

NORTH CAROLINA
GUILFORD COUNTY

IN THE GENERAL COURT OF JUSTICE
SUPERIOR COURT DIVISION
12 CVS 10736

ATLANTIC COAST CONFERENCE,)
)
Plaintiff and)
Counter-Defendants,)
)
)
v.)
)
UNIVERSITY OF MARYLAND,)
COLLEGE PARK; BOARD OF)
REGENTS, UNIVERSITY SYSTEM OF)
MARYLAND,)
)
Defendants and)
Counter-Claimants.)

AMENDED ANSWER AND
COUNTERCLAIMS

FILED
JAN 23 2014
CLERK OF SUPERIOR COURT
GUILFORD COUNTY, NC

PURSUANT TO Rule 15(a) of the North Carolina Rules of Civil Procedure, Defendants University of Maryland, College Park (hereinafter “the University” or “Maryland”) and Board of Regents, University System of Maryland (the “Board of Regents”) (the University and the Board of Regents are collectively referred to as the “Counter-Claimants”, “Defendants” or the “Maryland Defendants”), by and through their undersigned counsel acting for and on behalf of the Attorney General of the State of Maryland and respectfully taking exception to the Court’s ruling denying Defendants’ Motion to Dismiss for Lack of Personal Jurisdiction and continuing to deny that the Court has jurisdiction due to the sovereign immunity of the Maryland Defendants as arms of the government of the State of Maryland, hereby restate and incorporate by reference as if fully set forth herein their responses to the allegations of the Complaint contained in Defendants’ Answer filed herein on December 23, 2013, and amend their Answer and allege Counter-Claims against the Plaintiff Atlantic Coast Conference as follows:

EIGHTEENTH DEFENSE

In complete bar of any recovery by the Plaintiff on its Complaint, Defendants and Counter-Claimants allege the improper, illegal and fraudulent acts set forth in the following Counter-Claims against Plaintiff.

NINETEENTH DEFENSE AND COUNTERCLAIMS

In complete bar of any recovery by the Plaintiff on its Complaint, Defendants and Counter-Claimants, by their counsel and continuing to dispute the exercise of personal jurisdiction over the State of Maryland, for their counterclaims against the Atlantic Coast Conference (“ACC” or “Conference” or “Counter-Defendant”) allege as follows:

INTRODUCTION

1. Maryland has been a member of the ACC since the founding of the Conference in 1953. On November 19, 2012, Maryland publicly announced its intention to join the Big Ten Conference (“Big Ten”) beginning on July 1, 2014.

2. As known to the ACC, Maryland’s intercollegiate athletic programs are required to be self-sustaining and self-supporting. Under Maryland law, those programs may not receive any tuition funds or state appropriations.

3. Immediately after Maryland’s announcement, the ACC took steps designed to deny Maryland athletic, academic, and financial benefits that Maryland expected to derive from joining the Big Ten and to penalize Maryland for its decision to leave the ACC, with the goal of impeding Maryland and deterring other members from leaving the Conference. Specifically, the ACC imposed on Maryland a withdrawal penalty of \$52.26 million (the “Withdrawal Penalty”) purportedly authorized by the ACC Constitution and Bylaws (collectively, the “ACC Constitution”). The ACC claims that the Withdrawal Penalty constitutes “liquidated damages.”

4. The Withdrawal Penalty bears no relation to actual damages (if any) to the ACC from Maryland's withdrawal. To the contrary, the ACC nearly tripled the penalty for leaving the Conference, without basis, analysis or justification, in September 2012 (a short time before Maryland's announcement) through a purported amendment to the ACC Constitution (the "2012 Amendment"). Maryland and one other ACC member institution opposed the 2012 Amendment.

5. The purported 2012 Amendment lacks any legitimate economic justification.

6. Further, the 2012 Amendment failed to comply with the notice and procedural requirements of the ACC Constitution. Therefore, the 2012 Amendment is null and void.

7. The ACC also ignored and breached the ACC Constitution in its urgency to punish Maryland and deter further withdrawals from the Conference. The ACC Constitution provides that amendments do not take effect until the beginning of the next fiscal year following their adoption. Even if the September 2012 increase in the Withdrawal Penalty had been validly adopted (and it was not), the 2012 Amendment would not have taken effect until July 1, 2013.

