

IN THE CIRCUIT COURT  
OF MONONGALIA COUNTY, WEST VIRGINIA

WEST VIRGINIA UNIVERSITY :  
BOARD OF GOVERNORS for and :  
on behalf of WEST VIRGINIA :  
UNIVERSITY :  
Plaintiff :

v : CIVIL ACTION NO.

RICHARD RODRIGUEZ : 07-C-851  
Defendant :

\* \* \*

Videotape Deposition  
of Perry Petropolus  
Tuesday, June 10, 2008

\* \* \*

a witness herein, taken on behalf of the  
Defendant in the above-entitled cause of action  
pursuant to notice and the West Virginia Rules of  
Civil Procedure by and before Debra A. Volk,  
Notary Public within and for the State of West  
Virginia at the law offices of Flaherty,  
Sensabaugh & Bonasso, PLLC, 965 Hartman Road,  
Suite 1105, Morgantown, West Virginia 26505,  
commencing at 1:15 p.m.

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14

15 Signed by: Thomas V. Flaherty, Esquire

16 On behalf of the Plaintiff, 6-10-08

17

18 Signed by: Marvin A. Robon, Esquire

19 On behalf of the Defendant, 6-10-08

20

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21 ALSO PRESENT:

22 John C. Taylor, Videographer

23

24

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2 P R O C E E D I N G S

3 \* \* \*

4 VIDEOGRAPHER: We're now on  
5 the record in the matter of WVU versus Rodriguez,  
6 Civil action number 07-C-851. My name is John  
7 Taylor. I'm a legal video specialist from Katz  
8 Consulting Group, LLC, located at 820 Quarrier  
9 Street, Charleston, West Virginia, 25301. I'm not  
10 related to any parties to this action or to  
11 counsel of record, nor do I have a financial  
12 interest in this action. Today is June 10, 2008.  
13 The time is 1:15 p.m. This deposition is taking  
14 place at Flaherty, Sensabaugh & Bonasso, PLLC,  
15 965 Hartman Run Road, Morgantown, West Virginia.  
16 The deponent today is Perry Petropolus. Will  
17 counsel please identify themselves for the  
18 record?

19 COURT REPORTER: I am Debra  
20 Volk, the Court Reporter, here on behalf of  
21 Streski Reporting and Video.

22 MR. ROBON: I am Marvin A.  
23 Robon from Barkan & Robon. We are the attorneys  
24 for Rich Rodriguez, the Defendant in this case.

1 MR. MCGINLEY: Sean McGinley,  
2 local counsel for Defendant.

3 MR. FITZSIMMONS: Robert J.  
4 Fitzsimmons on behalf of West Virginia  
5 University.

6 MR. MACIA: Alexander Macia  
7 with West Virginia University.

8 MR. FITZSIMMONS: Bob  
9 Fitzsimmons on behalf of West Virginia  
10 University.

11 MR. FLAHERTY: And I'm Tom  
12 Flaherty on behalf of the Plaintiff, West  
13 Virginia University, et al and the witness.

14 VIDEOGRAPHER: Would the  
15 Court Reporter please swear in the witness?

16 \* \* \*

17 PERRY PETROPOLUS  
18 being first duly sworn, was examined and deposed  
19 as follows:

20 \* \* \*

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24

1                                   E X A M I N A T I O N

2   BY MR. ROBON:

3   Q.                    Would you state your name and your  
4   business address?

5   A.                    Business address?

6   Q.                    Yes sir.

7   A.                    My name is Perry George Petropolus,  
8   and my offices are at the Waterfront Place Hotel  
9   in Morgantown, West Virginia.

10  Q.                    And Mr. Petropolus, what is your  
11  principal occupation?

12  A.                    Real estate, sir.

13  Q.                    Development?

14  A.                    Development and brokerage.

15  Q.                    And investment?

16  A.                    Personal investment, yes, sir.

17  Q.                    Okay.

18                        And how long have you been doing  
19  that?

20  A.                    Probably since the early seventies.  
21  I had a banking stint for a while.

22  Q.                    How many square feet would you say  
23  that you control?

24  A.                    Myself and my partners; probably over

1 a million square feet.

2 Q. Are any of your partners on the Board  
3 of Governors?

4 A. No, sir.

5 Q. Do any of your partners have close  
6 friends on the Board of Governors?

7 A. I don't know if they are close  
8 friends, but they have friends.

9 Q. How many -- you know who the Board of  
10 Governors are, obviously you're a member;  
11 correct?

12 A. Yes, sir.

13 Q. How long have you been on the board?

14 A. I am finishing up my second term. I  
15 filled in for an unexpired first term because one  
16 board member had passed away, and I am finishing  
17 my first full term.

18 Q. And that is how many years?

19 A. I have one year left, sir.

20 Q. How many years for a term?

21 A. I'm going to say four years, and I  
22 have been on about six, seven years on the board.

23 Q. And was that an appointment from the  
24 governor's office?

1 A. Yes.

2 Q. Not Governor Manchin though?

3 A. I was appointed by Governor Wise.

4 Q. Okay.

5 And wasn't Mike Garrison the Chief of  
6 Staff for Governor Wise?

7 A. Yes, sir.

8 Q. Is that how you first met Mike  
9 Garrison?

10 A. Through Governor Wise, yes, sir.

11 Q. Did you know that Mike Garrison was a  
12 lobbyist also?

13 A. Later on I did, not my first meeting,  
14 yes, sir.

15 Q. When did you -- time wise, when would  
16 you have first known that he was a lobbyist?

17 A. When he probably went into private  
18 practice. I'm speculating. That's when I met  
19 him. They opened up -- Spilman and Thomas opened  
20 up a law firm.

21 Q. And what year would that have been?

22 A. Oh --

23 Q. Approximately?

24 A. Two or three years ago.

1 Q. So what did he do before he was a  
2 lobbyist?

3 A. He was the chief of staff for  
4 Governor Wise.

5 Q. Oh, then he became a lobbyist?

6 A. Well, he became -- he was an  
7 attorney, but he went to work for a private  
8 practice.

9 Q. I see.

10 The Board of Governors has how many  
11 members?

12 A. 17, it's changed now because there  
13 was a new law. Two of the -- representing the  
14 smaller colleges were eliminated, so there is  
15 fifteen now actually.

16 Q. And the governor has appointed the  
17 majority of those people?

18 A. Yes, sir.

19 Q. Okay.

20 As a group of that many people, are  
21 there committees or subcommittees on different  
22 aspects of --

23 A. At certain times, committees are  
24 assembled, yes, sir.

1 Q. In West Virginia, do they have like a  
2 board of regents that deals between the  
3 legislature and the --

4 A. Higher Ed Policy Commission.

5 Q. Okay.

6 A. It's really the governor, the Higher  
7 Ed, then the board. We really report to the  
8 Higher Ed Policy Commission.

9 Q. Okay.

10 And does Higher Ed Policy Commission  
11 get appointed by the governor?

12 A. Marvin, I'm guessing, I'm assuming  
13 they do. I don't know for a fact.

14 Q. Okay.

15 Within the Board of Governors, are  
16 there subcommittees, committees?

17 A. Yes, sir, the main committee is  
18 finance, student affairs.

19 Q. And which committees are you on?

20 A. I am on finance, sir.

21 Q. With regard to finance, do you get  
22 involved with the West Virginia University  
23 Foundation?

24 A. From a board member standpoint or

1 personal?

2 Q. Yes, board member.

3 A. Very seldom.

4 Q. Is there a connection between the  
5 university and the Foundation as far as funding  
6 for the athletic programs?

7 A. My understanding there is through the  
8 MAC organization, the Mountaineer Athletic Club.

9 Q. Is it your understanding that the  
10 contributions that are made by donors are not  
11 really made to the university but they are made  
12 to the Foundation and the monies are funneled  
13 into the university athletic program?

14 A. Athletic donations?

15 Q. Yes.

16 A. Most of the donations I'm familiar  
17 with, I've always written checks to MAC,  
18 Mountaineer Athletic Club.

19 Q. Okay.

20 Is that a subpart of the Foundation?

21 A. I think it is. It helps structure,  
22 in fact, I think the Foundation pays for some of  
23 the help for the employees.

