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

FILED
APR 08 2008
FRANKLIN CIRCUIT COURT
SALLY JUMP, CLERK

UNIVERSITY OF LOUISVILLE PLAINTIFF

v.

THE UNIVERSITY'S RESPONSE TO DUKE'S MOTION FOR JUDGMENT ON THE PLEADINGS

DUKE UNIVERSITY DEFENDANT

* * *** * *

Plaintiff, the University of Louisville (the "University"), through counsel, for its Response to the Motion for Judgment on the Pleadings filed by Defendant, Duke University ("Duke") states as follows:

INTRODUCTION

This is a breach of contract action as a result of Duke's breach of an Athletic Competition Agreement (the "Agreement") entered into by the parties on June 23, 1999. Pursuant to the Agreement, the parties were to play four games in 2002, 2007, 2008 and 2009. After the University played the first game at Duke in 2002, Duke cancelled the remaining games under the Agreement. The Agreement contains a liquidated damage clause which provides for the payment of $150,000 per game for a breach unless the non-breaching party is able to schedule a replacement game with a "team of similar stature." *See*, Agreement, ¶ 13, Complaint, Exhibit A. The University filed this action against Duke seeking liquidated damages under the Agreement because, despite diligent efforts, the University has been unable to find a "team of similar stature" to replace any of the games cancelled by Duke. Complaint, ¶ 22. As alleged by the University, there is no team of "similar stature" that will replace the three games cancelled by Duke, which would require two of the three games to be played in Louisville.

Duke has moved for judgment on the pleadings claiming that the University replaced the 2007 game with a game with a "team of similar stature" and that the 2008 and 2009 games are not ripe for adjudication because it is still possible for the University to find a "team of similar stature" to replace Duke. Duke's Memorandum, pp. 5-8. Duke submits information outside the pleadings in an effort to prove that the University replaced the 2007 game with a contest against the University of Utah ("Utah") and that Utah is a "team of similar stature" to Duke. As demonstrated below, Duke's Motion fails on all counts and must be denied.

First, because Duke submitted information outside the pleadings, its motion cannot be treated as one for judgment on the pleadings, but rather must be decided as a motion for summary judgment. CR 12.03. Second, because discovery has just begun, a motion for summary judgment is premature. *Pendelton Bros. Vending Co. v. Comm. Fin. & Admin. Cab.*, 758 S.W.2d 24, 29 (Ky. 1988), (*citing Hartford Ins. Group v. Citizens Fidelity Bank & Trust Co.,* 579 S.W.2d 628 (Ky. App. 1979)). As such, Duke's Motion cannot properly be considered by the Court and must be denied. *Id.*

Third, contrary to Duke's assertion, the term "team of similar stature" is not defined in the Agreement and its meaning cannot be determined without a review of extrinsic evidence. Indeed, Duke submitted information outside the pleadings to support its claim that the University replaced Duke for the 2007 game with a "team of similar stature." The University disputes that it replaced Duke with Utah and that Utah is a "team of similar stature" to Duke. Therefore, the University must be permitted to take discovery to gather evidence to support its position concerning whether Utah replaced Duke and what is meant by a "team of similar stature." Duke's Motion is, therefore, not only premature, but a dispute of fact exists at this time which

precludes summary judgment. *See, Cook United, Inc. v. Waits*, 512 S.W.2d 493, 495 (Ky. 1974). *See also, Equitana Ins. Co. v. Slone & Garret, P.S.C.*, 191 S.W.3d 552, 556 (Ky. 2006).

Finally, Duke's Motion concerning the ripeness of the University's claims on the 2008 and 2009 games must also be denied. Duke argues that the University's claims for damages for these years is not ripe because "these seasons have yet to begin" and the University "may yet find a 'team of similar stature' to replace the games" cancelled by Duke. Duke's Memorandum, pp. 7-8. The University alleged in its Complaint, however, that "the schedules for 2008 and 2009 for teams of 'similar stature' to Duke have . . . been completed" and that "it is futile for the University to continue its efforts to find a replacement of 'similar stature' for Duke for the football game it needs for 2008 and 2009." Complaint, ¶¶ 23 & 24. Taking these allegations as true, as the Court must in ruling on a motion for judgment on the pleadings, Duke's Motion fails on its face. *City of Pioneer Vill. v. Bullitt County*, 104 S.W.3d 757, 759 (Ky. 2003). Moreover, it is without dispute that Utah did not replace all three games cancelled by Duke or that any other team, be it of a similar stature or otherwise, assumed Duke's remaining obligations under the Agreement. For these reasons, Duke's Motion must be denied on all counts.

STATEMENT OF FACTS AND PROCEDURAL HISTORY

A. The Agreement.

On June 23, 1999, the University and Duke entered into the Agreement for a four game football series to be played October 5, 2002 (at Duke), October 6, 2007 (at Louisville), October 4, 2008 (at Duke) and October 3, 2009 (at Louisville). *See*, Agreement ¶ 2, Complaint, Exhibit A. At Duke's request, the date of the 2002 game was ultimately changed and played on September 7, 2002. *See*, Complaint, Exhibit B. After playing only the 2002 game, Duke breached the Agreement and informed the University that it would not fulfill its obligation to play the remaining games. *See*, Complaint, Exhibit C.

Paragraph 13 of the Agreement states that if the non-breaching party cannot replace the breaching party with a "team of similar stature," then the breaching party owes $150,000 in liquidated damages for each game. Agreement ¶ 13, Complaint, Exhibit A. The term "team of similar stature" is not defined in the Agreement. The University has worked diligently since Duke breached the Agreement, but has been unable to find a team of similar stature to replace Duke for the 2007, 2008 and 2009 games. Complaint, ¶ 19. As a result of Duke's breach of the Agreement, the University was left with an uneven three-game opening in its future schedules, requiring the University to find an opponent of similar stature willing to play either two home games in Louisville in exchange for only one home game, or which would be willing to play the University in Louisville with no home game in return. *Id.* at ¶ 23.

