

times the Conference's annual operating budget, this increase was still insufficient to address the potential losses caused by withdrawal.

52. As a result of these discussions, the Council of Presidents voted to increase the withdrawal payment to 3 times the Conference's annual operating budget.

53. Thus, the withdrawal payment is simply a vehicle through which a Member may choose to terminate its membership in the Conference by meeting the payment obligations rather than continuing to meet the obligations of a Member. It thus constitutes a form of alternate performance under the ACC Constitution and Bylaws and represents a fraction of the losses that would be caused to the Conference by the withdrawal of a Member.

D. The 2013 Grant of Rights

54. In 2012, the University of Maryland announced its withdrawal from the ACC. In the same year, the ACC elected to add the University of Notre Dame (except for Football), the University of Pittsburgh, Syracuse University, and the University of Louisville as Member Institutions. Concurrently with these membership modifications, the ACC and ESPN began negotiations to amend the 2010 Multi-Media Agreement.

55. During this time period, other collegiate athletic conferences began to experience significant instability and realignment, which continues to this day. At this time, the Southeastern Conference ("SEC") added the University of Missouri and Texas A&M University (from the Big 12 Conference), while the Big Ten Conference added the University of Maryland (from the ACC), Rutgers University (from the Big East Conference) and the University of Nebraska (from the Big 12 Conference). The Pac-12 Conference and the Big 12 Conference were undergoing a similar realignment.

56. The instability and realignments in other college athletic conferences necessitated that, in order to secure a long-term media rights agreement and thus ensure the payment of predictable sums over time, the media rights granted had to be stable and constant over the same period of time. This stability provides ESPN with certainty regarding the games (and their participants) it has a right to broadcast, and it provides each of the Conference's Member Institutions with certainty regarding the annual revenue that it can anticipate throughout the term of the agreement.

57. To facilitate this stability and certainty, each Member Institution that remained in or intended to join the ACC, including Florida State, entered into a written Grant of Rights agreement. Florida State did so on April 19, 2013. This Grant of Rights agreement is attached as **Exhibit 2** to this Amended Complaint.

58. The Grant of Rights agreement is a written contract between the Member Institutions and the Conference in which each Member Institution granted the Conference its Media Rights⁵ and, in exchange, on behalf of the collective Member Institutions, the Conference negotiated revisions to the 2010 Multi-Media Agreement to increase the [REDACTED] paid. The Conference then distributed the funds to the Member Institutions.

59. The Grant of Rights was intended to provide the necessary commitments for long-term agreements with ESPN by providing an assurance that the collection of Media Rights ceded to ESPN would remain unchanged if a Member Institution left the Conference. This thus bound the Member Institutions to one another, to the Conference, and ultimately to ESPN in a partnership.

⁵ These rights are for "home" games. A "home" game is any game which is either played at a Member's home location or in which the Member is designated as the "home" team.

60. By aggregating the Media Rights from each Member Institution, the Conference was able to increase the total value of those rights as opposed to the situation in which each Member, individually, was forced to negotiate and enter into individual agreements to broadcast those rights.

61. As set forth in the Grant of Rights agreement, in order to negotiate for increased payments for the Media Rights to be granted to ESPN, “each of the Member Institutions [including Florida State] is required to, and desires to, irrevocably grant to the Conference, and the Conference desires to accept from each of the Member Institutions, those rights granted herein.”

Exhibit 2 at p. 1.

62. The Grant of Rights further stipulated that it was irrevocable and exclusive for the duration of the ESPN agreement, regardless of whether a Member Institution withdrew from the Conference:

Grant of Rights. Each of the Member Institutions hereby (a) irrevocably and exclusively grants to the Conference during the Term . . . all rights (the “Rights”) necessary for the Conference to perform the contractual obligations of the Conference expressly set forth in the ESPN Agreement, *regardless of whether such Member Institution remains a member of the Conference during the entirety of the Term*

Exhibit 2 at p. 2 ¶ 1 (emphasis added). This was repeated in ¶ 6:

Acknowledgements, Representations, Warranties, and Covenants. Each of the Member Institutions acknowledges that the grant of Rights during the entire Term is irrevocable and effective until the end of the Term *regardless of whether the Member Institution withdraws from the Conference during the Term or otherwise ceases to participate as a member of the Conference* in accordance with the Conference’s Constitution and Bylaws.