24 Q. For the Mountaineer Athletic Club?

1 A. For the Mountaineer Athletic Club.

2 Q. And it is called the M-A -- MAC?

3 A. MAC. M-A-C, yes, sir.

4 Q. When I think of MAC, I think of?

5 Mid-American Conference where I am from so --

6 A. No, we are Big East here obviously.

7 Q. And I assume you're a principal donor  
8 to the -- to MAC?

9 A. I'm not a major donor, but I help a  
10 lot.

11 Q. Did you see the letter that was  
12 written to the Board of Governors from Ken  
13 Kendrick and Bob Reynolds and there were -- I  
14 think there were three other people that were --

15 A. Distinguished alumni.

16 Q. Right.

17 A. I did not see the letter, sir. I  
18 read the newspaper.

19 Q. So you're aware of it?

20 A. I'm aware of it, yes, sir.

21 Q. Did that have an influence on you as  
22 a member of the Board of Governors? I shouldn't  
23 - that's a bad question. Did that letter give  
24 you concern?

1 A. Well, I had concern way before I got  
2 a letter about the whole scenario and of that  
3 distinguished alumni, I knew four of the five  
4 people very well, and, yes.

5 Q. Okay.

6 Is there a committee that deals with  
7 athletics from the Board of Governors?

8 A. Not a specific committee, no, sir. A  
9 committee could be appointed.

10 Q. Well, for example, who would be the  
11 person on the Board of Governors who would  
12 approve, like Bob Huggins contract?

13 A. That would be the president. I mean  
14 the board from my understanding, this is even  
15 with Hardesty when I first got -- we authorized  
16 the president for the day to day operations of  
17 the university, the contracting, and the chairman  
18 and the president are probably the two hardest  
19 working members of the board on business matters  
20 or athletic matters.

21 Q. Is there any limits on their  
22 authority?

23 A. I would imagine by law, I don't know.  
24 I can't answer that knowledgeable enough.

1 Q. So, Michael Garrison was given pretty  
2 much of a carte blanc to negotiate whatever he  
3 wanted to with Richard Rodriguez or --

4 MR. FLAHERTY: Object to the  
5 form of the question. Go ahead and answer.

6 A. Well, he was given the same powers  
7 and rules that President Hardesty had to -- and  
8 authorized to do the same things.

9 BY MR. ROBON:

10 Q. Okay.

11 And the same would be true of Bobby  
12 Huggins' contract?

13 A. Yes, sir.

14 Q. And what's the interplay between the  
15 president doing negotiations with major coaches  
16 for the football and basketball programs as  
17 compared with the athletic director, Ed  
18 Pastilong?

19 A. Can I ask you to repeat the question?

20 Q. Sure.

21 What's the relationship between  
22 Garrison now assuming the task of negotiating  
23 with the head basketball and head football  
24 coaches were that used to be the responsibility

1 of the athletic director?

2 MR. FLAHERTY: Object to the  
3 form of the question. Go ahead.

4 THE WITNESS: I can answer?

5 MR. FLAHERTY: Yes.

6 THE WITNESS: My  
7 understanding the athletic director is still  
8 involved, how active the -- Mr. Garrison became a  
9 little more active than the past president in  
10 working with Mr. Pastilong and the coaches, maybe  
11 because he is a bigger fan, I don't know.

12 BY MR. ROBON:

13 Q. Have you ever testified before?

14 A. In real estate as a condemnation  
15 expert. Witness for the state, private people.

16 Q. Appraisal?

17 A. Appraisal, yes, sir.

18 Q. For the state?

19 A. I was a state witness.

20 Q. That's kind of a --

21 A. Well, they got me.

22 Q. That's kind of unusual for a property  
23 owner. It's normally the other way around.

24 A. But when you are twenty-four years

1 old, and you need to pay the rent, you will do  
2 about anything they give you.

3 Q. So that was a good start in your  
4 career?

5 A. Yes.

6 Q. Okay.

7 Tell me when you first heard about  
8 the Heather Bresch matter with Michael Garrison.

9 A. When I first heard it -- I probably  
10 saw it before it heard it, then we discussed it  
11 at the board.

12 Q. You saw a news article or something?

13 A. A news article. It really -- she  
14 feels she -- she made a news article that she has  
15 her degree.

16 Q. Did the -- were other board members  
17 aware of it before you to your knowledge?

18 A. I don't think so.

19 Q. So is it fair to say that the Bresch  
20 matter came as a complete surprise to the board?

21 A. Yeah, it wouldn't have made a  
22 difference. I mean we didn't know she didn't  
23 have a degree that she thought until we read it,  
24 yes, sir.

1 Q. And you certainly didn't authorize  
2 Michael Garrison to award her a degree?

3 A. No, sir. No, sir.

4 Q. It never came up in any agenda or  
5 anything?

6 A. Never, ever.

7 Q. Do you think that Michael Garrison  
8 was doing this on his own accord or was he doing  
9 it as a favor to the governor?

10 A. I -- without reservation, Michael  
11 Garrison did things on his own, he would not have  
12 been influenced by the governor, especially  
13 something as high a priority as this.

14 Q. Do you think Heather asked him to do  
15 it?

16 A. I think Heather -- 'cause I  
17 understand some of the facts now. She called him  
18 one time, and she wanted him to look why they say  
19 she didn't have her degree, and she says she  
20 does.

21 Q. What about the article I read in the  
22 paper that said that Michael Garrison indicated  
23 there were seventy other similar degrees awarded  
24 in the past where someone may have not completed

1 their coursework or their thesis?

2 A. My understanding, well more than my  
3 understanding, there's a -- I think his name is  
4 Doctor Cummings, the administration, and that's  
5 academic and Stewart Hall wanted that looked into  
6 in the business, B and E school, and this  
7 gentleman did an audit and that was his findings  
8 I learned like three weeks ago when he came back  
9 and spoke to the Board of Governors.

10 Q. And how did the board react to that?

11 A. Well, I -- we weren't happy about it.  
12 It does show some confusion and some -- and it  
13 has to be corrected.

14 Q. Now, when we had -- you had two  
15 meetings in the last couple of weeks. You had  
16 one a week ago Friday where there was no  
17 discussion about Garrison resigning, and then you  
18 had another meeting the following Friday, last  
19 Friday, where I think he announced he was  
20 resigning as President?

21 A. Yes, sir.

22 Q. Was he -- was that choice given to  
23 him, either resign or get fired?

24 A. No, sir, that choice was never made.

1 He resigned on his own.

2 Q. Was there a motion made by the board  
3 to terminate him or sanction him in some manner?

4 A. Not to my knowledge. We did go into  
5 executive session after he made that  
6 announcement.

7 Q. Okay.

8 In his -- did he sign a resignation  
9 letter or just made a verbal announcement?

10 A. All I'm familiar with was he made a  
11 verbal announcement to the board and the public.  
12 It was the public part of the meeting.

13 Q. One of the articles that I read  
14 indicate that he's resigning as president, and  
15 they don't say that he is resigning as an  
16 employee of the university; what is your  
17 understanding?

18 A. My understanding is so far at this  
19 point other than when he announced he's resigning  
20 as president.

21 Q. And not as an employee?

22 A. I -- not to my knowledge, I don't  
23 know.

24 Q. Were there any discussions among the

1 board members as to what position he might  
2 maintain at West Virginia University?

3 A. More discussions. Well, I'm into a  
4 human -- I need legal counsel. This is, I'm into  
5 executive session and this is human resources,  
6 which is private.

7 MR. FITZSIMMONS: We will  
8 direct that --

9 MR. FLAHERTY: I don't think  
10 you can answer that. If it's a personnel matter  
11 that was discussed in executive session, I think  
12 there's a privacy right that attaches to that to  
13 the employee, and you're prohibited under --

14 THE WITNESS: Marvin, not  
15 that I want -- I don't want to violate something  
16 that I'm not supposed to say.

17 MR. ROBON: Well, the issue  
18 would be he is a key witness in this case, and he  
19 is the representative of the university, and the  
20 Board of Governors controls what he does. So I  
21 would request -- I don't think that would be  
22 privileged.