8. The ACC purported to apply the 2012 Amendment before July 1, 2013. The ACC imposed the Withdrawal Penalty as early as December 2012 by withholding from Maryland its share of conference revenues. Before July 1, 2013, more than \$16 million of Maryland's share of conference revenues were withheld by the ACC and not distributed to Maryland. Further, the ACC has made clear its intention to withhold *all* future conference revenues due to Maryland until it has determined that the Withdrawal Penalty is paid in full.

9. The ACC has also penalized Maryland by excluding it from participation in conference meetings and by barring its coaches from participation in meetings dealing with competition, scheduling, and planning with respect to individual sports. The ACC has done all this even though Maryland remains a member of the ACC.

10. The ACC's actions are unlawful and tortious, and constitute an illegal restraint of trade, unfair competition, and unfair or deceptive trade practices.

11. The ACC's illegal, retaliatory, and anticompetitive conduct threatens irreparable harm to Maryland and Maryland's student-athletes, student and alumni fan base, faculty, athletic competitiveness, and reputation.

12. Maryland and the Board of Regents bring these counterclaims to prevent this harm and to force the ACC to adhere to its legal obligations, including the contractual obligations arising from the ACC Constitution. Counter-Claimants seek a declaratory judgment for the purpose of determining a question of actual controversy between the parties. Counter-Claimants also seek compensatory and punitive damages to remedy the ACC's breach of contract and unlawful conversion and an award of treble damages, civil penalties, injunctive relief, and attorneys' fees and costs to remedy the ACC's violations of the Maryland Antitrust Act, Md. Code Ann., Commercial Law §§ 11-204 and 11-209, and violations of North Carolina's Unfair and Deceptive Trade Practices Act ("UDTPA") § 75-1.1.

PARTIES

13. The Board of Regents is the governing body of the University System of Maryland. Title 12 of the Education Article of the Annotated Code of Maryland establishes the University System of Maryland as an instrumentality of the State of Maryland to "foster the development of a consolidated system of public higher education, to improve the quality of education, to extend its benefits, and to encourage the economical use of the State's resources." Maryland is a constituent institution of the University System of Maryland and is the flagship institution within the University System of Maryland.

14. Counter-Defendant ACC is an unincorporated association that governs, regulates and promotes, through the sale of television broadcasting rights, sponsorships, and other promotional benefits, certain intercollegiate athletic competitions among its member institutions, generating substantial revenues. The Conference currently consists of fifteen member institutions of higher education from ten states. The current members of the Conference are Maryland, Boston College, Clemson University, Duke University, Florida State University, Georgia Institute of Technology (“Georgia Tech”), University of Miami, University of North Carolina, North Carolina State University, University of Virginia, Virginia Polytechnic Institute and State University (“Virginia Tech”), Wake Forest University, University of Notre Dame (for all sports but football and hockey), University of Pittsburgh (“Pittsburgh”), and Syracuse University (“Syracuse”). Each of these institutions is a member of the ACC unincorporated association.

FACTUAL ALLEGATIONS COMMON TO ALL COUNTS
The ACC’s Attempts to Punish Maryland and Deter Others

15. The ACC, an association of universities that compete with Maryland, is attempting to deny Maryland significant athletic, academic, and financial benefits by preventing Maryland and others from leaving the Conference. Alternatively, the ACC is attempting to impede and to penalize Maryland for its decision to join the Big Ten in order to deter other institutions from withdrawing from the ACC. The ACC is attempting to do this by (1) imposing the Withdrawal Penalty, despite the fact that it is void and unenforceable under the ACC Constitution; (2) withholding Maryland’s share of conference revenues (and announcing its intention to withhold all future revenues due to Maryland until the ACC determines that the Withdrawal Penalty is paid in full); (3) converting certain of Maryland’s National Collegiate Athletic Association (“NCAA”) funds; and (4) denying Maryland (and its athletic teams) equal

treatment and access with respect to ACC meetings, proceedings, and decision-making. These actions are anticompetitive and unreasonable restraints on trade, violate the ACC Constitution, and threaten irreparable injury to Maryland and its students, faculty, alumni, fans, and other consumers.

