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FRANKLIN CIRCUIT COURT
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COMMONWEALTH OF KENTUCKY
FRANKLIN CIRCUIT COURT
DIVISION I
CIVIL ACTION NO. 07-CI-1765

RECEIVED
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FRANKLIN CIRCUIT COURT
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UNIVERSITY OF LOUISVILLE
University of Louisville
Louisville, Kentucky 40292

PLAINTIFF

v.

COMPLAINT

DUKE UNIVERSITY
Suite 4000
2400 Pratt Street
DUMC-3024
Durham, North Carolina 27710

DEFENDANT

SERVE: Pamela J. Bernard
Vice President & General Counsel
Suite 4000
2400 Pratt Street
DUMC-3024
Durham, North Carolina 27710
and
Secretary of State
Commonwealth of Kentucky
152 State Capitol
700 Capital Avenue
Frankfort, Kentucky 40601-3493

* * * * *

Plaintiff, the University of Louisville (the "University"), through counsel, for its
Complaint against Defendant, Duke University ("Duke"), states as follows:

PARTIES

1. The University is an agency of the Commonwealth providing post-secondary
education primarily in Louisville, Kentucky and is governed by KRS Chapter 164, in particular
KRS 164.810 through 164.870.

2. Duke is a private institution providing post-secondary education primarily in Durham, North Carolina.

JURISDICTION AND VENUE

3. The Court has personal jurisdiction over Duke pursuant to KRS 454.210 because it has transacted business with the University in the Commonwealth.

4. Venue is proper in this Court because the University is an agency of the Commonwealth and actions for breach of contract involving agencies of the Commonwealth must be brought in Franklin Circuit Court pursuant to KRS Chapter 45A.

BACKGROUND FACTS

5. The University and Duke entered into a bilateral Athletic Competition Agreement (the "Agreement") on June 23, 1999, a copy of which is attached hereto as Exhibit A.

6. The purpose of the Agreement "is to confirm the arrangements made for holding an athletic contest" between the University and Duke. Agreement, p. 1, ¶ 2.

7. The four football games to be played pursuant to the Agreement are as follows:

DATE	PLACE	TIME
October 5, 2002	Durham, NC	TBA
October 6, 2007	Louisville, KY	TBA
October 4, 2008	Durham, NC	TBA
October 3, 2009	Louisville, KY	TBA

Id.

8. The 2002 game was eventually scheduled for September 7, 2002 at Duke and was played that date, pursuant to a December 17, 2001 letter between the University and Duke, a copy of which is attached as Exhibit B.

9. On March 24, 2003, Duke wrote to the University, a copy of which is attached as Exhibit C, to advise that Duke was cancelling the remainder of the Agreement pursuant to

Section 13, despite the fact that both parties still had obligations remaining under the terms of the Agreement.

10. On March 28, 2003, the University wrote to Duke, a copy of which is attached as Exhibit D, and requested the liquidated damages of \$150,000 per contest as set forth in Section 13 of the Agreement. In the alternative, the University indicated it would accept a suitable replacement from the Atlantic Coast Conference (“ACC”) for the games cancelled by Duke.

11. On April 7, 2003 Duke responded to the University, a copy of which is attached as Exhibit E, contending that the liquidated damages would only be due if the University could not find a replacement of “similar stature” after a good faith effort to do so.

12. Counsel for the University and Duke exchanged additional correspondence regarding the matter in which the parties’ positions remained essentially unchanged.

13. The University has continued its efforts to complete its football schedules for 2007, 2008, 2009 and other years both before and after it received Duke’s letter cancelling the Agreement.

14. The schedule for the University’s 2007 football season, which is now past its midpoint, is as follows:

August 30, 2007	Murray State University	Home
September 6, 2007	Middle Tennessee State University (“MTSU”)	Home
September 15, 2007	University of Kentucky (“UK”)	Away
September 22, 2007	Syracuse University	Home
September 29, 2007	North Carolina State University	Away
October 5, 2007	University of Utah (“Utah”)	Home
October 13, 2007	University of Cincinnati	Away
October 19, 2007	University of Connecticut	Away
October 27, 2007	University of Pittsburgh	Home
November 8, 2007	West Virginia University	Away
November 17, 2007	University of South Florida	Away
November 29, 2007	Rutgers University	Home

15. Because Duke refused to honor its obligation under the Agreement to play the University during the 2007 football season, the University was unable to complete its schedule with teams of "similar stature" to Duke.