23 MR. FLAHERTY: Well, he's not  
24 going to answer that question.

1 BY MR. ROBON:

2 Q. Okay.

3 Was there any suggestion of the type  
4 of position he might maintain at the university?

5 MR. FITZSIMMONS: I'm going  
6 to object. Anything that you have discussed in  
7 the executive session, you're not to answer that  
8 question. And to the extent that that calls for  
9 any discussions that you had in executive  
10 session, we're directing you not to answer that.

11 THE WITNESS: I can say  
12 without -- I mean all gamic avenues were  
13 discussed; we were in there for two hours.

14 BY MR. ROBON:

15 Q. Okay.

16 What about outside of executive  
17 session, you communicate with other Board of  
18 Governors' members, correct? You see them on the  
19 street, you see them at social functions, you see  
20 them at your restaurant.

21 A. Not since Friday, I really haven't  
22 seen anybody.

23 Q. Well, even before Friday. Were there  
24 any -- what were the discussions among the board

1 members outside of executive session with regard  
2 to the Garrison matter; that you hoped he would  
3 resign?

4 A. No. We felt based on the information  
5 presented to us, he did nothing wrong. However,  
6 the status of the university and where it was  
7 taking, I personally believe, especially with the  
8 politics at West Virginia, perceptions becomes  
9 reality, and the press won out. And we were  
10 looking for the long term success of the  
11 university and its stability, but the board will  
12 state emphatically he did nothing wrong.

13 Q. Okay.

14 And that's the board's position?

15 A. Yes, sir.

16 Q. Okay.

17 Did Rich Rodriguez's contract  
18 amendment ever come up to the Board of Governors  
19 after he signed it on August 24 of '07 for  
20 discussion or ratification at all that you were  
21 aware of?

22 A. I'm not aware of even the contract  
23 coming up to the board other than the  
24 announcement he signed the contract.

1 Q. Were you aware that there was a  
2 figure of four million dollars in the contract in  
3 the event he left the university football program  
4 as head coach?

5 A. Not until all this happened. I  
6 didn't know what the amount was, Marvin, and I'm  
7 good friends with Rich; he never shared that with  
8 me.

9 Q. Did you -- is it your opinion that  
10 four million dollars was in there to keep him as  
11 the coach here at West Virginia so he wouldn't  
12 leave?

13 A. I looked at that as like I did real  
14 estate as a liquidated damage clause. I mean if  
15 I want to walk from a deal, I know what my  
16 minimum out is, and then I got to -- I am not  
17 saying that's the way it should be but that's how  
18 I looked at that.

19 Q. But you had no part in determining  
20 that amount?

21 A. No, sir. I mean I had with Rich,  
22 talking to Rich basically not on the business  
23 terms of this contract but issues with the  
24 department, the things that he would like to see

1 happen.

2 Q. And what did he tell you that -- back  
3 in 2007, what was he looking for from the  
4 university administration?

5 MR. FLAHERTY: When in 2007?

6 MR. ROBON: When he signed  
7 his contract amendment.

8 Q. In and around August of '07?

9 A. Where there was two areas, I'm not  
10 going to get the dates 'cause Rich and I being a  
11 neighbor, I would see him a good bit. One was  
12 the Alabama, there was a situation where he  
13 almost left to go to Alabama and then the  
14 Michigan situation.

15 Q. Alabama would have been in 2006.

16 A. Six, okay. I don't know when or  
17 what. I've lost track of the times, but to '07  
18 he had four or five issues that he said were  
19 paramount, and he called me one night, this is  
20 after the -- a couple days after the Pitt game.  
21 He wasn't playing straight for a while. He was  
22 still upset.

23 Q. That he lost?

24 A. That he lost, I mean. And he said

1 Perry, I can't get books or something. And --

2 Q. He can't get books for his athletes?

3 A. Yeah, I'm going by memory now. It  
4 was late at night, and one was something to do  
5 with -- well, he still wanted to a web page. A  
6 web page was always a big thing with Rich.

7 Q. A web site?

8 A. A web site. Yeah, I'm sorry,  
9 something to do with high school football  
10 coaches.

11 Q. Where they wouldn't have to pay a fee

12 --

13 A. To get into the --

14 Q. And did he indicate that he thought  
15 that was not so much for him but for the  
16 betterment of the football program at West  
17 Virginia University?

18 A. Oh, yeah, I mean he wanted the web  
19 site, the revenues to help pay for the assistant  
20 coaches, if I remember correctly.

21 Q. So he wanted to give more -- one of  
22 his goals was to pay the assistants more money?

23 A. Yes.

24 Q. And he expressed those concerns to

1 you?

2 A. Yeah, that wasn't the first time, yes  
3 sir.

4 Q. More than once?

5 A. Yeah, more --

6 Q. So it wasn't just a passing concern?

7 A. And I looked into some; I got shot  
8 out of the saddle with the athletic director but  
9 --.

10 Q. Explain that to me because that's  
11 what I have heard. I had heard the expression  
12 shot out of the saddle. I heard the word dumped  
13 on?

14 A. Well, I would never say that. Mr.  
15 Pastilong is pretty methodical, and he  
16 researches, I mean and I have a good relationship  
17 with Eddie, and I have a good relationship with  
18 Rich and I said Eddie, I can't understand the web  
19 page and he started talking about something down  
20 in Texas, some Texas A & M. I don't know what  
21 the school was and they got in trouble and that's  
22 why, and then he said this, you guys got to look  
23 at your stuff. He was a little upset with me  
24 when I -- but he told me, these are the reasons.

1 Q. So is it fair to say that the things  
2 that Rich Rodriguez wanted seemed reasonable, but  
3 the athletic director had reasons for not doing  
4 them?

5 A. Yes, that's -- and I did tell Rich at  
6 the end that -- I said Rich please be patient.  
7 It will take time, nothing happens quick around  
8 here. I remember telling him that.

9 Q. Did Rich indicate to you that Michael  
10 Garrison had made representations to him to get  
11 him to sign the contract addendum that certain  
12 things would be done?

13 A. No, sir, not until I read that. I  
14 never, ever, talked to Rich other than one time  
15 on salary on Alabama business terms. It was  
16 always issues and the things that he wanted for  
17 the program.

18 Q. So you looked upon him as a loyal  
19 football coach wanting to help the university?

20 A. As a neighbor and a friend, then a  
21 football coach. I had more fun with Rich than  
22 most people, teasing him, and very few people  
23 could tease him.

24 Q. Oh, is that right? Okay.

1           But you would agree with me that a  
2 four million dollar figure makes someone really  
3 think twice about leaving?

4 A.           Well, it depends. Depending -- I'm  
5 going again with my real estate. I mean  
6 depending on what the deal is and what was  
7 structured, I wasn't aware of the terms. Rich  
8 did a lot of complaining about some of the issues  
9 but he never complained to me ever, ever about  
10 whatever the liquated damage clause was.

11 Q.           When did you find out that the  
12 university had sued him?

13 A.           We had a -- I think we had a  
14 conference call meeting where we were called to a  
15 special meeting on a call and said that we were  
16 going to sue Coach Rodriguez.

17 Q.           Before the lawsuit?

18 A.           I don't know the timing, Marvin. I'm  
19 not playing coy. I just don't remember.

20 Q.           Okay.

21 A.           Then when the next formal meeting, I  
22 remember us being briefed on it.

23 Q.           Were you aware or did Michael  
24 Garrison or Craig Walker or anybody inform you

1 that the lawsuit was filed before any payment was  
2 due from Rich Rodriguez?

3 A. I wasn't aware of that.

4 Q. You don't even know --

5 A. I don't know. I don't know about the  
6 details of it.

7 Q. You don't even know about that today?

8 A. No, sir.

9 Q. Is it fair to say that Michael  
10 Garrison would have been the one who authorized  
11 the filing of the lawsuit?

12 A. I would imagine, yes, sir. I'm  
13 making my assumption, but he had the  
14 authorization to do the lawsuit. And I'm sure  
15 that he had Mr. Macia or maybe -- I am assuming,  
16 Mr. Goodwin, the chair, maybe they met.