On March 21, 2007, Greg Brohm ("Brohm"), the University's Director of Football Operations, advised that he had contacted all Bowl Championship Series ("BCS") conference teams and had received no interest from any of them in playing the University. *See*, UL 0740, Exhibit A. Brohm indicated the options for finding games for the 2008 and 2009 seasons were to schedule games with a Division I-AA team (now known as the Football Championship Subdivision), look for a two-for-one with Florida Atlantic or another Sun Belt team (which conference does not contain teams of similar stature to Duke) or look for a home-and-home game with a team from one of the other BCS Conferences not eligible for an automatic bowl berth in a BCS Bowl and, therefore, not of similar stature to Duke. *Id.*

As described in the Complaint, despite the University's best efforts, the University has been unable to schedule a "contest with a team of similar stature" to replace the football games cancelled by Duke. *Id.* at ¶¶ 20-22. "[T]he schedules for 2008 and 2009 for teams of 'similar stature' to Duke have also been completed" and "its 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." *Id.* at ¶¶ 23 & 24. In fact, on February 25, 2008 the University publicly released its schedule for 2008. *See* The University's 2008 Schedule, Exhibit B.

B. Procedural History.

The University filed its Complaint on November 1, 2007, and also served discovery. Duke filed its Answer on December 1, 2007 and on that date propounded discovery to the University. Duke's discovery directly contradicts its current claim that "the facts are not in dispute and the parties need not undertake the process of pursuing discovery on them." Duke's Memorandum, p. 4. The parties served their written responses on January 9, 2008 and exchanged documents on January 29, 2008.

Duke's Motion contends that **only** four factors lead to the conclusion that Utah is a team of similar stature to Duke. Duke's Memorandum, p. 6. The four factors are: (i) Utah had a better record than Duke in 2007; (ii) Utah played in a bowl game and Duke did not; (iii) Utah and Duke played the same number of ranked teams in 2007 (although the exact source of the rankings and whether they were attained at the time of the game or after the season is unclear); and (iv) the University's game with Utah was televised on ESPN. *Id.* Ironically, in Duke's Responses to the Interrogatories, which it now claims are unnecessary, it stated that:

> [A]ny and all college varsity football teams in the Football Bowl Subdivision (formerly Division 1-AA) are teams of similar stature to Duke, as that term is used in the Agreement and as that term is understood in the context of college football programs. Additionally Duke states that any and all college varsity football teams in the Football Championship Subdivision (formerly Division I-AA) that would be considered as good or better than Duke in football, including but not limited to, any Football Championship Subdivision teams the Plaintiff played, or has agreed to play, in the ten years prior to signing the Agreement and the ten years after signing the Agreement are teams of a "similar stature" to Duke, as that term is used in the Agreement and as that term is understood in the context of college football programs.

Duke's Responses, p. 2, relevant portions of which are Exhibit C.[1] Duke's contradictory assertions confirm that the meaning of the phrase "team of similar stature" cannot be determined from the pleadings. As such, Duke's current Motion must be denied.

Duke's Motion, which relies on facts which were already known at the time Duke answered the Complaint and propounded discovery (only Utah's bowl game result was not yet known), was only filed after the parties began discussing deposition dates and the University notified Duke that it believed Duke's Discovery Responses were deficient. *See* e-mails exchanged between counsel addressing certain of these issues, Exhibit D.

ARGUMENT

I. DUKE'S MOTION MUST BE DENIED AS IT CANNOT BE DECIDED ON THE PLEADINGS.

Duke requests that the Court enter a judgment in its favor pursuant to CR 12.03. When a party moves for a judgment on the pleadings, it must admit for the purposes of its motion not only the truth of all its adversary's well-pleaded allegations of fact and the fair inferences to be drawn from them, but also the untruth of all of its own allegations which have been denied by its adversary. *City of Pioneer Vill.*, *supra*, 104 S.W.3d at 759. Civil Rule 12.03 provides that judgment on the pleadings should be granted only "if it appears beyond a doubt that the nonmovant can prove no set of facts that would entitle him to relief." *Spencer v. Woods*, 282 S.W.2d 851 (Ky. 1955). *See also*, Phillips, KENTUCKY PRACTICE, RULES OF CIVIL PROCEDURE ANNOTATED, 6th ed., Vol. 6, p. 294. Thus, a motion for a judgment on the pleadings is appropriate only when the "allegations of a pleading are admitted and only questions of law

[1] Conversely, although ignored by Duke in its Motion, the University stated in its Responses to discovery that it "considers any school that is a member of a Bowl Championship Series ("BCS") conference whose champion automatically qualifies for a BCS bowl game to be a 'team of similar statute to Duke. . . . The University also considers Notre Dame to be a 'team of similar stature' to Duke." *See*, University's Response to Duke's Interrogatory No. 15.

remain." *Id.*; *Archer v. Citizens Fid. Bank and Trust Co.*, 365 S.W.2d 727 (Ky. 1963). Such is not the case here.

Although Duke states that it admits all of the factual allegations contained in the University's Complaint (which it does not) and that consideration of information outside the pleadings is not needed to decide its motion, Duke submits information outside the pleadings in support of its argument that the University replaced the 2007 Duke game with a contest against Utah and that Utah is a "team of similar stature" to Duke. Duke's Memorandum, pp. 6-7, Exhibits 3 & 4. While the University disagrees with Duke's contention that Utah replaced Duke and is a "team of similar stature," it agrees that the determination of which teams are teams "of similar stature" can only be resolved by looking to information outside the pleadings. Duke's own submission, therefore, demonstrates that the issue is not appropriate for consideration on a motion for judgment on the pleadings and its present Motion should be denied.