16. In both 2008 and 2009, the University's schedule will include seven Big East conference games.

17. Currently, the University's out-of-conference football schedule for 2008 includes games with UK, Tennessee Tech University, Kansas State University and MTSU, but the University needs at least one more out-of-conference football game for 2008 which it has been unable to schedule.

18. For 2009, the University's out-of-conference schedule includes a home game with Indiana State University ("Indiana State") and away games with UK and Utah. The University needs two additional out-of-conference games to complete its football schedule for 2009. Because Duke has refused to honor its obligation under the Agreement to play the University during the 2009 football season, the University was forced to replace Duke with a contest against Indiana State, which is not a member of the Football Bowl Subdivision and thus, is not a replacement of "similar stature."

19. The University has worked diligently and for a long period of time to find a replacement of "similar stature" to Duke. In fact, the University has solicited help from both Duke and ACC representatives in an effort to find a replacement of "similar stature" to Duke in order to complete its football schedules for 2007, 2008 and 2009. The University received little, if any, help from either Duke or the ACC in finding a replacement of "similar stature" to Duke.

20. Since Duke advised the University that it was terminating the Agreement, representatives of the University's Athletic Department have communicated by e-mail, telephone

or letter with the Athletic Departments of every member of the Football Bowl Subdivision in an effort to find a replacement of “similar stature” to Duke for the games cancelled by Duke. The University has also communicated with ESPN officials who schedule the college football games televised by ESPN, but such communications have been to no avail.

21. In fact, the University’s Athletic Department currently spends up to one hour per day attempting to find a suitable replacement for Duke and complete its football schedule for 2008 and 2009, as well as other years.

22. However, the University has been unable to schedule a “contest with a team of similar stature” to replace the football games cancelled by Duke. Agreement, p. 3, ¶ 13.

23. There are two primary reasons why the University has been unable to complete its football schedules “with a team of similar stature” to Duke. No team of “similar stature” to Duke is willing to play two games at Louisville in return for only one home game. In addition, there is no dispute that the schedule for 2007 is complete, and the schedules for 2008 and 2009 for teams of “similar stature” to Duke have also been completed. Moreover, there is no dispute that Indiana State, which is scheduled to play a contest against the University in 2009 as a replacement for Duke, is not a team of “similar stature” to Duke.

24. Therefore, it is futile for the University to continue its efforts to find a replacement of “similar stature” to Duke for the football game it needs for 2008 and 2009.

25. The University has continuously tried to resolve this issue with Duke, including through correspondence within the past few weeks, but has been unable to do so and now brings this Complaint.

COUNT I

BREACH OF CONTRACT

26. The University restates and realleges the allegations contained in Numerical Paragraphs 1 through 25 of this Complaint.

27. The University was unable to find a “team of similar stature” to replace the 2007 contest cancelled by Duke.

28. Duke has breached the Agreement by refusing to play the contest with the University scheduled for 2007 and by unequivocally repudiating its contractual obligation to play the remaining “contests” set forth in the Agreement for 2008 and 2009.

29. As set forth in the Agreement, Duke owes the University liquidated damages in the sum of \$150,000 for the game that was scheduled to be played in 2007 which it cancelled.

COUNT II

BREACH OF CONTRACT

30. The University restates and realleges the allegations contained in Numerical Paragraphs 1 through 29 of this Complaint.

31. The University has been unable to find a “team of similar stature” to replace the 2008 contest cancelled by Duke.

32. Duke has breached the Agreement by refusing to play the contest with the University scheduled for 2007 and by unequivocally repudiating its contractual obligation to play the remaining “contests” set forth in the Agreement for 2008 and 2009.

33. As set forth in the Agreement, Duke owes the University liquidated damages in the sum of \$150,000 for the game scheduled to be played in 2008 which it cancelled.

COUNT III

BREACH OF CONTRACT

34. The University restates and realleges the allegations contained in Numerical Paragraphs 1 through 33 of this Complaint.