17 Q. Did the Board of Governors ever  
18 discuss with amongst the members or the  
19 administration any type of liquidated damages  
20 provision for any of the coaches either, you  
21 know, since 2005?

22 A. Not to my knowledge, sir. I wasn't  
23 part of any of those meetings for any of the  
24 contracts of any of the coaches.

1 Q. Are you familiar with the terms of  
2 the Bobby Huggins contract?

3 A. Just based on what was presented to  
4 me after it was done.

5 Q. And his buyout is how much; do you  
6 remember?

7 A. No, I do not remember. If there is,  
8 again, I'm not being coy, and I'm pretty good  
9 friends with Coach Huggins. Marvin, I'll be  
10 honest with you. I'm not trying to be cute. The  
11 deal that I've always cut with Coach Rodriguez  
12 and Coach Huggins, I don't tell them about  
13 football or basketball, and they don't tell me  
14 how to run the hotel. So --

15 Q. I'm going to hand you what we've  
16 marked as Exhibit AA, and ask if you or any of  
17 the board members ever saw that letter from Rich  
18 Rodriguez?

19 \* \* \*

20 (Whereupon, Petropolus  
21 Deposition Exhibit AA marked for purposes of  
22 identification.)

23 \* \* \*

24 A. If I did, I don't remember. I don't

1 think I've ever seen this letter, sir.

2 Q. Were there discussions about this  
3 letter where Rich explained his reasons for  
4 leaving the university and how he felt that the  
5 administration at the university broke their  
6 promises to him?

7 A. My gathering the information came  
8 really from news sources, I didn't get any direct  
9 information.

10 Q. How active of a role has the Board of  
11 Governors been taking in connection with the  
12 lawsuit or as an inactive role?

13 A. I would say we would be more  
14 inactive. We've authorized, we've hired legal  
15 counsel, and we've stayed out, and we get an  
16 update once in a while on the status.

17 Q. Who ultimately, in your opinion, once  
18 Michael Garrison is no longer president, will  
19 have the wheel of the ship, so to speak, in  
20 connection with this lawsuit?

21 A. That plan is being, not for the  
22 lawsuit, but the plan to run the university is  
23 being formulated now, and I think it would be  
24 premature for me to answer that, sir, not because

1 of this case, just all the other things.

2 Q. Tell me about the governor's  
3 involvement with regard to the lawsuit.

4 A. Other than what I've read in the  
5 press, I have had no conversations with him on  
6 this lawsuit.

7 Q. And he has taken an active role  
8 according to the news media --

9 MR. FLAHERTY: Object to the  
10 form of the question. It's not accurate; it's a  
11 misstatement of facts.

12 MR. ROBON: I'll rephrase the  
13 question.

14 BY MR. ROBON:

15 Q. Recount for the Jury what you can  
16 about the news articles that you've read about  
17 the Governor, Joe Manchin and the Richard  
18 Rodriguez law suit.

19 A. Well, it was more, I thought, between  
20 both of them, two friends name calling, if you  
21 want my personal opinion. It was more about Rich  
22 personally and Governor Manchin personally than  
23 there was about the lawsuit. I don't think I've  
24 read much on the Governor with the lawsuit.

1 Q. You think it's personal with the  
2 governor?

3 A. Rich used to work for the governor  
4 when he had the carpet business; it goes way  
5 back.

6 Q. When he was in college?

7 A. When he was -- I think it was  
8 college, yes, sir.

9 Q. But do you think that the governor is  
10 taking this personally that he left the State of  
11 West Virginia?

12 MR. FLAHERTY: Object to the  
13 form of the question. It calls for pure  
14 speculation.

15 MR. ROBON: You can answer.

16 THE WITNESS: I can answer?

17 Okay, I would imagine it hurt the Governor  
18 because of their relationship from a personal  
19 standpoint.

20 BY MR. ROBON:

21 Q. Do you have a relationship with the  
22 governor?

23 A. Yes, I would not say a strong one,  
24 but I know the governor well. I mean I would

1 consider him a friend, and I'm sure he would  
2 consider me a friend.

3 Q. How often would you say you  
4 communicate with him?

5 A. At events and, probably most times  
6 events. Very seldom have I talked to him on the  
7 phone or on a private basis.

8 Q. Okay.

9 You haven't talked to him with regard  
10 to this lawsuit?

11 A. No, he wouldn't bring this up with  
12 me.

13 Q. Okay.

14 What about other board members?  
15 Would they have conversations with the governor  
16 like Steve Farmer or Steve Goodwin?

17 A. I don't -- I can't answer that. I  
18 know they probably have similar relationships.

19 Q. Have they brought that up to you that  
20 they spoke to the governor about the lawsuit, and  
21 he said such and such?

22 A. No, no, not to me.

23 Q. So the governor's never said anything  
24 to you about Rodriguez as far as you can recall?

1 A. Other than what I read in the papers,  
2 sir.

3 Q. Do you know who John Beilein is?

4 A. Yes, I'm good friends with John. He  
5 was another neighbor.

6 Q. Okay.

7 When John left, there was a  
8 negotiation reduction of his liquidated damages  
9 or his penalty clause; did the Board of Governors  
10 get involved with that?

11 A. No, sir.

12 Q. Who, on behalf of the university,  
13 handled that particular problem?

14 A. I'm going to say Mr. Pastilong  
15 handled that with Mr. Beilein's attorney, Coach  
16 Beilein's attorney. There might have been other  
17 people in the athletic department or --

18 Q. And that would have been Mr.  
19 Fitzsimmons?

20 A. Yes, and maybe Eddie talked to Steve  
21 Goodwin who is the chair but the Board wasn't --

22 Q. Would President Hardesty had been  
23 involved in that all or not?

24 A. I am sure that it would have been run

1 by him, I'm assuming that. I don't know for a  
2 fact.

3 Q. And do you know the basis of why they  
4 reduced the amount of -- that he would have to  
5 pay?

6 A. My understanding was it was because  
7 of the discount of the present value, discounting  
8 it back over a term and getting a lump -- getting  
9 an amount.

10 Q. It wasn't a lump sum, he's paying it  
11 over five years.

12 A. But it was some type of a discounted  
13 --

14 Q. I see.

15 A. I'm not saying that's accurate.  
16 That's how I --

17 Q. That's how you perceived it?

18 A. Yeah.

19 Q. Would you said that another athletic  
20 coach could think the same thing would happen to  
21 him if the same set of circumstances came up and  
22 he resigned?

23 MR. FLAHERTY: Object to the  
24 form.

1 A. If he knew the circumstances, I could  
2 see that -- where he would think that.

3 BY MR. ROBON:

4 Q. Be a pattern so to speak?

5 A. Unless it was an isolated incident  
6 for some other reason, yeah -- but.

7 Q. Did the Board of Governors ever  
8 commission any type of study as to what actual  
9 damages would be incurred by the university if a  
10 head coach left, either in basketball or  
11 football?

12 A. I don't think we commissioned it. I  
13 remember someone saying that they studied it or  
14 someone was studying it, I think Mr. Parsons was  
15 studying it.

16 Q. Did you ever see the results of his  
17 study?

18 A. No, sir.

19 Q. Did any of the other Board of  
20 Governors ever see the results of his study to  
21 your knowledge?

22 A. Not to my knowledge, but I can't  
23 answer that without any knowledge; I don't know.

24 Q. Was there any other study done on any

1 other contract buyout like with John Beilein?

2 A. I can't answer that, sir.

3 Q. Not to your knowledge?

4 A. Not to my knowledge, yes, sir.

5 Q. I am going to hand you what we have

6 marked Exhibit BB. This is a document that I

7 understand was prepared by Mike Parsons.

8 \* \* \*

9 (Whereupon, Petropolis

10 Deposition Exhibit BB marked for purposes of

11 identification.)

12 \* \* \*

13 MR. FITZSIMMONS: Could you

14 get it any bigger?

15 MR. ROBON: Well, I made it

16 bigger so you could read it. I couldn't read it,

17 Bob. I just blew it up.

18 MR. FITZSIMMONS: What the

19 heck happened?