II. DUKE'S MOTION CANNOT BE DECIDED ON SUMMARY JUDGMENT AS DISCOVERY HAS JUST BEGUN.

Civil Rule 12.03 provides that "[i]f . . . matters outside the pleadings are presented to and not excluded by the court, the motion shall be treated as one for summary judgment and disposed of as provided for in Rule 56, and all parties shall be given reasonable opportunities to present all materials made pertinent to such a motion by Rule 56." Under Kentucky law, summary judgment is to be granted cautiously and is appropriate only when it appears impossible for the non-movant to prove facts establishing a right to the relief requested. *Kreate v. Disabled Am. Veterans*, 33 S.W.3d 176, 178 (Ky. App. 2000). A motion for summary judgment is proper only after the party opposing the motion has been given ample opportunity to complete discovery and develop the facts. As the Court of Appeals recently explained, "for summary judgment to be properly granted, the party opposing the motion must have been given adequate opportunity to

discover the relevant facts. Only if that opportunity was given do we reach the issue of whether there were any material issues of fact precluding summary judgment." *Suter v. Mazyck*, 226 S.W.3d 837, 841-42 (Ky. App. 2007)

Here, not only has the University not been given adequate opportunity to complete discovery, but discovery has just begun. The University disputes Duke's contention both that it replaced Duke with Utah and that Utah is a "team of similar stature" to Duke. These issues cannot be resolved without consideration of information outside the pleadings as evidenced by Duke's own submission of such information. Because the University has not been given adequate opportunity to complete discovery on these issues, Duke's Motion is improper and must be denied. *Pendleton Bros. supra*, 758 S.W.2d at 29.

III. DUKE'S MOTION MUST BE DENIED BECAUSE THE MEANING OF THE PHRASE "TEAM OF SIMILAR STATURE" CANNOT BE DETERMINED WITHOUT EXAMINATION OF EXTRINSIC EVIDENCE.

Duke argues the University cannot recover damages for the 2007 game because it replaced the Duke game with a contest against a "team of similar stature." Duke asserts that the phrase "team of similar stature" is clear and unambiguous and not susceptible to more than one reasonable interpretation. A review of relevant case law, the Agreement and the positions of the parties demonstrates Duke is wrong.

"[T]he construction and interpretation of a contract, including questions regarding ambiguity, are questions of law to be decided by the court." *First Cmty. Bank of Prestonburg v. West*, 55 S.W.3d 829, 835 (Ky. App. 2000). "An ambiguous contract is one capable of more than one different, reasonable interpretation." *Central Bank & Trust Co., v. Kincaid*, 617 S.W.2d 32, 33 (Ky. 1981). To determine whether an ambiguity exists, the court must decide whether "the contract provision is susceptible to inconsistent interpretations." *Transport Ins. Co. v. Ford*, 886 S.W.2d 901, 905 (Ky. App. 1994). If the question of interpretation depends on a choice

among reasonable inferences to be drawn from extrinsic evidence, the contract is ambiguous and the question of interpretation must be determined by the trier of fact. *Cook United, Inc.*, *supra*, 512 S.W.2d at 495. *See also, Equitana Ins. Co.*, *supra*, 191 S.W.3d at 556 ("[i]f the writing is ambiguous, the factual question of what the parties intended is for the jury to decide.") Therefore, once a court determines an ambiguity exists, areas of dispute concerning reasonable inferences to be drawn from the extrinsic evidence preclude summary judgment. *Id.*

Even though there is no dispute that it was not played on the same date, Duke argues that the University replaced the 2007 game with a game against Utah because the University played Utah during the same week of the season as the game against Duke was to be played. Yet, there is no way to glean from the University's 2007 schedule alone which of the twelve games played during the season was the one which replaced the game cancelled by Duke. Although generally set years in advance, a team may rearrange its schedule to fill openings created, for example, when a team reneges on its obligation to play, such as Duke did in this case. In those circumstances, a team may have to change the dates of previously scheduled games to accommodate the schedule of an opponent secured to replace a cancelled game. Even the 2002 game between Duke and the University originally scheduled in 1999 to be played on October 5, 2002, was changed in December 2001 at Duke's request and was played on September 7, 2002.

Without knowing when each of the games on the University's 2007 schedule was originally set to be played, whether there was any change in that date and why, Duke cannot know which of the twelve games played by the University in 2007 was the game secured to replace the one cancelled by Duke. Duke's assertion to the contrary is no more than an assumption which Duke has no evidence to support. Duke has failed to demonstrate that the

University can prove no set of facts showing Utah was not a replacement for Duke in its 2007 schedule. Accordingly, Duke's Motion must be denied. *Spencer*, *supra*, 282 S.W.2d at 851.

Duke also argues that Utah is a "team of similar stature" to Duke and submits materials outside of the pleadings in support of this contention. However, Duke's submission of information outside the pleadings is, in essence, an acknowledgment that the phrase "team of similar stature" is ambiguous. Contrary to Duke's assertion, a team's quality, status or "stature" cannot be determined by looking at its win/loss record and schedule for one given year in isolation. A school's quality or status is determined primarily by its conference affiliation and whether that conference is one whose champion receives an automatic berth in a BCS Bowl. Regardless, a determination of the factors to be considered cannot be made from looking only to the Agreement or the pleadings in this case. As a result, the record on this issue must be developed and the meaning of the phrase "team of similar stature" cannot be decided at this time.

Moreover, Duke's interpretation as described in its discovery responses would essentially render the phrase "team of similar stature" meaningless and would allow Duke to escape its obligation to pay for breach of the Agreement as long as the University scheduled a replacement game with any college football team. *See*, Duke's Responses, p. 2, Exhibit C. Such an interpretation is completely unreasonable. Yet, even if the Court could consider this a reasonable interpretation, Kentucky courts adhere to the rule of *contra proferentem* in construing contracts; *i.e.*, "when a contract is susceptible of two meanings, it will be construed strongest against the party who drafted and prepared it." *B. Perini & Sons v. Southern Ry. Co.*, 239 S.W.2d 964, 966 (Ky. 1951). Here, Duke drafted the Agreement at issue. *See* UL 0001 – 0005, Exhibit E. As such, if there is any question as to the meaning of "team of similar stature," it must be construed against Duke – another reason Duke's Motion must be denied.