16. Certain rules of play must be established in order to conduct sporting events between athletic teams from various universities. The NCAA typically sets rules of intercollegiate athletic competitions, including rules relating to student-athlete eligibility and on-field rules of play. For a number of sports, including basketball, the NCAA also organizes tournaments designed to yield a national champion. Maryland, the other ACC institutions, and numerous other colleges and universities in the United States are members of the NCAA. By this action, Counter-Claimants are not challenging the NCAA eligibility rules, recruiting rules or other nationally imposed NCAA rules.

17. In addition to participating in the overarching NCAA association, almost all universities offering intercollegiate athletic programs have also associated to form athletic conferences for at least one sport. Members of an athletic conference typically share the same NCAA designation (*i.e.*, Division I, II, or III). The ACC is such an association; it is a Division I conference consisting of the universities identified in Paragraph 14.

18. A collegiate athletic conference such as the ACC consists of member universities that associate with respect to certain athletic events and competitions, but a conference does not require the membership or cooperation of all NCAA institutions. Typical conference services include logistical and operational matters, such as scheduling games or matches and hiring and assigning referees. Conferences typically also engage in significant revenue-generating

commercial activities such as selling broadcasting rights for conference events, hosting a conference tournament, and engaging in other promotional activities.

19. As an association, a conference such as the ACC acts as an instrument of, and pursuant to the instructions of, its members – members who compete with each other for the recruitment and retention of students and faculty. Despite their status as direct competitors both on and off the field, a conference’s member universities may need to decide certain matters jointly, such as how to share the revenues from network broadcasting agreements, how to share the revenues from a conference tournament, what share of ticket receipts are given to the visiting team, whether to accept a proposed conference broadcasting contract, or what to pay conference administrators.

The ACC Constitution

20. The ACC purports to operate under a Constitution and Bylaws, pursuant to which Conference members have agreed to conduct the ACC’s business affairs.

21. The ACC Constitution states: “It is the purpose and function of this Conference to enrich and balance the athletic and educational experiences of student-athletes at its member institutions, to enhance athletic and academic integrity among its members, to provide leadership and to do this in a spirit of fairness to all.” Among the stated aims of the Conference set forth in the ACC Constitution are to “[e]ncourage responsible fiscal management and further fiscal stability,” “[p]rovide leadership and a voice in the development of public attitudes toward intercollegiate sports,” and “[p]romote mutual trust and friendly intercollegiate athletic relations between member institutions.”

The ACC's Adoption of the Withdrawal Penalty in Violation of the ACC Constitution

22. While simultaneously recruiting new members, including the University of Notre Dame and the University of Louisville, and unsuccessfully attempting to recruit other university members (including, upon information and belief, at least two members of the Big Ten), the ACC has attempted to prevent its existing institutions from leaving the Conference.

23. On or about September 11, 2012, a vote of its Council of Presidents was conducted in violation of the ACC Constitution. On that date, a number of the member universities of the ACC purported to amend Section IV-5 of the ACC Constitution and approve the Withdrawal Penalty, which would impose on any member that withdraws from the Conference a penalty in an amount equal to three times the Conference's total operating budget. The ACC proposed that Section IV-5 be amended to read: "Upon official notice of withdrawal, the member will be subject to a withdrawal payment, as liquidated damages, in an amount equal to three times the total operating budget of the Conference (including any contingency included therein), approved in accordance with Section V-1 of the Conference Bylaws, which is in effect as of the date of the official notice of withdrawal. The Conference may offset the amount of such payment against any distributions otherwise due such member for any Conference year. Any remaining amount due shall be paid by the withdrawing member within 30 days after the effective date of the withdrawal."

24. According to the ACC, the Withdrawal Penalty applicable to Maryland equals \$52,266,342.00.

25. Upon information and belief, the \$52,266,342.00 Withdrawal Penalty would constitute the largest payment ever made by any member institution to leave any athletic conference. In contrast, the Big Ten, the Pacific-12 Conference ("Pac-12"), and the Southeastern

Conference (“SEC”) assess no exit fee on withdrawing members. Even for those conferences that require withdrawal payments, the ACC’s excessive Withdrawal Penalty would be multiple times larger than that of any other intercollegiate athletic conference.

26. In September, 2012, the ACC’s then-current members, acting as an association of competing universities, approved the 2012 Amendment and the Withdrawal Penalty over the objection of Maryland and one other member and in violation of the requirements set forth in the ACC Constitution for amendment.

