id.* at 62.

329. *See id.* at 58.

330. *Id.*

331. *Id.* at 59.

332. *Id.*

333. *Id.* at 56.

334. *See id.* at 60.

335. *Id.*

336. *Id.* at 57.

337. *Id.* at 56–60.

338. *Id.*

Software from tech company JumpForward features a Compliance Toolbox that allows compliance departments to easily monitor many different areas of compliance, such as all phone calls, text messages, and e-mails sent to prospective student-athletes.<sup>339</sup>

The sex scandal at Louisville came to light when Katina Powell released her book entitled *Breaking Cardinal Rules* wherein she claims to have hired escorts on twenty-two occasions between 2010 and 2014 for men's basketball players.<sup>340</sup> She claims that these gatherings were organized by former Louisville basketball staffer Andre McGee.<sup>341</sup> Louisville Head Basketball Coach Rick Pitino stated that he does not know if it is true.<sup>342</sup> Investigations are ongoing at this time, so it is difficult to determine with certainty who knew and who was involved. Regardless of the outcome, the allegations alone are enough to damage the reputation of the athletic program at the University of Louisville.

From an athletic director perspective, the Louisville scandal may serve as an example of how difficult it is to know every activity of every person associated with the athletic program. Louisville President James Ramsay released a statement that reads, "For the past 18 years, Tom Jurich has served as athletic director of an exemplary program at U of L . . . [he is] committed to the values that are fundamental to the success of Cardinal athletics."<sup>343</sup> Jurich was ranked number one in a list compiled of the top twenty-five athletic directors in the country.<sup>344</sup> The rankings consider areas such as athletic success, stability, national respect, and avoidance of scandals and NCAA issues.<sup>345</sup> Even the most careful, compliant athletic directors are not immune from scandals.

When it comes to major university athletic program scandals, there is a consistent presence of a culture, not just a few individuals, that does not value compliance rules. Although the NCAA makes some recommendations in its

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339. *Compliance Toolbox*, JUMPFORWARD, <http://www.jumpforward.com/compliance-toolbox/> (last visited May 25, 2016).

340. Anthony Schoettle, *Grand Jury Investigating Louisville Basketball Sex Scandal*, IBJ (Oct. 30, 2015), <http://www.ibj.com/articles/55570-grand-jury-investigating-louisville-basketball-sex-scandal>.

341. *Id.*

342. Jerry Barca, *Rick Pitino, The Louisville Sex Scandal and the Scab Pulled back on College Athletics*, FORBES (Oct. 22, 2015), <http://www.forbes.com/sites/jerrybarca/2015/10/22/rick-pitino-the-louisville-sex-scandal-and-the-scab-pulled-back-on-college-athletics/>.

343. Jeff Greer, *U of L President Ramsey Preaches Patience*, COURIER J. (Oct. 8, 2015), <http://www.courier-journal.com/wlna/sports/college/louisville/2015/10/08/university-of-louisville-president-james-ramsey-preaches-patience-for-ncaa-school-investigation-into-book/73588794/>.

344. Matt Brown, *Top 25 College Athletic Directors*, SPORTS ON EARTH (Oct. 1, 2015), <http://www.sportsonearth.com/article/152470378/ncaa-best-athletic-directors-rankings>. These rankings were released two days before the Louisville scandal became public.

345. *Id.*

infractions reports, which are all in hindsight, the recommendations are still valuable to athletic directors because they provide insight into how to fix weaknesses in compliance. Athletic directors should learn from their own mistakes and the mistakes of others as a way to improve their own compliance strategies. Scandals are a way to lose jobs, donor support, reputation, and the integrity of the athletic program and university.

## V. CONCLUSION

The athletic director of today plays an expanded role in university athletic programs. Instead of performing duties focused on socializing with donors or sitting down with a calendar to create competition schedules, athletic directors now resemble CEOs and plan capital campaigns, master legal concepts, and sign multimillion dollar agreements. Athletic directors also now have more power in NCAA Division I governance through autonomy. There are several paths to the head athletic director chair, but one is causing a stir—the business outsider with minimal experience in college sports. The shift to this path has returned questionable results evidenced by the unsuccessful tenures of Dave Brandon at Michigan and Stephen Patterson at Texas. Their lack of success may suggest that the athletic director position requires skills unique to college sports, such as recognizing where the line is between university tradition and profits.

Another concept unique to college athletics is the principle of amateurism. It is the backbone of the college sports model as we know it. Legal and other regulatory entities like the NLRB are closer than ever to removing amateurism from the college sports. Athletic directors must uphold these principles of amateurism by duty in their contracts, but also because of the danger it poses to non-revenue generating sports, which would likely be eliminated because their funding would be paid to student-athletes of men's basketball and football. Another reason why amateurism is important to athletic directors is that it sets up the possibility of a scandal if it is not frequently reinforced and monitored by compliance employees. Finally, in a time where universities are spending more than ever, athletic directors must find new revenue streams to obtain sufficient funds to pay student-athletes up to the full cost of attendance. Between the risks of scandal, collapse of the amateurism model, and the unique skills required to successfully run a university athletic program, athletic directors earn every penny.