IV. THE UNIVERSITY'S CLAIMS FOR THE 2008 AND 2009 GAMES ARE RIPE FOR ADJUDICATION AND DUKE'S MOTION MUST BE DENIED.

Duke's Motion concerning the ripeness of the University's claims for the 2008 and 2009 games must also be denied. Duke argues that the University's claims for damages for the 2008 and 2009 games are not ripe and that the court lacks subject matter jurisdiction over them because "these seasons have yet to begin" and the University "may yet find a 'team of similar stature' to replace" the games Duke was to play in the 2008 and 2009 seasons. Duke's Memorandum, pp. 7-8. The Supreme Court has reiterated, that in determining the existence of subject matter jurisdiction, the focus is whether, "on the face of the complaint," it presents the type of case over which the court normally has jurisdiction. *Shamrock Coal Co. v. Maricle*, 5 S.W.3d 130, 133 (Ky. 1999). There can be no question that a breach of contract claim is the "type" of claim over which circuit courts normally have jurisdiction.

Moreover, the University alleged in its Complaint that "the schedules for 2008 and 2009 for teams of 'similar stature' to Duke have . . . been completed" and that "it is futile for the University to continue its efforts to find a replacement of 'similar stature' for Duke for the football game it needs for 2008 and 2009." Complaint, ¶¶ 23 & 24. Taking the allegations in the University's Complaint as true, as the Court must in ruling on a motion for judgment on the pleadings, Duke's Motion fails on its face. *City of Pioneer Vill., supra,* 104 S.W.3d at 759. In addition, the University and Duke publicly released their schedules for the 2008 season in February 2008. Under the circumstances, Duke cannot seriously contend that the University's claim for 2008 is not ripe for consideration. It is also beyond dispute that no team assumed all of Duke's obligations under the Agreement. Thus, contrary to Duke's assertion, the University's claims for both 2008 and 2009 are ripe for adjudication.

CONCLUSION

Duke's Motion should be denied for several reasons. First, Duke's Motion cannot be decided on the pleadings as Duke submits materials outside the pleadings for consideration by the Court. Also, Duke's Motion cannot properly be decided as a motion for summary judgment because discovery has just begun. In addition, Duke's Motion must be denied as the term "team of similar stature" cannot be determined from either the pleadings or the Agreement

Duke may disagree with the University's allegations concerning the completeness of its schedule for the 2008 and 2009 seasons and dispute the futility of the University's ability to find a team of similar stature to replace its games for those seasons. Duke's denial of these allegations, however, merely demonstrates the existence of a factual dispute which can not be resolved without discovery.

As such, Duke's Motion for Judgment on the Pleadings must be denied.

Respectfully submitted,

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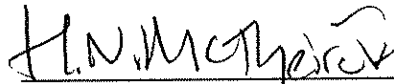
CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of The University's Response To Duke's Motion For Judgment On The Pleadings was served via e-mail and by United States mail, first class, postage prepaid, upon Barbara B. Edelman and Grahmn N. Morgan, Dinsmore & Shohl LLP, 240 West Main Street, Suite 1400, Lexington, Kentucky 40507 on this 8th day of April, 2008.



COUNSEL FOR PLAINTIFF,
UNIVERSITY OF LOUISVILLE

EXHIBITS

EXHIBIT A	UL 0740
EXHIBIT B	The University's 2008 Football Schedule
EXHIBIT C	Duke's Responses, p. 2
EXHIBIT D	E-mails exchanged between counsel addressing certain of these issues
EXHIBIT E	UL 0001 – 0005

2627537_5.doc

From: Kevin Miller
To: Gregory O Brohm
Date: 3/21/2007 9:22 AM
Subject: Re: Scheduling

We need to start and see who will go home and away in Mt West, CUSA and possibly MAC.

Can you come down later today and let's go over some options? Auburn is interested in doing series and I have sent them dates. Not until 2013 and 2014.

USC has called back and I have left them some dates.

I am open until 4:00pm.

Kevin

>>> "Gregory O Brohm" <greg.brohm@louisville.edu> 3/21/2007 8:50 AM >>>
I have received no new interest in home-and-away series from any BCS conference teams. I have contacted basically all of the BCS conference teams that we would have an interest in playing. The only initial interest had come from Penn State, Ole Miss, and Missouri. Penn State's dates were 2014 and beyond, and now he won't get back to me. The Ole Miss contact will not respond now to my inquiries. I think that you were contacting the guy at Missouri.

No MAC schools or Conference USA schools that we would be willing to play showed any interest in a 2 for 1. I think we may have to go home-and-home with any MAC or C-USA school. I threw out the idea of playing a game in Paul Brown Stadium in 08 and a game here in 09 to Brad Bates at Miami, OH. I am waiting for his response. Syracuse and Cincinnati are playing games vs. Miami in Oxford this season. On their web site, it says that Vandy is playing them home-and-home (dropped us, picked up them).

I have sent a note to Danny Hope to see if they will come here in 08 or 09. Waiting for response.We can get 1-AA teams for any of the years we need. I have interest from quite a few of them.

I think we may have to look at going home-and-home with C-USA, MAC, Mountain West, or WAC schools instead of 2 for 1.

I would like to look at scheduling Florida Atlantic again in 2009 for a home game. I think we might want to even consider a 2-for-1 with them because we do recruit in that area. I think South Florida is actually playing at Florida Atlantic this season. Troy is another team we know will go 2-for-1 with us.

If we get a 1-AA team in 2008, I think we can actually get away with playing a one-time-game on the road vs. a power program (Alabama is one that might be willing). That would give us 7 home games in 2008; it would give us an opportunity to make an even bigger impact on the national scene; and it would satisfy our fan base who want us to play those type of games. Playing that type of game in 2008 would give us breathing room to get weaker opponents in 2009. Of course, we might not want to set a precedent of playing one-time games like that, I don't know.