20 MR. ROBON: It's an eight and

21 a half by eleven that I expanded so it's more

22 easily readable.

23 BY MR. ROBON:

24 Q. He's come up here with a number of

1 seven and a half million dollars, and he's broken  
2 it down into various categories. My question to  
3 you is the Board never authorized or had passed a  
4 resolution asking him to do this; correct?

5 A. Not to my knowledge, sir.

6 Q. And this document was never presented  
7 to the Board of Governors?

8 A. Not to my knowledge, sir. This is  
9 the first time I've ever seen it.

10 Q. Do you think that next year the  
11 football season tickets are going to be down  
12 because Rich Rodriguez left?

13 A. As a professional, I can't answer  
14 that. As a fan, I don't know, I just don't know.

15 Q. Well, they've got a pretty good team  
16 coming back, don't they?

17 A. Uh-huh (yes).

18 Q. Pretty good quarterback?

19 A. Well, ask Rich if they lose one what  
20 happens.

21 Q. When they lose a game you mean?

22 A. Yeah.

23 Q. Tell us, what was Rich's reaction,  
24 you know, when he lost the Pitt game? How did

1 people feel -- what did they say to him; did he  
2 communicate that to you?

3 MR. FLAHERTY: Object to the  
4 form of the question. I don't see how this  
5 witness can communicate how other people felt.

6 MR. ROBON: I'll rephrase the  
7 question.

8 BY MR. ROBON:

9 Q. Did you discuss with Rich after he  
10 lost the Pitt game, have any conversations about  
11 the attitude of the administration or the  
12 athletic department?

13 A. I had one conversation with Rich  
14 after the Pitt, but it was like a week or so, it  
15 was a football banquet and my heart was bleeding  
16 for him. I mean I knew --

17 Q. He was down in the dumps?

18 A. That's lightly. I mean --

19 Q. Did he say to you that there were  
20 derogatory comments made to him as a result of  
21 the loss?

22 A. Well, he had a couple things. Some  
23 people -- he got hate mail or something he said,  
24 and some administration-wise didn't console him.

1 And he needed consoled, I mean, I said Rich, you  
2 know, it's a big -- you know my heart's bleeding.  
3 I don't know what to tell you. I don't know what  
4 you tell somebody, how much that game meant to  
5 him.

6 Q. Who came up with the idea, if you  
7 know, about putting a liquidated damages  
8 provision in the coach's contract here at West  
9 Virginia?

10 A. I don't know, sir.

11 Q. And it wasn't really sanctioned by  
12 the board or anything like that; it was just done  
13 by the administration?

14 A. Again, I'll go back to the issues.  
15 You talked a little bit about getting a locker  
16 room for Rich and getting the sideline passes  
17 because I was active there. I wasn't active at  
18 all in his contract.

19 Q. And when you said you were active,  
20 explain that, getting passes.

21 A. Help to give, you know, if I see  
22 Rich, if I'm walking in the neighborhood, see --  
23 you know, and he did get his sideline passes, I'm  
24 pretty sure.

1 Q. Did that surprise you that he didn't  
2 have that type of thing before hand without  
3 asking for it?

4 A. It did surprise me only because I  
5 don't think Coach Nehlen had them either.

6 Q. Have you been to other Big East  
7 schools and games, talked to the --

8 A. Away games.

9 Q. Do you commonly speak with members of  
10 the Board of Governors or Board of Trustees of  
11 other schools in the Big East?

12 A. No, sir.

13 Q. There's no like conference?

14 A. If there is, I haven't gone to any.

15 Q. Okay.

16 Is the university involved in other  
17 litigation that you're aware of?

18 MR. FLAHERTY: Generally?

19 MR. ROBON: Generally, yes.

20 MR. FLAHERTY: All types of  
21 litigation? Construction litigation, contract  
22 litigation, employment litigation, what -- do you  
23 want to be more specific?

24 MR. ROBON: Any litigation.

1 THE WITNESS: Again this,  
2 sir, some of that information was provided to me  
3 in executive session. I need opinion whether I  
4 can say.

5 MR. FLAHERTY: You cannot get  
6 into anything that was discussed in executive  
7 session.

8 BY MR. ROBON:

9 Q. Where there any -- is there any  
10 litigation pending with personnel matters that is  
11 just public knowledge other than with Rodriguez?

12 A. I am not aware of any. I could be  
13 naïve, but I'm not.

14 Q. Are you a West Virginia alum?

15 A. Yes, sir.

16 Q. And you graduated when?

17 A. '73.

18 Q. Were you a sports --?

19 A. I've been a nut. You've got to  
20 remember something, I always sat in old  
21 Mountaineer Field in the rain when Richmond beat  
22 us 48 nothing or something so --

23 Q. So you are a fan not a player?

24 A. I've always been a fan. Never

1 obviously at five foot six you're not much --

2 Q. There's an old adage, guys like you  
3 and me, small but mighty. Did you hear  
4 scuttlebutt that long before Michael Garrison was  
5 made president that he was going to get the job?

6 A. Did I hear scuttlebutt?

7 Q. Uh-huh (yes).

8 A. That was the scuttlebutt. People  
9 thought that and it couldn't have been farther  
10 from the truth.

11 Q. Do believe that there was an inside  
12 path with the relationship that Mike Garrison had  
13 with the governor, that's why he got appointed?

14 A. With Governor Manchin?

15 Q. Yes.

16 A. I don't believe that. Michael  
17 Garrison had relationships with a lot of them,  
18 but I still to this day defend the search and how  
19 it was handled, Marvin. I was not part of the  
20 search committee because of my relationship with  
21 Michael Garrison.

22 Q. Do you think if the Heather Bresch  
23 matter hadn't come up, he would still be  
24 president?

1 A. Without question.

2 Q. How frequently did you communicate  
3 with Mike Garrison in the last year?

4 A. When he was President?

5 Q. Uh-huh (yes).

6 A. Besides the board meetings, probably  
7 once or twice a month.

8 Q. Were they general things or where  
9 they university related?

10 A. Well there was a personal  
11 relationship. That would be most of it. Then  
12 there were a couple university - I'm involved in  
13 a couple projects with the university.

14 Q. That he is overseeing?

15 A. I'm involved with the Foundation  
16 really, not the university, in the parking  
17 garage.

18 Q. Okay.

19 A. And we would discuss that.

20 Q. How are you involved with the  
21 Foundation?

22 A. Well, they are part owners with me at  
23 the parking garage with the hotel.

24 Q. So it's an investment for the

1 Foundation?

2 A. Yes, and we run it.

3 Q. Is it fair to say that you allowed  
4 the Foundation to be an investor so they could  
5 make money?

6 A. They're pretty good investor to have  
7 with you. I don't know if I allowed them or  
8 begged them though, I'm glad to have them.

9 Q. But it's a mechanism that they can --

10 A. Well, they use it because their  
11 building's there, they use the garage.

12 Q. So they not only use it but it helps  
13 the growth of their funds?

14 A. I would imagine, yes, sir.

15 Q. What else is the Foundation involved  
16 in that affects the university that you're aware  
17 of?

18 A. Investments, it goes to scholarships  
19 and what they do with the money.

20 Q. Were you aware that the Foundation  
21 contributed to Rich's salary?

22 A. I might have heard that; I don't know  
23 as a fact.

24 Q. That wouldn't surprise you?

1 A. No, they did that with presidents,  
2 President Hardesty, I think they contributed to  
3 President Hardesty.

4 Q. So it's a funding source for the  
5 university?

6 A. Because of state regulations, I think  
7 I'm probably the worst person to know the law,  
8 academic law, but I don't think you can pay  
9 anybody higher than the chancellor of the Higher  
10 Ed Policy.

11 Q. And that's what two fifty a year or  
12 so?

13 A. Yeah, so if you paid anything above  
14 that it would have to be through the Foundation.

15 Q. And there's probably four or five  
16 people at the university above that amount I  
17 would assume, the basketball coach, the football  
18 coach, some others?

19 A. I would imagine, yes, sir. You're  
20 probably accurate about the football and  
21 basketball. I don't know about the other people.