27. Section X-1 of the ACC Constitution requires that any proposed amendment “be submitted, in writing, four weeks before the meeting, through the commissioner to the Constitution and Bylaws Committee for review.”

28. Section X-1 further requires that the ACC Commissioner “send complete copies of the proposed amendments to all members at least fifteen (15) days before the meeting” at which such amendments will be considered.

29. Neither the ACC Commissioner nor the ACC complied with the requirements of Section X-1 of the ACC Constitution with respect to the purported 2012 Amendment of Section IV-5 and approval of the Withdrawal Penalty. Nonetheless, the ACC’s then-current members (other than Maryland and one other member) voted to adopt the proposed amendment and approve the Withdrawal Penalty.

30. Maryland, through its President, Wallace D. Loh, opposed and voted against the amendment to Section IV-5 and the Withdrawal Penalty.

31. Maryland has not assented to the purported amendment or the Withdrawal Penalty.

32. As a result of the ACC's failure to adhere to the requirements of Section X-1 of the ACC Constitution, the purported 2012 Amendment of Section IV-5 and the Withdrawal Penalty are null, void, and without effect. Nonetheless, the ACC has taken action to enforce the Withdrawal Penalty against Maryland, including, as described below, wrongfully withholding Maryland's distributions of conference and other revenues.

The Withdrawal Penalty Lacks Any Economic Basis or Justification

33. The 2012 Amendment to Section V-1 of the ACC Constitution characterized the Withdrawal Penalty as "liquidated damages."

34. The Withdrawal Penalty of three times the Conference's total operating budget bears no justifiable relationship to the amount of damages, if any, that the ACC would incur upon the withdrawal of Maryland (or any other single member) from the Conference.

35. The amount of the Withdrawal Penalty in the 2012 Amendment has no economic basis or justification, and is not reasonably related to any actual damages which could be suffered or incurred by the ACC upon the withdrawal of Maryland (or any other single member) from the Conference.

36. The ACC will not suffer damages (if it suffers any damages at all) in an amount remotely approaching the amount of the Withdrawal Penalty.

37. The \$52,266,342.00 Withdrawal Penalty exceeds the entire budget for all of Maryland's intercollegiate athletic programs for the 2013 fiscal year.

38. The \$52,266,347.00 Withdrawal Penalty amounts to more than three times the 2013 annual distribution of conference revenues to each ACC member.

The ACC's Illegal Application of the Amendment and Withholding of Distributions

39. Even if the September 11, 2012 amendment establishing the Withdrawal Penalty had been validly enacted (and it was not), the ACC violated the ACC Constitution and acted tortiously and in an anticompetitive manner by announcing its intent to apply the Withdrawal Penalty before the 2012 Amendment had become effective under the ACC Constitution and by withholding Maryland's distributions of Conference revenues at a time when Maryland remained a member of the ACC and before Maryland provided official notice of its intent to withdraw under the ACC Constitution.

40. Section X-2 of the 2012-13 ACC Constitution provided that "[a]ny amendments to the Constitution and Bylaws are effective July 1 following enactment, unless provided otherwise."

41. On information and belief, the purported amendment to Section V-1 of the Constitution presented for vote at the September 11, 2012 meeting did not expressly provide for an effective date different from that set forth in the ACC Constitution. As a result, neither the amendment nor the Withdrawal Penalty could have become effective until July 1, 2013.

42. The ACC applied the 2012 Amendment and attempted to enforce the Withdrawal Penalty by withholding more than \$16 million in distributions owed to Maryland starting in December 2012 and continuing through this date. The ACC has also asserted its intent to withhold all future distributions from Maryland until the Withdrawal Penalty has been paid in full.

43. Under the ACC Constitution, the timing of a member's withdrawal from the Conference is determined by the date when the member provides "official notice of withdrawal." Section IV-5 of the ACC Constitution prescribes the only method for voluntary withdrawal from

the ACC: “[t]o withdraw from the conference, a member must file an official notice of withdrawal with each of the conference members and the Commissioner on or before August 15 for the withdrawal to be effective June 30 of the following year.”

44. Only at the point that an ACC member has provided official notice of withdrawal does the withdrawing institution become subject to a withdrawal payment under the ACC Constitution.

45. Only at the point that an ACC member has provided official notice of withdrawal does the ACC Constitution permit the Conference to “offset the amount of such payment against any distributions otherwise due such member for any Conference year.”