In 2009 then we could fill 3 home games the following way:

* 1-AA team
* FLorida Atlantic or another Sun Belt team
* BCS conference team or a MAC or C-USA school (as first game of a home-and-away series)

Greg

>>> "Kevin Miller" <kevin.miller@louisville.edu> 3/20/2007 3:12 PM >>>

Any progress made while I was gone?

UNIVERSITY TRAVEL UofL ALL-ACCESS SCHEDULES ONLINE STORE GIVING S

ROSTER | SCHEDULE/RESULTS | STATS | NEWS | ARCHIVES

Customer Care

MEN'S SPORTS
- Baseball
- Basketball
- Cross Country
- Football
- Golf
- Soccer
- Swimming & Diving
- Tennis
- Track & Field

WOMEN'S SPORTS
- Basketball
- Cross Country
- Field Hockey
- Golf
- Lacrosse
- Rowing
- Soccer
- Softball
- Swimming & Diving
- Tennis
- Track & Field
- Volleyball

ATHLETICS DEPT
- Administration »
- Academic Services
- Cardinal Athl Fund
- Cardinal Extras »
- Compliance
- Facilities
- General Releases
- Jr. Cardinal Club
- L-Care
- L-Club
- Links
- Marketing
- Podcasts
- Photo Galleries
- Scoreboard
- Spirit Groups »

Downloadable Schedules

2008-2009 SCHEDULE

(Click on an event for complete event information)

Date	Opponent / Event	Location	Time/Result
08/31/08	vs. KENTUCKY TV	PAPA JOHN'S CARDINAL STADIUM	3:30 p.m. ET
09/06/08	vs. TENNESSEE TECH	PAPA JOHN'S CARDINAL STADIUM	TBA
09/17/08	vs. KANSAS STATE TV	PAPA JOHN'S CARDINAL STADIUM	8:00 p.m. ET
09/26/08	vs. CONNECTICUT TV	PAPA JOHN'S CARDINAL STADIUM	8:00 p.m. ET
10/10/08	at Memphis TV	Memphis, Tenn.	8:00 p.m. ET
10/18/08	vs. MIDDLE TENNESSEE STATE	PAPA JOHN'S CARDINAL STADIUM	TBA
10/25/08	vs. USF	PAPA JOHN'S CARDINAL STADIUM	TBA
11/01/08	at Syracuse	Syracuse, N.Y.	TBA
11/08/08	at Pittsburgh	Pittsburgh, Pa.	TBA
11/14/08	vs. CINCINNATI TV	PAPA JOHN'S CARDINAL STADIUM	8:00 p.m. ET
11/22/08	vs. WEST VIRGINIA	PAPA JOHN'S CARDINAL STADIUM	TBA
12/04/08	at Rutgers TV	Piscataway, N.J.	TBA

Schedule Key

☐ Home Event ☐ Away Event

Next Even

at

KENTUCKY

Day: Sunday
Date: Aug. 31
Location: PAPA JC CARDIN STADIU
Time: 3:30 p.

Coverage

TV: ESPN

Sport Camps
Sports Information
Sports Performance
Student Section
Tickets
Traditions »

All times and dates subject to change for TV
More TV information will be added at a later date

For previous season schedules, please visit our archives section.

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Louisville Football

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

UNIVERSITY OF LOUISVILLE PLAINTIFF

v.

DUKE UNIVERSITY'S ANSWERS TO THE UNIVERSITY OF LOUISVILLE'S FIRST SET OF INTERROGATORIES, REQUESTS FOR ADMISSIONS AND REQUESTS FOR PRODUCTION OF DOCUMENTS

DUKE UNIVERSITY DEFENDANT

* * * * * * * * * * * *

Comes now Defendant, Duke University ("Duke"), by counsel, and for its Responses to the University of Louisville's ("Plaintiff") First Set of Interrogatories, Requests for Admissions and Requests for Production of Documents (the "Requests"), states as follows:

GENERAL OBJECTIONS

1. Duke objects to the Requests to the extent they seek information and/or documents which are irrelevant and which will not lead to the discovery of admissible evidence.

2. Duke objects to the Requests to the extent they are not restricted to a relevant time frame.

3. Duke objects to the Requests to the extent they seek information and documents protected from disclosure by the attorney-client privilege or work-product doctrine.

4. Duke objects to the Requests to the extent they are overly broad and unduly burdensome.

5. Duke objects to the Requests to the extent they are vague and ambiguous.

6. Duke objects to the Requests to the extent they seek information and/or documents already in the possession of Plaintiff or its counsel, and/or which can be obtained as easily by Plaintiff or its counsel as by Duke and its counsel.

7. Duke reserves all rights to object to the competency, relevancy, materiality and/or admissibility of the information and/or documents disclosed in response to the Requests.

8. Each of the foregoing General Objections is incorporated by reference into each Answer and/or Response to each Request as though set forth fully therein.

ANSWERS TO INTERROGATORIES

INTERROGATORY NO. 1: List all college varsity football teams (as that term is used in the Agreement) considered by Duke to be a "team of similar stature" to Duke.

ANSWER: Objection. This Interrogatory is vague and overly broad. Without waiving these objections or the foregoing General Objections, Duke states that any and all college varsity football teams in the Football Bowl Subdivision (formerly Division I-A) are teams of a "similar stature" to Duke, as that term is used in the Agreement and as that term is understood in the context of college football programs. Additionally, Duke states that any and all college varsity football teams in the Football Championship Subdivision (formerly Division I-AA) that would be considered as good or better than Duke in football, including but not limited to, any Football Championship Subdivision teams the Plaintiff played, or has agreed to play, in the ten years prior to signing the Agreement and the ten years after signing the Agreement are teams of a "similar stature" to Duke, as that term is used in the Agreement and as that term is understood in the context of college football programs. As is made clear by the Agreement, junior varsity programs of any of the aforementioned teams would not be teams of a "similar stature" to Duke's varsity college football team.