22 Q. From your perspective as a  
23 businessman and a member of the Board of  
24 Governors, if you had to think about the damages

1 that West Virginia University is alleging against  
2 Rich Rodriguez, what would you say would be the  
3 most important element, if any?

4 MR. FITZSIMMONS: As to the  
5 damages we're alleging in the lawsuit?

6 MR. ROBON: Right.

7 MR. FITZSIMMONS: Do you need  
8 to see the Complaint?

9 THE WITNESS: Yeah, I don't  
10 know what -- other than the dollar amount I  
11 heard. Is that -- I don't know -- I mean in this?

12 BY MR. ROBON:

13 Q. Well, my question is from your  
14 perspective, you know, you've been involved in  
15 the Board of Governors, you've been involved in  
16 the university, you've been involved in  
17 investments, you've been very successful, you're  
18 a very good contributor, I understand. I mean,  
19 his leaving, what would be your feeling that  
20 would be the thing that harmed the university the  
21 most, if anything from a financial perspective?

22 A. Well then you would have to look at  
23 ticket sales and do I -- I've done no study. I  
24 can't make a professional --

1 Q. So would you say if ticket sales were  
2 as good as they were last year, there would be no  
3 damage?

4 MR. FLAHERTY: Object to the  
5 form of the question.

6 MR. ROBON: You can answer.

7 THE WITNESS: I can answer,  
8 unless there were other damages that I don't --  
9 I'm not aware of or what Rich was doing outside  
10 putting the team on the field, I mean I didn't  
11 see, was it the talk show or this and that.

12 BY MR. ROBON:

13 Q. Tell me your understanding of how  
14 Bill Stewart became his successor, the inside  
15 scoop.

16 A. I don't have inside scoop.

17 Q. Well, wasn't the inside scoop the  
18 governor saw him win the Fiesta Bowl?

19 A. The governor was at the Fiesta Bowl  
20 so was the athletic director.

21 Q. So you think the governor approved of  
22 the hiring or did he issue the hiring?

23 A. I'd put my money on Pastilong did the  
24 number.

1 Q. And Pastilong and the governor are  
2 very close old college friends; correct?

3 A. Good friends. I've seen them argue.

4 Q. The governor always wins, doesn't he?

5 A. Not necessarily, I've seen Mr.  
6 Pastilong tell the governor no three or four  
7 times.

8 Q. Did you ever hear that certain donors  
9 of the university or to the Foundation were  
10 demanding that there be a liquidated damages or a  
11 penalty clause in Rich's contract to prevent him  
12 from leaving particularly after the offer came  
13 from Alabama in 2006?

14 A. I'm not aware of that.

15 Q. Would that surprise you?

16 MR. FLAHERTY: Would what  
17 surprise him?

18 BY MR. ROBON:

19 Q. That certain donors would make a  
20 demand like that?

21 A. Well, I hope they wouldn't.

22 Q. Did Rich ever tell you that he was  
23 informed that certain donors indicated that in  
24 their pledges that they wanted to be certain he

1 was going to stay as the head football coach?

2 A. Rich never said that to me.

3 Q. Is it fair to say of the fifteen  
4 board members, some are much more active than  
5 others?

6 A. Well, especially the chair because  
7 that's his function.

8 Q. That's Goodwin.

9 A. And a lot of them travel. But --

10 Q. Who would you say are the top three  
11 other than Steve Goodwin?

12 MR. FLAHERTY: Top three  
13 what?

14 Q. Involved, you know.

15 A. Well, they're all active. I mean I  
16 would definitely say they rely on Hank Barnette,  
17 senior statesman on the board, for opinion, Steve  
18 Goodwin and Hank.

19 Q. Now, I've not heard that name before.

20 A. Hank Barnette?

21 Q. Right.

22 A. He's getting off this year, he's been  
23 on two terms. He was Chairman of the Board of  
24 Bethlehem Steel.

1 Q. Does his term run out July first?

2 A. I think he runs out.

3 Q. Has anybody called to your attention  
4 that donations to the West Virginia Foundation  
5 are down or up since Rodriguez left?

6 A. No, sir. I --

7 Q. And you're not aware of any donors  
8 that have contacted you or the board and  
9 indicated they're not making donations because  
10 Rodriguez left?

11 A. No, sir, I haven't had those  
12 conversations.

13 Q. What was the board's attitude when  
14 Rodriguez left and what I'm looking for is, did  
15 they inquire, I want to find out why or was it  
16 just, well, he's gone, we'll replace him?

17 A. No, it wouldn't be that. I mean -- I  
18 was a person, I don't know -- from a board but  
19 I'm sure they all had their personal -- I mean I  
20 -- we lost a football coach, I lost a neighbor  
21 and a friend, Marvin. So I did mind -- you know,  
22 I wanted to know why and Rich was frustrated and  
23 the Pitt loss didn't help us.

24 Q. Did he express those frustrations to

1 you frequently?

2 A. All the time.

3 Q. Did you see from his perspective that  
4 he was frustrated that nothing was being done at  
5 the athletic department level or the management  
6 level of the university to rectify the concerns  
7 he had?

8 A. Well, some things were. I mean based  
9 on his perception, maybe not, but I remember he  
10 was upset about the locker room and I saw locker  
11 room construction coming and he got his sideline  
12 passes. Maybe they weren't coming fast enough.  
13 And Rich, you know, he's one of the hardest  
14 working coaches in the whole country; you know  
15 that, he's going to be so prepared.

16 Q. Works day and night?

17 A. Works day and night. That's what  
18 people don't understand about Rich, he's a  
19 workaholic.

20 Q. But you saw the evidence of the  
21 frustration?

22 A. Yes.

23 Q. Who is paying the law firms, the  
24 Foundation or the university to represent the

1 university in this matter?

2 A. I can't answer that; I don't know.

3 Q. You don't know?

4 A. I know I'm not.

5 Q. Were you ever a member of the

6 Foundation?

7 A. No, sir.

8 Q. Never an officer?

9 A. No, sir.

10 Q. Director?

11 A. No, sir.

12 Q. The president would have the

13 authority to make promises to Rich Rodriguez

14 though, wouldn't he?

15 A. He was authorized by the board to do

16 you know, from a legal standpoint.

17 Q. So if the president indicated to

18 Rodriguez that he didn't believe in buyouts which

19 is the penalty or liquated damages, he would have

20 authority to say that?

21 A. I would say yeah. He can say what he

22 wants, whether he can do it or not, I mean I

23 don't know what the law is, but lawful, he was

24 authorized.

1 Q. Let's take a few minutes and go off  
2 the record.

3 VIDEOGRAPHER: The time is  
4 2:07 p.m., and we are going off the record. This  
5 concludes tape one.

6 \* \* \*  
7 (Short break taken)

8 \* \* \*  
9 VIDEOGRAPHER: The time is  
10 2:17 p.m. We're back on the record; this begins  
11 tape two.

12 BY MR. ROBON:

13 Q. We took a what, ten-minute break, Mr.  
14 Petropolus?

15 A. Yes, sir.

16 Q. Did you bring anything with you with  
17 regard to the notice of deposition that we served  
18 with regard to notes or documents?

19 A. I brought nothing, sir.

20 Q. Did the university attorneys provide  
21 you with a copy of the notice of deposition?

22 A. I was told to come to the deposition  
23 when they scheduled it.

24 Q. But they didn't give you the --

1 A. If they did, they could have given it  
2 to my secretary when they scheduled it. She does  
3 a lot of my scheduling.

4 Q. But you never saw it?

5 A. I haven't seen it, no.

6 MR. FLAHERTY: For the  
7 record, let me just state, as you well know, Mr.  
8 Robon, we have filed an objection to your late  
9 and outside the Rule, the duces tecum notice, and  
10 we filed that and provided it to you prior to  
11 this deposition. Mr. Petropolus is a party  
12 representative of the Board of Governors. You  
13 have to follow the rules of Rule 30(b)(6) and  
14 Rule 34 in order to request documents. You did  
15 not do that timely, and we advised you that at  
16 the time you made your request and filed a  
17 written response and filed it with the Court  
18 subsequently.