Exhibit 2 at p. 3 ¶ 6 (emphasis added).

63. The rights granted under the Grant of Rights by each Member Institution of the ACC included “the right to produce and distribute all events of such Member Institution that are subject to the ESPN Agreement,” with each Member Institution acknowledging that the Conference “owns or will own the copyrights” associated with the rights granted to the Conference. **Exhibit 2** at p. 2 ¶¶ 1, 2.

64. The Grant of Rights further provided that each Member Institution “covenants and agrees that . . . it will not take any action, or permit any action to be taken by others subject to its control, . . . or fail to take any action, that would affect the validity and enforcement of the Rights granted to the Conference under this Agreement.” **Exhibit 2** at p.3 ¶ 6.

65. In short, each Member Institution agreed (1) to grant its athletic Media Rights to the Conference, (2) to make this grant irrevocable for the duration of the term of Grant of Rights, and (3) not to take any action that would affect the validity of the Grant of Rights or otherwise contest its validity.

66. Florida State agreed to and executed the Grant of Rights on April 19, 2013.

67. Florida State’s President was authorized to agree to and execute the Grant of Rights on April 19, 2013 on behalf of Florida State.

68. The Grant of Rights contains a specific acknowledgement and warranty that the President of Florida State was authorized to agree to and execute the Grant of Rights:

[E]ach Member Institution represents and warrants to the Conference (a) that such Member Institution either alone, or in concert with an affiliated entity . . . has the right, power and capacity to execute, deliver and perform this Agreement . . . (b) that execution, delivery and performance of this Agreement . . . have been duly and validly authorized by all necessary action on the part of such Member Institution.

Exhibit 2 at p.3 ¶ 6.

69. On April 22, 2013, following the execution of the Grant of Rights by all Member Institutions, the ACC accepted and executed the Grant of Rights in Greensboro, North Carolina, with the signature of its Commissioner.

E. The 2014 Second Amendment to the Multi-Media Agreement

70. Relying on the irrevocable and exclusive Grant of Rights, the Conference negotiated the Second Amendment to the 2010 Multi-Media Agreement, which went into effect on June 24, 2014. In addition to incorporating the changes in the ACC's membership, this amendment also increased the [REDACTED]. By the end of the term, 2026-2027, the total fees paid to the Conference under this agreement would have been in the hundreds of millions of dollars.

71. The increase in the fees paid to the Conference, which were then distributed by the Conference to the Member Institutions (including Florida State), is good and valuable consideration in support of the Grant of Rights.

72. The Second Amendment to the 2010 Multi-Media Agreement contained a specific representation and warranty from the Conference to ESPN [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]. Attached as **Exhibit 3** to this Amended Complaint is the relevant portion of the Second Amendment to the 2010 Multi-Media Agreement

[REDACTED]

73. Following the ACC's acceptance of Florida State's Grant of Rights in 2013 and the implementation of the Second Amendment to the 2010 Multi-Media Agreement in 2014, Florida State received its pro rata share of the [REDACTED] payments from ESPN, totaling [REDACTED] of dollars. At no point did Florida State reject the distributions it received or contest the legality of the Grant of Rights it executed that made the Second Amendment to the 2010 Multi-Media Agreement possible.

74. Indeed, at this time, one member of the Board of Trustees of Florida State commented, "I was in concert with [Florida State] President Barron that this was the best thing that could happen. . . . It ensures that we don't lose any members. Nobody can afford to leave now."⁶

75. Another member of the Board of Trustees of Florida State commented,

What is on the minds of a lot of people is, is the ACC the conference that gives us the best opportunity to compete over the long term? . . . At the end of the day, I think the ACC negotiated a good deal with ESPN and levels the playing field with the rest of the conferences.⁷

Florida State's President also commented,

The added resources coming to the ACC schools will have a significant impact on the success of our athletic programs. . . . We are also very pleased that we will be moving forward on the next phase of developing an ACC network. The vote of the ACC presidents will ensure that the conferences will strengthen its position of leadership among Division I Athletics.⁸

⁶ "Anatomy of One School's Role in ACC Media Rights Deal," *USA Today* (April 25, 2013), available at <https://www.usatoday.com/story/sports/college/2013/04/25/acc-commissioner-john-swofford-lobbies-florida-state-grant-of-rights/2113527/>.