VERIFICATION

This is to verify that Duke University's Answers to University of Louisville's First Set of Interrogatories, Requests for Admissions and Requests for Production of Documents are true and correct to the best of my knowledge, information and belief.

Kate S. Hendricks
KATE S HENDRICKS
DEPUTY UNIVERSITY COUNSEL

STATE OF North Carolina

COUNTY OF Durham

Subscribed, sworn to and acknowledged before me by Kate S. Hendricks on this the 2nd day of January, 2008.

My commission expires: June 10, 2009.

[Seal]

Tracy A. Chelenza
Notary Public, State At Large

88863_2

McTyeire, Holland

From: Morgan, Grahmn [GMorgan@DINSLAW.com]
Sent: Monday, February 04, 2008 10:44 AM
To: McTyeire, Holland
Subject: RE: University of Louisville v. Duke -- Agreed Order of Confidentiality

Yes, I'll make sure I am available. Thanks.

From: McTyeire, Holland [mailto:HNM@gdm.com]
Sent: Monday, February 04, 2008 10:43 AM
To: Morgan, Grahmn
Subject: RE: University of Louisville v. Duke -- Agreed Order of Confidentiality

Grahmn,

I will plan to call you at 4 pm if that works for you.

Holland N. ("Quint") McTyeire V
Member
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F: 502.540.2223
C: 502.296.0782
hnm@gdm.com

About Greenebaum Services Offices

From: Morgan, Grahmn [mailto:GMorgan@DINSLAW.com]
Sent: Monday, February 04, 2008 10:22 AM
To: McTyeire, Holland
Subject: RE: University of Louisville v. Duke -- Agreed Order of Confidentiality

Quint,
I am available to discuss these issues at any time. Please give me a call to discuss.

With regard to the confidentiality agreement, we agreed that some mechanism should be in place to prevent either party from utilizing the documents received in discovery for anything other than litigation purposes. We

believe that the first two paragraphs of the Agreed Order accomplish that goal. Requiring the parties to file documents under seal goes well beyond our agreement and is an unecessary burden, as the documents (exchanged thus far) are not trade secrets and do not contain any personal identifying information. As I mentioned before, if you plan on producing such documents in the future, we would be willing to work with you to ensure that those types of documents are not placed into the public record.

I am confused by your request that Duke now produce a privilege log for certain documents that we did not produce on the basis of privilege. If you would like a privilege log, then I would request that you produce one as well for all the documents that you withheld. We previously agreed not to produce privilege logs at this time, however, if you now want to change your position on that issue, let me know and we can exchange the logs at a mutually agreeable time.

As I mentioned to you in my last email, I would (like you) attempt to schedule deposition dates for Mr. Alleva and Mr. Kennedy on business days between 2.25.08 and 3.4.08 in North Carolina. If Mr. Jurich, Mr. Brohm and Mr. Miller are available on any specific dates during that time period, please let me know so that we can arrange Mr. Alleva and Mr. Kennedy's schedule around those dates. Given the circumstances, we cannot take all of the proposed depositions on the same date, so it would save time if I could eliminate those dates that we will be deposing Mr. Jurich, Mr. Brohm and Mr. Miller from the options.

If those gentelmen are available on any date during that week or if you have specific dates, please let me know. If not, then perhaps another time period would work better.

Grahmn

From: McTyeire, Holland [mailto:HNM@gdm.com]
Sent: Monday, February 04, 2008 9:59 AM
To: Morgan, Grahmn
Subject: RE: University of Louisville v. Duke -- Agreed Order of Confidentiality

Grahmn,

We would propose a call to resolve or discuss some of these issues and I am generally available today or tomorrow.

We do not understand Duke's position with regard to the confidentiality (or lack thereof) of the documents produced by the parties and thought we were in general agreement that the documents produced would remain confidential. Duke's proposal gives no guaranteed protection to any document produced by either party.

We would appreciate receipt of whatever cover letter you received from Vanderbilt and by e-mail in a PDF file would be fine.

While you are correct that we generally agreed that a Privilege Log would not be required, we do not understand why the documents were marked and would request that we be provided the sender, recipient, date and brief description of the document for the 3 pages withheld. We do not believe a Privilege Log is necessary for other documents the parties did not produce.

We await dates for the Duke deponents and we would still request they be produced here.

Finally, I apologize if I was not clear but I intended to convey that we would try and make Misters Jurich, Miller and Brohm available any of the 7 business days between 02.25.08 and 03.04.08, assuming we receive some similar commitment from Duke, and I renew that offer.

Again, as noted above, I would propose a call today or tomorrow to discuss these issues in more detail. Please let me know what works for you.

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About Greenebaum Services Offices

From: Morgan, Grahmn [mailto:GMorgan@DINSLAW.com]
Sent: Friday, February 01, 2008 4:24 PM
To: McTyeire, Holland
Subject: RE: University of Louisville v. Duke -- Agreed Order of Confidentiality

Quint,

Thank you for your response and I understand the delay. At this time, Duke is not willing to agree to submit documents under seal. Of course, in the event that Louisville produces documents that it believes rise to the level of a trade secret or needs to be sealed for some other legitimate privacy reason, we are happy to work with you to come to a mutually agreeable resolution.

Having said that, Duke remains willing to sign the Agreed Order without the paragraph 3.

With regard to the Vanderbilt documents, I will send you the cover letter that we received with the documents. As I mentioned to you previously, Vanderbilt did not bates stamp the documents; however, I can assure you that we produced all of the documents Vanderbilt provided to us.

Duke 119, 120 and 135 are privileged documents that we withheld from our production. As you and I discussed

previously, the parties agreed to produce these documents without privilege logs. If your position in that regard has changed, please let me know and we can arrange for a mutually convenient time to exchange privilege logs.