19 MR. ROBON: Well, I don't  
20 need a lecture.

21 BY MR. ROBON:

22 Q. And did -- do you have any documents,  
23 any memos or notes of meetings or a diary  
24 relating to Rich Rodriguez's contract or his

1 termination?

2 A. Do I have any?

3 Q. Yes.

4 A. No, sir.

5 Q. Okay.

6 When minutes are made -- well, let me  
7 ask this question; was there ever an executive  
8 session discussing Rich Rodriguez leaving or his  
9 contract that you're aware of?

10 A. Only one session where we were  
11 updated on the case.

12 Q. We talked about Mike Garrison for a  
13 minute, and you indicated in West Virginia you  
14 have the governor, then you have the Higher  
15 Education; wasn't Garrison the chairman of that  
16 Higher Education Policy?

17 A. He was on, I don't know whether he  
18 was chairman, maybe he was chairman, I don't  
19 know. I know he was on the Higher Ed.

20 Q. And you also mentioned that he saw a  
21 few times where Pastilong, Eddie Pastilong and  
22 the governor weren't on the same page, so to  
23 speak; do you recall any of the issues where  
24 Pastilong absolutely said no to the governor?

1 A. Not specific issues.

2 Q. And when you talked about the --  
3 Garrison having authority from the board, there  
4 wasn't any special resolution passed after  
5 Hardesty resigned giving Garrison any extra  
6 authority or any special authority?

7 A. I think he was an interim before he  
8 took official. We had to do something; I forget  
9 what it was.

10 Q. So he was an interim president?

11 A. He was - yeah; there was a time when  
12 the transition was taking place.

13 Q. That would have been in the spring of  
14 '07?

15 A. I guess. I don't know, I'm not good  
16 on the dates.

17 Q. And when Rich told you about his  
18 frustrations at the university, the sideline  
19 passes and the football coaches that he -- high  
20 school he wanted to get in for nothing. And he  
21 wanted the student athletes to be able to keep  
22 their textbooks and sell them if they needed. He  
23 wanted more money and he wanted a web site so he  
24 could have more money for his assistant coaches,

1 these were things that he indicated would benefit  
2 the school; correct?

3 A. The program we always talked about,  
4 we assumed football program, yes, sir.

5 Q. And his goal during the time that he  
6 lived next door to you and you were friendly was  
7 to improve the West Virginia football program and  
8 the athletic program; correct?

9 A. That would definitely be one of his  
10 goals, yes, sir.

11 Q. You were speaking with Mr.  
12 Fitzsimmons outside during the break. That's  
13 normally not to occur but what did occur?

14 MR. FITZSIMMONS: Whoa,  
15 wait, when you said normally not to occur, there  
16 are certain rules that relate to that. We talk  
17 to witnesses all the time during breaks so when  
18 you say normally not to occur,?

19 MR. FLAHERTY: Specific case  
20 law --

21 MR. FITZSIMMONS: I don't  
22 know what you mean by that. But if you meant  
23 anything improper --

24 MR. ROBON: Well, let me ask

1 --

2 MR. FITZSIMMONS: Go ahead  
3 and ask the question.

4 BY MR. ROBON:

5 Q. I'll ask this question; was anything  
6 discussed about what you said?

7 A. My brother, my brother and Fitz are  
8 good friends.

9 Q. That's fine. Okay.

10 A. That's how we met.

11 Q. Okay.

12 I just wanted to clarify the record,  
13 you know, nothing personal in that regard.

14 A. No, I understand.

15 Q. Do you think Rich gave a hundred  
16 percent effort here at West Virginia University  
17 when he was here?

18 A. Probably a hundred and fifty.

19 Q. Okay.

20 And do you believe that he believes  
21 that he was forced out?

22 A. Do I believe? He might believe that,  
23 I don't believe that.

24 Q. But you could see how he could

1 believe that?

2 A. He was believing a lot of things,  
3 again, after the Pitt game, I'm telling you.

4 Q. And the -- after the Pitt game, it  
5 made it very uncomfortable for him in certain  
6 situations?

7 A. Sure it would.

8 Q. There was even an inference that he  
9 threw the game at one point; did you hear that?

10 A. I didn't hear that. I would throw  
11 up.

12 Q. And as far as you -- your personal  
13 concern, he was upstanding, honorable and still  
14 is, individual?

15 A. Rich and I were very good friends.

16 MR. ROBON: I have nothing  
17 further.

18 MR. FLAHERTY: Let me ask  
19 you a few follow-up questions, Mr. Petropolus.

20 \* \* \*

21

22

23

24

1 EXAMINATION

2 BY MR. FLAHERTY:

3 Q. You just responded to a question by  
4 saying that after the Pitt game Rich may have  
5 been believing a lot of things; what did you mean  
6 by that, what was his demeanor following the loss  
7 to the University of Pittsburgh in December?

8 A. He was stressed out after the game, I  
9 mean I'm no doctor. He wasn't the same Rich I  
10 knew for a while. His thinking was clouded.

11 Q. That Rich Rodriguez's thinking was  
12 clouded?

13 A. In my opinion.

14 Q. All right.

15 But that is based upon your  
16 perception of him as a friend and as a neighbor  
17 and as someone who saw him frequently?

18 A. He lost a big game, he got some  
19 criticism probably, but his friends were still  
20 there. I mean, you know --

21 Q. But as I understand your testimony,  
22 it was your perception that he was not thinking  
23 clearly following that Pitt loss?

24 A. He was pretty upset.

1 Q. You've indicated that prior to the  
2 Pitt game, he was frustrated; correct?

3 A. Yes, sir.

4 Q. And is that -- he was frustrated with  
5 the athletic department?

6 A. Over the issues. I don't know all  
7 the issues, at least the ones he shared with me.  
8 If there were others, I'm not aware of them. But  
9 -- and I could see a little of the frustrations,  
10 they were minor issues but they couldn't get done  
11 but after they were explained, I could understand  
12 a little better what Mr. Pastilong was thinking.

13 Q. It was clear to him that those issues  
14 were not part of his employment contract; those  
15 were just other initiatives that he wanted  
16 followed up on?

17 MR. ROBON: Objection.

18 MR. FLAHERTY: Go ahead and  
19 answer.

20 THE WITNESS: I don't know if  
21 they were part of the contract. These were just  
22 issues that Rich wanted to see get done for the  
23 program. He never talked about his contract to  
24 me.

1 BY MR. FLAHERTY:

2 Q. You indicated that he complained  
3 frequently.

4 A. I don't know if I said frequently, he  
5 had some issues.

6 Q. You told us earlier in your  
7 deposition Rich did a lot of complaining to you  
8 regarding things.

9 A. Well, maybe I was too rough but the  
10 issues, these same issues to get done.

11 Q. Did he ever complain, I mean did he  
12 complain to you on a regular basis because you  
13 were neighbors and friends?

14 MR. ROBON: I will object to  
15 that because he's already answered that, but you  
16 can answer.

17 BY MR. FLAHERTY:

18 Q. How often did you see Rich when he  
19 was in Morgantown in 2007?

20 A. I would say once, maybe, every two  
21 weeks, twice -- maybe once a week, I mean, you  
22 know, if I was by the facilities building, I  
23 would stop and say hi to him, and he was always  
24 working.

1 Q. At the times that he was complaining  
2 or expressing frustration to you; did he ever  
3 once complain to you about the four million  
4 dollar liquidated damage provision in his  
5 contract?

6 MR. ROBON: Objection.

7 MR. FLAHERTY: What's the  
8 basis of the objection.

9 MR. ROBON: Leading.

10 MR. FLAHERTY: How is that  
11 leading? Explain to me how it's leading and I'll  
12 correct it.

13 MR. ROBON: It is a yes or no  
14 answer and that's leading.

15 MR. FLAHERTY: No, it isn't.

16 THE WITNESS: Again, to the  
17 best of my knowledge, I never discussed with Rich  
18 anything to do with the business terms of his  
19 contract. He never brought them up; I didn't  
20 bring them up.