⁷ *Id.*

⁸ "ACC Schools Agree to Grant TV Rights to League," *AP News* (April 22, 2013), available at <https://apnews.com/acc-schools-agree-to-grant-tv-rights-to-league-fd6dae3c385d4b2bbe2dce53757a6971>.

76. In addition to entering into the Grant of Rights, the ACC's Member Institutions voted unanimously to amend the ACC's Bylaws to confirm that, pursuant to the Grant of Rights, the Member Institutions granted the ACC the right to market the Member Institutions' media and related rights. The ACC Bylaws as amended are attached to this Amended Complaint as **Exhibit 4. ACC Bylaws § 2.10.1**

F. The 2016 Agreements

77. In the years following, and into 2016, the ACC sought to generate additional revenue for its Members through a network partnership with ESPN. Because the Conference had already granted ESPN its Media Rights, the Conference sought a partnership with ESPN to establish the ACC Network, broadcast more ACC events, and share in the revenues from this new network.

78. As part of these agreements, ESPN agreed to extend and increase the [REDACTED] until the establishment and launch of the ACC Network, which ultimately took place in 2019. On July 21, 2016, the parties executed an Amended and Restated ACC-ESPN Multi-Media Agreement ("2016 Multi-Media Agreement") and an ACC-ESPN Network Agreement ("ACC Network Agreement") (together "the ESPN Agreements"). Throughout the duration of these agreements, the ACC will receive [REDACTED] to distribute to its Members in the form of [REDACTED] payments, Media Rights payments, and revenues from the ACC Network.

79. Similar to the Second Amendment to the 2010 Multi-Media Agreement, the 2016 Multi-Media Agreement contained a warranty by the Conference [REDACTED]

WARRANTIES

20.1 By Conference. [REDACTED]

80. The Conference further warranted that [REDACTED]

[REDACTED]

[REDACTED] A copy of the Multi-Media Agreement warranties provision is attached to this Amended Complaint as **Exhibit 5**.

81. The ACC Network Agreement included a similar warranty:

WARRANTIES

12.1 By Conference. [REDACTED]

82. In addition, under the ACC Network Agreement, the Conference warranted that [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED] A copy of the ACC Network Agreement warranties provision is attached to this Amended Complaint as **Exhibit 6**.

83. In preparation for entry into the ESPN Agreements, on July 18, 2016, each Member Institution executed an “Amendment to Atlantic Coast Conference Grant of Rights Agreement” (“Amended Grant of Rights”). A copy of the Amended Grant of Rights is attached to this Amended Complaint as **Exhibit 7**.

84. As a condition for entering into the 2016 Multi-Media Agreement and the agreement establishing the ACC Network, the Amended Grant of Rights states, “ESPN has informed the Conference that it will enter into the Prospective Agreements only if each of the Member Institutions agrees to amend the Original Grant Agreement to extend the term thereof.” **Exhibit 7** at p. 1.

85. The Amended Grant of Rights stipulates that the terms and conditions of the Grant of Rights “remain in full force and effect” unless “specifically modified by this Amendment.”

86. The Amended Grant of Rights did not modify the Grant of Rights provisions in which each Member Institution irrevocably assigned its Media Rights to the Conference, regardless of whether it remained a Member of the Conference, and agreed not to take any action that would affect the validity of the Grant of Rights.

87. The Amended Grant of Rights did extend the “Term” of the Grant of Rights from June 30, 2027 to June 30, 2036.

88. This extension was necessary in order to establish and operate the ACC Network through 2036. [REDACTED]

[REDACTED]

[REDACTED]

89. The Grant of Rights was further necessary to provide content to the ACC Network for as long as that Network operated. Absent certainty as to the duration of the Grant of Rights, the ACC and ESPN could not establish the ACC Network, nor market it to cable providers. Consequently, the term of the Grant of Rights was extended to be coterminous with the life of the ACC Network under the Network Agreement.

90. As part of the extension of the Grant of Rights necessary to implement the 2016 Multi-Media Agreement and the ACC Network Agreement, ESPN agreed to [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED] providing a predictable and substantial source of revenue.