With regard to depositions, Mr. Alleva and Mr. Kennedy are checking their schedules to see if they are available during the last week of February and the first week of March. As I mentioned to you before, subject to their availability during that time frame, we will make them available for deposition in North Carolina.

Please let me know what specific dates Mr. Jurich, Mr. Brohm and Mr. Miller are available during those two weeks.

Finally, I understand your position with regard to the settlement offer and will get you a response as soon as possible.

I look forward to hearing back from you on the deposition dates. Thanks. Grahmn

---

From: McTyeire, Holland [mailto:HNM@gdm.com]
Sent: Thursday, January 31, 2008 6:46 PM
To: Morgan, Grahmn
Subject: RE: University of Louisville v. Duke -- Agreed Order of Confidentiality

Grahmn,

Thank you for your e-mail below. I apologize for my delayed response as I was unexpectedly tied up on another matter for large parts of this week.

We would like to attempt to reach a compromise on Paragraph 3 and would propose filing under seal as an alternate method we could incorporate into the Agreed Order. As I understand it from the Clerk's Office, filing under seal merely requires that the materials be placed in an envelope with the style of the case on it, a description of the materials (which are likely to be Exhibits to some pleading) and for the Agreed Order to be attached to the envelope. Filing under seal would seem to address your concern regarding the current procedure being too cumbersome and dependent on a response from opposing counsel.

We received your documents on Tuesday and assume you received documents from us. As for the documents from Vanderbilt, I would request being provided with any Certification or other correspondence from Vanderbilt providing the documents to you and confirming that there are no other documents responsive to Duke's Subpoena. Also, an initial review of Duke's production of documents suggests that the documents marked Duke 119, 120 and 135 are missing from Duke's production and we would appreciate it if those documents are provided to us.

As indicated in my original e-mail, I think we can make the 3 deponents you have requested available the last week of February or possibly the Monday or Tuesday of the following week, assuming we get some similar commitment from you, but we would need to confirm that quickly as their schedules are

filled far in advance. We would still be willing to move forward that week with the depositions of the Duke personnel as well.

Finally, we do not understand the delay in responding to the University's settlement proposal and if Duke is giving serious consideration to it we would like to know that soon. Therefore, the University's offer will be withdrawn if not accepted by Friday, 02.15.08.

I look forward to discussing these matters with you at your convenience.

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About Greenebaum Services Offices

From: Morgan, Grahmn [mailto:GMorgan@DINSLAW.com]
Sent: Monday, January 28, 2008 6:45 PM
To: McTyeire, Holland
Subject: RE: University of Louisville v. Duke -- Agreed Order of Confidentiality

Quint,
This will confirm that you will call me tomorrow after you have had a chance to discuss the deletion of paragraph 3 from the Confidentiality Agreement with your client. As I stated on the phone with you earlier, we believe that the provision is too cumbersome. Let me know if your client agrees to delete paragraph 3 and we will sign the Agreement.

As we discussed, I have overnighted the documents responsive to U of L's first set of Requests for Production of Documents and the documents Vanderbilt produced in response to the subpoena we served on them in December of last year.

You are also overnighting the documents responsive to Duke's first set of Requests for Production of Documents.

I will check with my client regarding deposition times. Please also check with those individuals I identified (Tom Jurich, Kevin Miller and Greg Brohm) and let me know what dates they are available.

I will let you know Duke's response to U of L's settlement proposal as soon as possible.

Thanks. Grahmn

From: McTyeire, Holland [mailto:HNM@gdm.com]
Sent: Monday, January 28, 2008 2:34 PM
To: Morgan, Grahmn
Subject: University of Louisville v. Duke -- Agreed Order of Confidentiality

Grahmn,

As we discussed, I attach a simple Agreed Order that we would propose filing to protect the documents being produced from public disclosure.

As for the depositions we discussed, we could schedule them the last week of February or the first week in March to avoid conflicts with other events. As we indicated, we would propose that all deponents be produced in Frankfort.

Finally, we would appreciate a response from Duke to the University's settlement proposal which we made back on 01.02.08. You indicated you would get back with us regarding the University's proposal soon.

Please e-mail or call me with any questions and we look forward to hearing from you on the outstanding issues above.

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McTyeire, Holland

From: McTyeire, Holland
Sent: Tuesday, February 12, 2008 11:47 AM
To: EDELMAN, BARBARA
Cc: Morgan, Grahmn
Subject: RE: University of Louisville v. Duke -- Dates for 2011 and Discovery Issues

Barbara,

Thank you for your e-mail.

I will try to address some of the issues you raise.

As for the merits of the University's claim, the University is owed 2 games in Louisville in exchange for 1 away game from a team of similar stature to complete the obligations owed by Duke pursuant to the Agreement. We have explained in our responses to Duke's discovery which teams would be of similar stature and Utah is not such a team. The University has made efforts to find teams to complete Duke's obligations and no team of similar stature is willing to do so.

The University attempted to resolve this matter for some time before initiating the present action. As you know, I e-mailed and called Kate Hendricks during the month before suit was filed. The last response I received from Ms. Hendricks seemed to indicate that Duke was not interested in resolving this matter. The University did not believe it had any options to resolve this matter other than filing suit.

In our call last Monday, you indicated that Duke would be willing to play a game here in 2011 in order to resolve this matter. Since our call, the University has been trying to learn from you which dates Duke has available in 2011 to determine if there is a possibility that a game could be played then. It strikes the University as more than a little unusual that Duke is unwilling to provide dates in 2011 for the offer that it made last Monday.

I think everyone recognizes that even if both universities have open dates in 2011 and continue to have an interest in a resolution of this matter along those lines, there will still be negotiations regarding the terms and conditions for such a game. In any event, it is beginning to appear that Duke has no interest in playing here in 2011, contrary to your offer last Monday. I do not understand what discussions you need with your client and would have thought that any such discussions would been held before the offer was made last Monday. Again, please remember we are only asking for open dates in 2011 and have not

asked for anything more at this time with regard to playing here in 2011.