21 BY MR. FLAHERTY:

22 Q. So he never complained to you --

23 A. Never.

24 Q. About the liquidated damages?

1 A. Not to me on the terms of his  
2 contract.

3 MR. ROBON: Continuing  
4 objection. He already said he didn't talk about  
5 the terms.

6 BY MR. FLAHERTY:

7 Q. You indicated some familiarity with  
8 liquidated damage clauses?

9 A. Only from a real estate perspective,  
10 yes, sir.

11 Q. And what is your understanding from a  
12 real estate perspective of the purpose of  
13 liquidated damages clause?

14 A. To us, either whether you're buyer  
15 or seller, it's a minimum amount that you can  
16 walk.

17 Q. Is it an estimate or a fair estimate  
18 of what might be --

19 A. A lot of things can come up, that's  
20 why you do the liquidated damages because you  
21 don't know. They're very hard to estimate.

22 Q. So when you told Mr. Robon earlier  
23 that -- that -- he asked you a question about  
24 whether ticket sales, client ticket sales would

1 be a damage and you responded that, there was no  
2 further questions about it; would you agree that  
3 there are plenty of other potential damages that  
4 can occur from someone walking away from the real  
5 estate deal or an employment contract and that's  
6 why you do real estate -- you do liquidated  
7 damages?

8 A. There can be other damages, you know,  
9 that I haven't studied but -- in real estate,  
10 yeah, there are a lot of other damages that you  
11 don't know about.

12 Q. And that's why you put liquidated  
13 damages in a real estate clause; correct?

14 A. From a real estate -- yes, sir.

15 Q. Rich Rodriguez described himself in  
16 his deposition as being impatient to get things  
17 done; would you agree with that description of  
18 him?

19 A. Impatient? He was on a mission; he  
20 would be impatient.

21 Q. He always wanted something done,  
22 something else done?

23 A. Yes, sir.

24 Q. If he had A, he wanted B. If he had

1 A and B he wanted C; is that a characteristic of  
2 his personality?

3 MR. ROBON: Objection.

4 BY MR. FLAHERTY:

5 A. He wanted to be the best he could be,  
6 whatever it took. So he wouldn't settle for  
7 mediocrity.

8 MR. FLAHERTY: I think  
9 that's all I have. Thank you.

10 MR. ROBON: I have a couple .  
11 follow-up questions, Mr. Petropolus.

12 \* \* \*

13 E X A M I N A T I O N

14 BY MR. ROBON:

15 Q. In a real estate contract when you  
16 have liquidated damages, it's generally used to  
17 force the other party to conclude a transaction.  
18 For example, you're selling property and buyer  
19 opts not to buy, you want the damages because  
20 they broke the deal; correct?

21 MR. FITZSIMMONS: I am going  
22 to object. It's a misstatement as to what  
23 they're for, what liquidated damages clauses are  
24 for.

1 MR. ROBON: I'm asking.

2 MR. FITZSIMMONS: I  
3 understand. You made the representation that  
4 that's what they were for in your question and  
5 that's not a true fact.

6 MR. MCGINLEY: Let me say  
7 something here before I start talking. Bob and  
8 Tom, are we going to have one person or --  
9 because and that was kind of a speaking  
10 objection.

11 MR. FITZSIMMONS: Well now  
12 you're the second so you obviously answered that  
13 by being the second person.

14 MR. MCGINLEY: Well, let's  
15 just -- I just want to ask you both. Are we  
16 going to have a rule with one person or any --

17 MR. FLAHERTY: We've haven't  
18 discussed that.

19 MR. MCGINLEY: Well, I'm  
20 asking you right now.

21 MR. FLAHERTY: Let's discuss  
22 it after the deposition. Obviously, there's two  
23 of you talking now; there's two of us talking.

24 MR. MCGINLEY: I'm talking

1 just to ask the question.

2 MR. FLAHERTY: We will do it  
3 after the deposition.

4 MR. MCGINLEY: And that was a  
5 speaking objection, okay?

6 MR. FLAHERTY: What was a  
7 speaking objection?

8 MR. MCGINLEY: What Bob just  
9 said.

10 MR. ROBON: I'll rephrase the  
11 question.

12 BY MR. ROBON:

13 Q. Normally, let's say you're a seller  
14 in a real estate shopping center, strip center.  
15 There normally is a deposit; correct?

16 A. Yes.

17 Q. And the deposit is generally  
18 forfeitable if the party doesn't purchase the  
19 contract other than an objection of title or one  
20 of the contingencies can't be fulfilled; correct?

21 A. After a period of time, yes, sir. It  
22 increases I mean.

23 Q. Right.

24 So it's simply a deposit that is

1 forfeited and in most cases it may not be nearly  
2 the amount of damages that could be suffered by  
3 the seller?

4 A. Early on, it might be looked at as a  
5 deposit, in my opinion but if you go longer into  
6 the deal, more money is put in, and then it  
7 really does become a liquidated damage.

8 Q. For example, if someone is going to  
9 purchase a strip center and they get ready for  
10 closing and they want to stop, all of a sudden  
11 the tenant knows that the property is going to be  
12 sold and then the buyer backs out, the damages  
13 could be significant.

14 A. Especially the time in looking at  
15 leases, and all information, yes, sir.

16 Q. But those damages are actually  
17 calculable, are they not? I mean if you lost a  
18 tenant, for example, that's paying ten thousand a  
19 month, I mean you know what your damages are  
20 because you got a vacant space?

21 A. They're calculable, but you're not  
22 going to be a hundred percent accurate. There's  
23 other --

24 Q. Right, but you could come close if

1 there was no liquidated damages provision in the  
2 contract, a good real estate lawyer representing  
3 either the buyer or the seller could come up with  
4 a reasonable estimate of what the damages would  
5 be suffered by either party?

6 A. Yes, sir, and that's what we try to  
7 do, a reasonable estimate.

8 Q. So there's a connection between  
9 reasonableness and the actual sum that's put in a  
10 contract, correct?

11 A. I think that's accurate, yes, sir.

12 MR. ROBON: No further  
13 questions.

14 \* \* \*  
15 E X A M I N A T I O N

16 BY MR. FLAHERTY:

17 Q. You would also agree that there is a  
18 difference between an earnest money deposit and a  
19 liquidated damage clause?

20 A. Without question, yes, sir.

21 MR. FLAHERTY: Nothing  
22 further.

23 VIDEOGRAPHER: The time is  
24 2:32 p.m. We're going off the record. This

1 concludes tape two and this deposition.

2 MR. FLAHERTY: He'll read and  
3 sign.

4 \* \* \*

5 (Whereupon, this deposition  
6 was concluded at 2:32 p.m.)

7 \* \* \*

8 (Whereupon signature was not  
9 waived by the witness).

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1 THE STATE OF :  
 WEST VIRGINIA :  
 2 : SS: C E R T I F I C A T E  
 COUNTY OF OHIO :  
 3

4 I, DEBRA A. VOLK, Court Reporter and  
 Notary Public within and for the State of West  
 Virginia duly commissioned and qualified, do  
 5 hereby certify that the within-named witness,  
 PERRY PETROPOLUS, was by me first duly sworn to  
 6 testify to the truth, the whole truth and nothing  
 but the truth in the cause aforesaid; and the  
 7 testimony then given by the witness was by me  
 reduced to stenotype in the presence of the  
 8 witness; afterwards reduced to Computer Aided  
 Transcription under my direction and control;  
 9 that the foregoing is a true and correct  
 transcription of the testimony given by said  
 10 witness.

11  
 12 I do further certify that this  
 testimony was taken at the time and place in the  
 foregoing caption specified, and was completed  
 13 without adjournment.

14  
 15 I do further certify that I am not a  
 relative, counsel or attorney of either party, or  
 otherwise interested in the event of this action.  
 16

17 IN WITNESS THEREOF, I have hereunto set  
 my hand and affixed my seal of office at  
 18 Wheeling, West Virginia, on the \_\_\_\_\_ day of  
 \_\_\_\_\_, 2008.

19  
 20  
 21 \_\_\_\_\_  
 DEBRA A. VOLK, Court Reporter  
 Notary Public within and for  
 22 the State of West Virginia

23  
 24 My commission expires July 25, 2015  
 (DAV)