46. Under the ACC Constitution, the withdrawing member is not subject to a withdrawal penalty and may not have its distributions of conference revenue withheld in order to satisfy a withdrawal penalty until that member provides “an official notice of withdrawal.”

47. Under the ACC Constitution, a member that has provided official notice of withdrawal remains, in all respects -- except for entitlement to Conference distributions due after the date of notice of withdrawal – a member of the ACC, entitled to all rights and privileges of a member, until its actual withdrawal date.

48. Maryland filed an official notice of withdrawal by letter dated June 26, 2013, and received by the ACC Commissioner and each then-existing Conference member on June 27, 2013.

49. Although prior to June 27, 2013, Maryland announced its intention to join the Big Ten in 2014, the announcement did not constitute official notice under Section IV-5 of the ACC Constitution.

50. Except for certain specifically-defined revenues (not at issue here), the ACC Constitution and Bylaws provide for the equal distribution of ACC revenues to its members.

51. The ACC wrongfully withheld from Maryland and retained Maryland's share of the conference revenues distributed in December 2012. Maryland's share was \$3,067,255.27. The ACC acknowledged this improper action, and stated its intent to withhold from Maryland and retain all future distributions, in a letter dated December 14, 2012. This action by the ACC breached the ACC Constitution and was retaliatory, tortious, and anticompetitive.

52. The ACC wrongfully withheld from Maryland and retained Maryland's share of the conference revenues distributed in the period January 2013 through June 27, 2013. Maryland's share was in excess of \$16 million. This action by the ACC breached the ACC Constitution and was retaliatory, tortious, and anticompetitive.

53. When the ACC wrongfully withheld payments due to Maryland, the Conference was aware that Maryland had a policy that required the university to fund its intercollegiate athletic programs from revenues generated by the intercollegiate athletic department. The ACC also knew that Maryland had budgeted the receipt of ACC distributions in its 2012-13 athletic department budget. The ACC further knew that Maryland's athletic department depends on the ACC revenues to meet its expenses and fund its intercollegiate athletic programs, including the payment of coaches' salaries, travel expenses for teams, and athletic scholarships for its student-athletes.

54. By withholding revenue distributions from Maryland, the ACC (and the members of the ACC who supported the Withdrawal Penalty) endeavored to make Maryland's athletic teams less competitive within the Conference, and to weaken Maryland's ability to compete when it becomes a member of the Big Ten. As a member of the ACC, Maryland is obligated by

the ACC Constitution to field teams in scheduled athletic competitions to compete against its ACC counterparts. The other ACC members enjoy the full benefits of ACC membership including receipt of substantial distributions that are now being withheld from Maryland. The ACC has tilted the playing field and has injured and will continue to injure Maryland and its student-athletes.

55. The refusal of the ACC to distribute the revenue due and owing to Maryland as an ACC member institution required the University's intercollegiate athletics department to operate at a deficit in 2013.

56. Cuts to planned athletic expenditures would be detrimental to student-athletes and the overall competitiveness and reputation of Maryland's intercollegiate athletics program. Such reductions in expenditures could affect not only Maryland's short-term, on-field competitiveness but also its ability to maintain its athletic facilities at a level needed to most effectively compete for Division-I student-athletes.

The ACC's Conversion of NCAA Funds Intended for Distribution to Maryland In Aid of Its Athletes and Athletic Programs

57. Maryland is a member of the NCAA and, as such, has a contractual and business relationship with the NCAA under which Maryland is entitled to receive monies through the NCAA's Grants in Aid, Sports Sponsorship, and Student Assistance ("SAOF/SAF") Funds (collectively referred to as the "NCAA Funds"). The NCAA Funds have been, at all relevant times, and are the sole property of Maryland and are not among any monies or revenues generated by or through the ACC or to which the ACC has any entitlement. At no time has the ACC ever been entitled to assume ownership or control of Maryland's NCAA Funds or to withhold them from Maryland.

58. The Maryland NCAA Funds have historically, and strictly as a matter of convenience, been transferred from the NCAA to the ACC, which was obligated to and did pass those funds to Maryland.

59. Despite repeated oral and written demand that the ACC deliver to Maryland all of Maryland's NCAA Funds, the ACC has withheld these monies from Maryland, with the sole exception of certain money from the NCAA Student Assistance Funds.