91. Before the execution of the Amended Grant of Rights and the ESPN Agreements, the Conference held a number of meetings with legal counsel for its Members, with the Presidents, with the Athletic Directors, and with the Faculty Athletics Representatives (“FAR”).

92. These meetings were in addition to on-campus meetings with various Presidents, campus stakeholders, and conference calls with attorneys for the Members.

93. For example, on June 22, 2016, the Conference held a meeting of the FARs including the FAR for Florida State, who chaired the meeting. After being briefed on the provisions of the ESPN Agreements, the FARs (including Florida State’s FAR) voted unanimously to move forward with the Agreements. The FARs were further advised that counsel for the ACC would be leading a call on June 24, 2016, with counsel for each Member to review the Amended Grant of Rights.

94. On June 23, 2016, the Council of Presidents met to discuss the Amendment to the Grant of Rights and the ESPN Agreements. Florida State's then-President attended that meeting.

95. The then-President of ESPN also attended the June 23 meeting and described ESPN's perspective on and the necessity for the new agreements.

96. The Conference's media consultant also gave the Presidents a review of the terms and conditions of the ESPN Agreements.

97. During the same meeting, the Presidents were advised that their attorneys would be holding a conference call with the counsel for the Conference to discuss the Amended Grant of Rights the next day, June 24, 2016.

98. On June 24, 2016, counsel for the Conference held conference calls with the attorneys for the Members to discuss the Amended Grant of Rights.

99. On June 28, 2016, Florida State accepted and executed the Amended Grant of Rights, extending the term of the Grant of Rights until June 30, 2036.

100. Florida State's President was authorized to enter into and accept the Amended Grant of Rights on behalf of Florida State.

101. On July 11 and 12, 2016, and before the Conference accepted the Amended Grant of Rights, a series of additional meetings were held to discuss the details of the ESPN Agreements. These included a meeting of the Council of Presidents that was attended by Florida State's then-President, and a meeting of the Conference's Television Committee attended by Florida State's Athletic Director, and its FAR.

102. At these meetings, the general terms of the agreements were reviewed with each Member Institution through its representatives, including Florida State.

103. Subsequently, each Member Institution, including Florida State, ratified the 2016 Multi-Media Agreement and the ACC Network Agreement.

104. Florida State's then-President was authorized to ratify and otherwise enter into and approve the 2016 Multi-Media Agreement and the ACC Network Agreement on behalf of Florida State.

105. After each Member Institution agreed to and executed the Amended Grant of Rights, the ACC accepted the amendment on July 18, 2016, in Greensboro, North Carolina, through the signature of its Commissioner.

106. The terms and conditions of the 2016 Multi-Media Agreement and the ACC Network Agreement are confidential. Both agreements stipulate that their terms and conditions cannot be disclosed to the public and impose a confidentiality obligation on the Conference.

107. Thus, the 2016 Multi-Media Agreement and ACC Network Agreement provide that "each party shall maintain the confidentiality of this Agreement and its terms." 2016 Multi-Media Agreement ¶ 25.11; ACC Network Agreement ¶ 18.11. This portion of these agreements is attached to this Amended Complaint as **Exhibits 8 and 9**.

108. The ESPN Agreements further permit disclosure of the Agreements to each "Conference Institution, provided that each Conference Institution shall agree to maintain the confidentiality" of the Agreements. **Exhibits 8 and 9**.

109. The increased fees received by the Conference in connection with the ACC Network Agreement and the 2016 Multi-Media Agreement, including [REDACTED], which have been and will continue to be distributed by the Conference to its Members, is good and valuable consideration in support of the Amended Grant of Rights.

G. Under the Grant of Rights, Amended Grant of Rights, and ESPN Agreements, Florida State Athletics Experiences Unprecedented Success

110. Since the execution of the Amended Grant of Rights, the entry into the 2016 Multi-Media Agreement (and extension of the option), the establishment of the ACC Network, and the payment of a [REDACTED] by ESPN, Florida State has received more than [REDACTED] and the ACC as a whole has received more than [REDACTED]

111. Florida State's distributions from the ACC more than doubled over the 9-year period between its agreement to enter into the Grant of Rights and June 30, 2023. Over the past year alone, Florida State's distributions increased by nearly 20% over the prior year.