35. The University has been unable to find a “team of similar stature” to replace the 2009 contest cancelled by Duke.

36. Duke has breached the Agreement by refusing to play the contest with the University scheduled for 2007 and by unequivocally repudiating its contractual obligation to play the remaining “contests” set forth in the Agreement for 2008 and 2009.

37. As set forth in the Agreement, Duke owes the University liquidated damages in the sum of \$150,000 for the game scheduled to be played in 2009 which it cancelled.

WHEREFORE, the University requests that this Court:

A. Award the University liquidated damages against Duke in the amount of \$150,000 for Count I.

B. Award the University liquidated damages against Duke in the amount of \$150,000 for Count II.

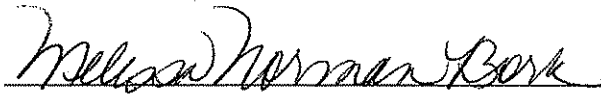
C. Award the University liquidated damages against Duke in the amount of \$150,000 for Count III.

D. Award the University its costs against Duke.

E. Award the University any and all prejudgment and post-judgment interest to which it is entitled.

F. Grant the University such further and additional relief as this Court deems appropriate.

Respectfully submitted,



Holland N. McTyeire, V
Melissa Norman Bork
Jesse A. Mudd

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101 South Fifth Street
Louisville, Kentucky 40202
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COUNSEL FOR PLAINTIFF,
UNIVERSITY OF LOUISVILLE

ATHLETIC COMPETITION AGREEMENT

This is a record of the agreement made June 23, 1999, between Duke University ("Duke") and the University of Louisville ("Louisville").

1. **PURPOSE:** The purpose of this agreement is to confirm the arrangements made for holding an athletic contest between Duke and Louisville.
2. **EVENTS:** Each party shall cause its varsity team to play the other in a game of Football in accordance with the terms of this agreement. The game shall be held as set forth below:

DATE	PLACE	TIME
October 5, 2002	Durham, NC	TBA
October 6, 2007	Louisville, KY	TBA
October 4, 2008	Durham, NC	TBA
October 3, 2009	Louisville, KY	TBA

3. **RULES FOR THE CONTEST:** The contest shall be governed by the rules of the National Collegiate Athletic Association ("NCAA") as in effect at the time of the contest.
4. **ELIGIBILITY OF TEAM MEMBERS:** The eligibility of each team member to participate in a contest shall be governed by the rules and regulations of his institution and the rules of the athletic conference, if any, of which his institution is a member.
5. **OFFICIALS:** The officials for the contest shall be an Atlantic Coast Conference crew for games at Louisville and a Conference USA crew for games at Duke.
6. **COMPENSATION TO VISITING TEAM:**
 - A. The Home Team for the game shall compensate the Visiting Team as set forth below, and no other compensation shall be due or payable. Such compensation shall be:
 - A flat fee of \$150,000 for each game.
 - The rate may be renegotiated with mutual agreement of both parties.
 - B. The Home Team shall pay the Visiting Team the amount due hereunder not later than February 15, following the contest.
 - C. Revenue from radio and television shall be handled as set forth in succeeding paragraphs and shall be in addition to any compensation payable under this paragraph.
7. **ALLOCATION AND PRICING OF TICKETS:**
 - A. The Home Team shall set ticket prices.
 - B. Band members, cheerleaders and mascots for each institution shall be admitted without charge, when in uniform.

- C. The visiting team shall be allowed 400 complimentary tickets.
 - D. The Visiting Team shall be allotted tickets for sale. It is understood and agreed that the visiting institution shall return to the home institution ninety percent (90%) of the unused or unsold tickets held by said visiting institution not later than Monday preceding said game. If the game is not sold out, the Visiting Party may return tickets, not to exceed One Hundred (100) upon arrival.
8. **SIDELINE AND PRESS BOX PASSES:**
- A. The Home Team shall be allowed 40 sideline passes and the Visiting Party shall be allowed 40 sideline passes.
 - B. The Visiting Team shall be allowed 10 press box passes for the use of visiting university personnel at no charge. A reasonable number of press box passes will be provided at no charge for visiting news media and sports information personnel.
9. **RADIO AND FILM RIGHTS:**
- A. The Home Team shall retain the revenue from and have full control of all radio rights to broadcast the game as well as all film rights.
 - B. The Visiting Team shall be allowed one free outlet for live or delayed radio broadcast and shall retain the revenue from such broadcast.
10. **TELEVISION:** Louisville recognizes that Duke has assigned its live, over-the-air broadcast and cable television rights to their home football games to the Atlantic Coast Conference, Inc. which in turn has contracted with certain television networks and cable broadcasters ("Conference Contracts"). Duke recognizes that Louisville has assigned its live, over-the-air broadcast and cable television rights to their home football games to Conference USA, which also has contracted with certain television networks and cable broadcasters ("Conference Contracts"). Any discussion regarding the conditions of the Conference Contracts shall be directed to the conference offices for the Atlantic Coast Conference and Conference USA.