As for deposition dates, we started this discussion about 2 weeks ago in an effort that we could schedule them in a manner which would accommodate all parties and counsel. We had originally discussed dates in late February or early March but had generally agreed last Monday that it might be difficult to resolve various issues by then and thought we were in agreement to look for dates in mid to late April. At a minimum, I would like to be provided the week in April when you said you will be on Spring Break so we can plan around that week.

You are correct that we can respond as we deem appropriate but we had hoped that we would have been provided the open dates in 2011 by now, if any, or some idea when we might get them.

Please e-mail or call me if you would like to discuss this matter in more detail.

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-----Original Message-----
From: EDELMAN, BARBARA [mailto:EDELMAN@DINSLAW.com]
Sent: Monday, February 11, 2008 11:08 AM
To: McTyeire, Holland
Cc: Morgan, Grahmn
Subject: FW: University of Louisville v. Duke -- Dates for 2011 and Discovery Issues

Quint,

Grahmn passed along your email to me for response. I am sorry that UL does not understand Duke's method of proceeding in this matter. I doubt that any amount of explanation from us would make any difference but since you asked, I will make a few comments.

We do not understand why UL filed this lawsuit. This has done absolutely

nothing to "warm" my clients toward wanting to resolve things with UL. I know you believe you made efforts to settle beforehand and I will not argue that you didn't, however to have taken the step to sue my client for holes in UL's schedule for the 2008 and 2009 seasons seems ridiculous to all of us on this side.

We too would like to get this resolved, but on the other hand, we all know that UL will fill its schedules for 2008 and 2009 and there will be no more of a claim against us than there was over the 2007 season with the replacement of the Utah game. We simply cannot believe that the UL athletic staff was not capable of scheduling a home and away series
(2008 and 2009) with a decent team with 6 years notice.

Perhaps most important though, as to any delay in responding with a specific date for 2001, is that I have not been able to adequately discuss the situation with my client. It will, as it always has, take another few days for it to be passed along to the AD and for a decision to be made. We will respond but this is simply not the top priority item for the Duke Athletic department.

If you want to avoid litigating while we are negotiating, you control that destiny. We can stop litigating or we can go ahead and schedule motions, depositions, and discovery disputes. If we do, then our respective clients can blame us for running up a bill while trying to settle.

I will also advise again, as I did on the phone, so that you are not mislead by my statements, that we have been told by Duke to prepare pleadings to address the fact that we believe this lawsuit is premature and unfounded. We have done so and are awaiting a decision on filing which is combined with the decision of settling.

So to recap: We do not have a date yet to propose for the 2011 season.
We are evaluating the filing of a motion. We do not have deposition dates for April yet and under the circumstances that is low down my list in terms of locking in on a date.

I hope this satisfies your client's questions as to why we are proceeding as we are in this matter.

We will advise you of a 2011 date as soon as we have a response.

Thank you, Barbara

----- Original Message -----
From: McTyeire, Holland <HNM@gdm.com>
To: Morgan, Grahmn
Sent: Fri Feb 08 18:22:50 2008
Subject: University of Louisville v. Duke -- Dates for 2011 and Discovery Issues

Grahmn,

We do not understand why Duke is unable to provide us its open dates in 2011.

Also, as we discussed on Monday we want to confirm dates for depositions in April which will allow the parties to resolve any issues relating to deficiencies in responses and the location before then.

We intend to provide you a letter sometime next week outlining the deficiencies in Duke's Responses which we would like to resolve promptly.

If Duke has any real interest in resolving this matter by playing a game here in 2011 we would like to know that very soon so we can avoid potentially protracted motion practice on the parties' discovery responses, the location of the depositions of the Duke deponents, the issues raised by Barbara in our call on Monday and potentially others.

Please e-mail or call me if you would like to discuss this matter in more detail.

Greenebaum <http://www.gdm.com/>

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From: Morgan, Grahmn [mailto:GMorgan@DINSLAW.com]
Sent: Monday, February 04, 2008 5:08 PM
To: McTyeire, Holland
Subject: Voice Message

Quint,
I got your voice message. I will speak with my client and get back to you as soon as possible. Thanks.

Grahmn N. Morgan
Attorney at Law
Dinsmore & Shohl LLP
Lexington Financial Center
250 West Main Street
Lexington, Kentucky 40507
Phone: (859) 425-1044

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Athletic Busine   fice

Student Activities Cen...
University of Louisville
Louisville, Kentucky 40292
(502) 852-5833
FAX: (502) 852-5784

UNIVERSITY of LOUISVILLE

August 3, 1999

Chris Kennedy
Associate Athletic Director
Duke University
P.O. Box 90555
Cameron Indoor Stadium
Durham, NC 27708-0555

Dear Chris:

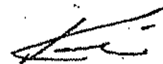
With regards to the attached contract that you sent to our office, we need to change two areas. We are proposing that the language relating to television be changed as follows:

> Louisville recognizes that Duke has assigned its live, over-the-air broadcast and cable television rights to their home football games to the Atlantic Coach 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.

Second, the liquidated damages as stated in Section 13, need to be changed to equal the guarantee for the games to be canceled. Our legal counsel mandated that the liquidated damages equal the guarantee. Please change the $50,000 to $150,000. All other language in the contract is fine. Please give me a call if you have any questions. Once we receive a revised contract I will have our Athletic Director sign.

We are excited about this upcoming series and we appreciate all the help you have provided in coordinating this agreement.

Sincerely,



Kevin Miller
Associate Athletic Director
for Internal Operations

Enclosure

sls/

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:**

A. Each game may be televised **ONLY** with mutual consent of the participating teams, at which time distribution of television revenues shall be agreed upon.

B. Both parties shall have the right to use excerpts from the game for television highlights show and coaches show purposes.

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 $50,000.

   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 $50,000.

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:	UNIVERSITY OF LOUISVILLE:
By: CB [signature]	By: ______
Title: Associate AD	Title: ______
Date: July 7, 1999	Date: ______