60. The ACC continues to wrongfully withhold Maryland's money from the NCAA Grants in Aid and Sports Sponsorship Funds, thereby depriving Maryland of the benefits of its contract with the NCAA and injuring Maryland, its athletic program and its student-athletes.

The ACC's Unequal and Disparate Treatment of Maryland

61. The ACC has not only discriminated against Maryland financially to penalize Maryland for the public announcement of its intention to join the Big Ten Conference in 2014; the ACC has also denied Maryland certain rights and privileges to which Maryland is entitled as a member of the ACC and to which it will remain entitled until it actually withdraws from the ACC.

62. Although Maryland's investigation is continuing, Maryland is aware that the ACC, on behalf of the members that supported passage of the Withdrawal Penalty, has excluded Maryland official designates from conference meetings held in November and December 2012 and throughout 2013 and excluded Maryland coaches and athletic staff from meetings dealing with ACC athletic competitions.

63. On December 13, 2012, Maryland sought assurances from the ACC that the Conference would treat Maryland as a full member, including by paying the University all regular distributions of fiscal year 2013 conference revenue, projected by the ACC to total

approximately \$16,000,000.00. The ACC has failed and refused to provide these assurances. Rather, the ACC announced to all ACC member institutions its intent to pay all members *except* Maryland the distribution due to be paid in equal amount to all members of the Conference.

64. In addition, Maryland President Wallace D. Loh has not been notified of or asked to participate in all ACC Presidents' activities and decisions. Dr. Loh was neither notified of nor participated in a vote of the Conference Presidents on the decision to admit a new ACC member institution, the University of Louisville, on or about November 28, 2012.

65. Maryland President Wallace Loh has been excluded from significant portions of meetings of the ACC's Council of Presidents, which occurred in March 2013 and September 2013.

66. On repeated occasions in 2013, Maryland President Wallace Loh requested that certain items be added to the agenda for meetings of the Conference Presidents. Those requests were refused.

67. Nothing in the ACC's Constitution permits the Conference to discriminate in its treatment of member institutions. Many of these acts occurred before Maryland filed an official notice of withdrawal with the Commissioner. Maryland today remains a member of the ACC entitled to all rights, privileges, duties, and obligations owed by the ACC to its members.

68. By discriminating against Maryland and not permitting Maryland to be a full and equal member of the ACC, the ACC has and intends to tilt the playing field further and render Maryland's athletic teams less competitive with respect to the teams of those members who do enjoy all of the rights and privileges of ACC membership.

COUNT I
(Declaratory Judgment)

69. Counter-Claimants repeat and incorporate by reference the allegations contained in paragraphs 1 through 68 as if fully set forth herein.

70. The September 11, 2012 amendments to Section IV-5 purporting to approve the Withdrawal Penalty are null, void, invalid, and unenforceable because they were adopted in contravention of the ACC Constitution. Upon information and belief, the 2012 Amendment to Section IV-5 was not submitted, in writing, four weeks before the September 11, 2012 meeting, through the ACC Commissioner to the Constitution and Bylaws Committee for review. Additionally, complete copies of the proposed amendment were not sent to Maryland or, upon information and belief, to all other ACC members at least fifteen days before that meeting.

71. The Withdrawal Penalty is not enforceable as liquidated damages. To the contrary, the Withdrawal Penalty is illegal, unenforceable, and void as a penalty. The ACC has never made any credible effort to estimate what, if any, reasonable damages the Conference would incur as the result of any single member's withdrawal. Rather, its arbitrary and capricious Withdrawal Penalty stands solely as a penalty and punitive measure aimed at discouraging and preventing members from withdrawing from the ACC and was established for that very purpose. Upon information and belief, no institution of higher education that has withdrawn from one athletic conference to join another has ever paid an exit fee remotely approaching \$52,266,342 to do so. As a result, the Withdrawal Penalty is not a valid liquidated damages provision but rather is an illegal and unenforceable penalty.