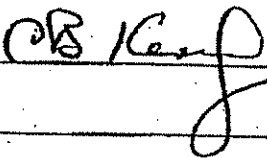
All rights fees from over-the-air broadcast and cable television rights shall be distributed based upon respective conference crossover agreements in force at that time.

In the event the game is not selected for an over-the-air or cable broadcast, the Home Team and Visiting Team shall have the game televised in its local market. The rights fee for such a broadcast shall be waived.


11. **CONCESSIONS, PARKING AND PROGRAM INCOME:** The Home Team shall have the exclusive right to sell programs and run concessions and parking. All income from program sales, concessions and parking shall be the sole property of the Home Team. The Visiting Team will be supplied with 75 game programs at no charge.

12. **IMPOSSIBILITY:** If an unforeseen catastrophe or disaster makes impossible the playing of any contest by either party, that contest shall be cancelled and neither party shall be responsible to the other for any loss or damage. Notwithstanding the preceding sentence, any financial obligations incurred by either party for promotion of the contest shall be shared equally. Cancellation of a contest under this paragraph shall not be deemed a breach of the contract. Notice of such a catastrophe or disaster shall be given as soon as possible. No such cancellation shall affect the parties' obligations as to subsequent contests covered by this agreement.
13. **DAMAGES:**
- A. If this agreement is breached by the Visiting Team, and no contest occurs between the Home Team and the Visiting Team, and if no contest with a team of similar stature is scheduled by the Home Team to replace the one canceled because of the breach, then the Visiting Team shall pay the Home Team a liquidated sum of \$150,000.
- B. If this agreement is breached by the Home Team, and no contest occurs between the Home Team and the Visiting Team, and if no contest with a team of similar stature is scheduled by the Visiting Team to replace the one canceled because of the breach, then the Home Team shall pay the Visiting Team a liquidated sum of \$150,000.
14. **INTEGRATION:** This contract is the total agreement between the two parties. Any conditions or modifications must be in writing, signed by both parties.
15. **ACCEPTANCE:**

DUKE UNIVERSITY:

By: 
 Title: _____
 Date: _____

UNIVERSITY OF LOUISVILLE:

By: 
 Title: Director of Athletics
 Date: November 29, 1999



DUKE UNIVERSITY DEPARTMENT OF ATHLETICS

CAMERON INDOOR STADIUM • BOX 90555 • DURHAM, NORTH CAROLINA 27708-0555
PHONE: (919) 684-2120 • FAX: (919) 681-7866

December 17, 2001

Kevin Miller
Associate Athletic Director/Internal Operations
Student Activities Center/Athletic Business Office
University of Louisville
Louisville, KY 40292

Dear Kevin:

This letter is to confirm the dates for the four-game Duke/U of Louisville football series.

September 7, 2002	Durham, NC
October 6, 2007	Louisville, KY
October 4, 2008	Durham, NC
October 3, 2009	Louisville, KY

If this is acceptable please indicate by signing this document.

We look forward to seeing you next fall.