112. Since the 2013 execution of the Grant of Rights, and as a direct result of the stability provided by the ESPN Agreements under the Grant of Rights and Amended Grant of Rights, Florida State has prospered both financially and on the field. Florida State currently has 20 athletic teams with 530 student-athletes. Since 2013, Florida State (1) won a national championship in Football, (2) won four national championships in Women's Soccer, (3) won a national championship in Softball, (4) participated in the College Football Playoff, (5) made three "Sweet Sixteens" and one "Elite Eight" appearances in Men's Basketball, (6) made three "Sweet Sixteens" and two "Elite Eight" appearances in Women's Basketball, (7) finished as the national runner-up in Softball, (8) finished as the national runner-up two times and made the national quarterfinals six other times in Women's Soccer, (9) made two College World Series appearances in baseball, and (10) made three "Sweet Sixteen" appearances in Women's Volleyball. Upon information and belief, in 2022, Florida State's athletic department ranked 15th in the nation among public universities in total revenue, with \$161,141,884.⁹

⁹ *NCAA Finances: Revenue and Expenses by School*, <https://sports.usatoday.com/ncaa/finances>

H. Florida State Seeks Unequal Revenue Distribution

113. In July 2021, both the University of Texas and the University of Oklahoma announced their plans to withdraw from the Big 12 Conference to join the SEC beginning in 2025.¹⁰ The date of their noticed withdrawal coincided with the termination of the Grant of Rights agreement for the Big 12, leaving the University of Texas and the University of Oklahoma free to market those rights.

114. Neither of these schools sued the Big 12 nor sought to breach their legal obligations or their grant of rights.

115. In July 2022, both the University of California at Los Angeles (“UCLA”) and the University of Southern California (“USC”) announced their plans to withdraw from the Pac 12 Conference to join the Big Ten Conference effective August 2024. The date of their withdrawal coincided with the termination of the Pac-12’s rights agreements, leaving UCLA and USC free to market those rights.

116. In August 2022, Florida State’s President, “comment[ing] on where the Seminoles stand in conference realignment,” said: “It’s something I’m spending a lot of time on and we’re getting a lot of help. . . . We’re trying to do anything we can to think about how we remain competitive. Florida State is expected to win. We’re going to be very aggressive.”¹¹

¹⁰ Each subsequently negotiated an earlier withdrawal date from the Conference.

¹¹ *FSU President says Seminoles will be “very aggressive” in conference realignment,* NOLEGAMEDAY (Aug. 21, 2022), available at <https://www.si.com/college/fsu/football/fsu-president-says-seminoles-will-be-very-aggressive-in-conference-realignment>.

117. At a meeting of the Board of Trustees on February 24, 2023, Florida State’s Board openly discussed withdrawing from the Conference and the cost of the withdrawal payment in order to facilitate a move to another conference in order to receive more money.

118. During that meeting, Florida State’s Athletic Director expressed concern about the “revenue gap” that would develop between Florida State and members of the SEC and Big Ten. He stated: “At the end of the day for Florida State to compete nationally, something has to change moving forward.”¹²

119. In response, one member of the Board of Trustees inquired about withdrawing from the ACC, which resulted in the following reported exchange:

One trustee questioned whether or not a buyout to leave the ACC was “even feasible.”

“That is an excellent question,” Carolyn Egan, FSU’s vice president for legal affairs and general counsel, responded.

According to Egan, the ACC’s exit fee is three times its annual operating budget. That equals \$120 million.

If FSU could make up \$30 million per year,” a trustee asked, “does that mean the Seminoles would break even in about four years?”

“Hypothetically,” Alford replied.¹³

¹² *FSU fires warning shot to ACC: “Something has to change”*, TAMPA BAY TIMES (Feb. 24, 2023), available at <https://www.tampabay.com/sports/seminoles/2023/02/24/fsu-football-florida-state-acc-conference-realignment/#:~:text=A%20trustee%20asked%20whether%20a,wasn't%20%E2%80%9Cno.%E2%80%9D&text=Florida%20State's%20board%20of%20trustees,and%20Big%20Ten%2C%20or%20else>.

¹³ *Id.*