72. The amendment and the Withdrawal Penalty could not be effective under the ACC Constitution before July 1, 2013.

73. An actual controversy of a justiciable issue exists between the parties. The ACC contends that the amendments to Section IV-5 purportedly adopted by the Conference on September 11, 2012 are valid and enforceable and that the Withdrawal Penalty is enforceable as liquidated damages. In addition to the public statements to that effect, the ACC has withheld monies properly due and owing to Maryland, purportedly in satisfaction of the Withdrawal Penalty. This genuine controversy between Counter-Claimants and the ACC involving the rights and liabilities of the parties under the ACC Constitution lies within this Court's jurisdiction, and the controversy may be determined by a judgment of this Court.

COUNT II
(Breach of Contract)

74. Counter-Claimants repeat and incorporate by reference the allegations contained in paragraphs 1 through 73 above, as if fully set forth herein.

75. The ACC Constitution constitutes a contract to which Maryland, the ACC, and the remaining members of the ACC are parties.

76. The ACC has breached its obligations to Maryland under the ACC Constitution by, among other things, withholding and retaining Maryland's share of Conference revenue in an amount in excess of \$16 million; denying Maryland, its student-athletes, coaches, and athletic staff equal access and treatment as a member of the ACC; improperly purporting to adopt an amendment to Section IV-5 regarding the withdrawal of member institutions on September 11, 2012; and purporting to apply and enforce the 2012 Amendment and the Withdrawal Penalty before its effective date under the ACC Constitution.

77. Maryland has performed and satisfied its obligations under the ACC Constitution (and any ancillary agreements). Any and all conditions precedent to the performance and

enforcement of the ACC's obligations to Maryland under the ACC Constitution have been satisfied or waived.

78. As a result of the ACC's breaches, the purported amendment to Section IV-5 of the Constitution purportedly adopted by the Conference on September 11, 2012, is *void ab initio*.

79. As a direct and proximate result of the ACC's breaches, Maryland has been damaged in an amount in excess of \$10,000.00 as will be proven at trial.

COUNT III
(Conversion of Funds)

80. Counter-Claimants repeat and incorporate by reference the allegations contained in paragraphs 1 through 79, as if fully set forth herein.

81. The Maryland NCAA Funds are the identifiable and describable personal property of Maryland.

82. The ACC, without authorization or right, has assumed and purported to exercise the right of ownership over the Maryland NCAA Funds to the exclusion of the rights of Maryland.

83. The ACC's actions with respect to the Maryland NCAA Funds constitute conversion.

84. The ACC's conversion of the Maryland NCAA Funds has proximately caused damages to Maryland and entitles Maryland to a judgment from the ACC in an amount in excess of \$10,000.00 as will be proven at trial.

COUNT IV
(Violation of the Maryland Antitrust Act, Md. Code Ann., Comm. Law § 11-204)

85. Counter-Claimants repeat and incorporate by reference the allegations contained in paragraphs 1 through 84, as if fully set forth herein.

86. The implementation and application of the Withdrawal Penalty by the ACC, an association of the various other member institutions that compete with Maryland, have had an anticompetitive effect and distorted competition in a relevant antitrust market, causing antitrust injury in Maryland and in certain other parts of the United States.

Horizontal Agreement

87. A conference (whether acting on behalf of or through its members) may not take actions or adopt restrictions that unreasonably restrain trade and unreasonably restrict competition among universities or among different conferences.

88. The ACC's adoption and implementation of an excessive, unreasonable, and punitive Withdrawal Penalty constitutes a horizontal agreement, combination, or conspiracy among the ACC and the members voting in favor of the draconian fee to unreasonably restrain trade. The ACC's withholding of funds owed to Maryland reflects a horizontal agreement among the member universities of the ACC to police and enforce the anticompetitive restraint. The establishment of this exorbitant penalty goes well above and beyond what is necessary to compensate the ACC for the loss of any member or the amount needed to continue the Conference's operations and serves no pro-competitive purpose. The measure is punitive and was approved by the ACC and its members solely to prevent or effectively deter institutions from leaving the Conference and joining a competing conference. These joint actions by the member institutions of the ACC constitute a horizontal agreement among competitors that unreasonably restrains trade.

89. The Withdrawal Penalty is inherently commercial in nature as it involves the monetary penalty that a member institution must pay to withdraw from the ACC and to join another intercollegiate conference. It has nothing to do with any NCAA or ACC regulation

designed to ensure fair competition in intercollegiate athletics, the preservation of amateurism, or the promotion of education. The Withdrawal Penalty and its anticompetitive application to Maryland is precisely the type of business and commercial conduct that falls within the scope of the antitrust laws.