Sincerely,


Chris Kinnally
Sr. Associate Athletic Director


Kevin Miller
Associate Athletic Director/Internal Operations



DUKE UNIVERSITY DEPARTMENT OF ATHLETICS

CAMERON INDOOR STADIUM • BOX 90555 • DURHAM, NORTH CAROLINA 27708-0555

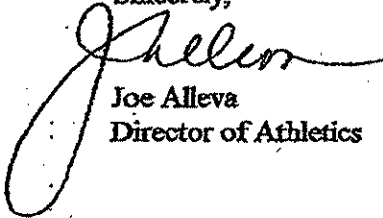
March 24, 2003

Mr. Tom Jurich
Director of Athletics
University of Louisville
Department of Athletics
Room E301
Louisville, KY 40292

Dear Mr. Jurich:

As you know, Duke University and the University of Louisville are scheduled to play football games in 2007, 2008, and 2010. I write to inform you that, under section 13 of our agreement, Duke University will not participate in those contests. I write so far in advance so that you will have ample time to find replacement games.

Sincerely,



Joe Alleva
Director of Athletics



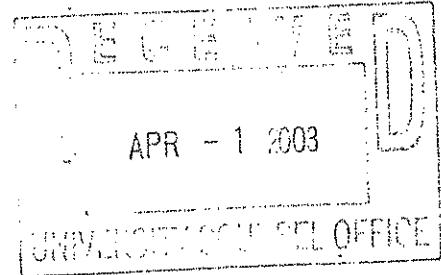
CARDINAL ATHLE

University of Louisville
Louisville, Kentucky 40292
Phone: (502) 852-5732
FAX: (502) 852-0816

UNIVERSITY of LOUISVILLE

March 28, 2003

Mr. Joe Alleva
Director of Athletics
Duke University
Cameron Indoor Stadium
Box 90555
Durham, North Carolina 27708-0555



Dear Joe:

Tom Jurich asked me to follow up on your March 24, 2003 letter that cancels our scheduled football games in 2007, 2008 and 2009 (not 2010 as you stated). The cancellation fee for each game is \$150,000 per contest.

Liquidated damages are outlined in Section 13 of our agreement as you referenced. I also referenced liquidated damages in an August 3, 1999 letter to Chris Kennedy, Senior Associate AD at Duke.

I spoke with Tom late yesterday and he indicated he would accept a suitable replacement from the ACC for the three games currently scheduled. Two games in Louisville and one that Louisville returns on the date we have blocked.

Please advise. We will confirm the cancellation once we agree upon the stated terms of cancellation.

Sincerely,

Kevin Miller
Associate Athletic Director

Cc Tom Jurich, Director of Athletics
Angela Koshewa, University Legal Counsel



DUKE UNIVERSITY DEPARTMENT OF ATHLETICS

CAMERON INDOOR STADIUM • BOX 90555 • DURHAM, NORTH CAROLINA 27708-0555

April 7, 2003

Kevin Miller
Associate Athletic Director
University of Louisville
Louisville, Kentucky 40292

Dear Mr. Miller:

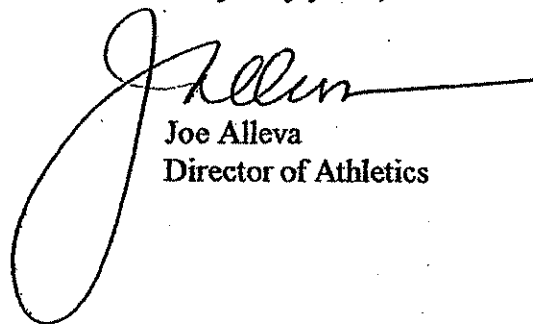
We were puzzled by your letter of March 28, 2003.

As you know, I previously notified you of Duke's intention to cancel the remaining games (two in Louisville, one in Durham) under the contract dated December 3, 1999 between Duke and Louisville. We are well aware of Duke's obligations under the contract regarding cancellation of games, and thus were surprised to receive your letter stating that you would agree to cancellation of the remaining games subject to receipt from Duke of \$300,000 in liquidated damages for the games to be played at Louisville.

According to paragraph 13 of the contract, the team canceling the game owes the non-cancelling team the liquidated sum of \$150,000 for each cancelled game IF the non-cancelling team is unable to schedule a replacement game. Given that the remaining games are not scheduled to occur until 2007, 2008, and 2009, that would seem to provide sufficient time to find replacement games. Accordingly, the liquidated damages would only be due after the non-cancelling team has made a good faith, but unsuccessful, effort to mitigate its damages by scheduling replacement games.

We trust that this clarifies the matter for you.

Very truly yours,



Joe Alleva
Director of Athletics