The Relevant Market

90. By exacting the Withdrawal Penalty and refusing to pay Maryland amounts owed Maryland, the ACC's actions injured competition in the market for conference affiliation/membership, that is the market in which conferences compete for university members and in which universities compete for membership in conferences.

91. The relevant market for antitrust purposes has two components: the product market and the geographic market. The relevant product market is limited to those products or services that compete to some substantial degree with the product or service at issue. The relevant geographic market is the area in which a seller operates in competition with sellers of similar goods and services and to which a purchaser can practically turn for substitutes. In this case, the relevant geographic market consists of the area of effective competition in which the conferences within the relevant product market compete for members and in which universities comparable to Maryland and located on the East Coast can practically turn for potential conference affiliations.

Product Market

92. As explained below, the relevant product market is Power 5 intercollegiate conference membership. There are two distinct aspects to this relevant product market. First, conferences seek to have colleges and universities become members of the conference, with the conference offering a bundle of financial, reputational, and academic benefits to convince

colleges and universities to join the conference. Similarly, colleges and universities compete in the relevant product market through their distinct athletic, academic, and research attributes and reputations – with the combination of those attributes and reputations making some universities more appealing to conferences than other universities. Thus, conferences are competing to attract the best potential member schools to join their conference and universities are competing for membership in the conference that provides the best bundle of financial, reputational, and academic benefits for the university and its constituents. Not every intercollegiate conference competes with every other intercollegiate conference for member institutions and not every intercollegiate conference is a viable option for membership for a university such as Maryland. The NCAA includes over 1,000 active member schools, which are divided into three divisions, Divisions I, II, and III. Division I is further divided into the Football Bowl Subdivision (“FBS”) (formerly Division 1-A), the Football Championship Subdivision (“FCS”) (formerly Division I-AA), and Non-Football Schools (“NFS”). In the 2012-2013 school year, Division I contained 340 of the NCAA’s 1,066 member institutions, with 11 conferences in FBS, 15 conferences in FCS, and 13 conferences in NFS. Conferences within the FCS and NFS do not compete with the ACC in the market for conference affiliation/membership because the FCS and NFS conferences consist of smaller colleges and universities that do not possess academic and athletic programs of the same size, magnitude, and quality of that of an institution such as Maryland. The National Association of Intercollegiate Athletics (“NAIA”) also consists of smaller colleges and universities and is not a viable competitor to the ACC.

93. Even within the FBS, not every conference competes with the ACC. The ACC recognized this fact in the competitive market analysis study that the ACC prepared to assess its market and its competitors. The intercollegiate conferences with which the ACC competes from

a product market perspective are limited to those with members of comparable academic, research, and athletic reputations. As described below, the ACC participates in a relevant product market for conference affiliation and membership that contains only four other conferences: the SEC, the Big Ten, the Big 12 Conference (“Big 12”), and the Pac-12. Conferences such as Conference USA, the Mid-American Conference, and the Sun Belt Conference are comprised of institutions that rank lower in the U.S. News and World Report (“U.S. News”) rankings, tend to have smaller enrollments and do not have the same history of athletic superiority and tradition. None of these conferences is a competitor to the ACC, the Big Ten, or the SEC in the market for conference affiliation and membership.

94. Each conference, as an association of its university members, competes in many ways with other conferences. Conferences (or associations of member schools) compete for member schools, sales of tickets, sale of broadcasting rights, advertising and sponsorships, and opportunities for their members to compete in lucrative athletic contests, such as the Bowl Championship Series (“BCS”) in football and the NCAA men’s and women’s basketball tournaments.

95. Intercollegiate athletic conferences compete for member institutions and that competition can be intense. Conferences often leverage broadcasting revenues to enhance the attractiveness of their athletic associations to prospective members. Various conferences have recruited and added member institutions to create or maintain appealing rivalries and enhanced competition in order to increase fan interest, broadcasting ratings, and sponsorship appeal, with the goals of improving the product offerings of the conference, increasing revenues to the conference and its members, and enhancing its members’ reputations and brands.

96. An Automatic Qualifying Conference (“AQ Conference”) is an athletic conference in the FBS whose champion receives an automatic berth in one of the five BCS bowl games. The five BCS football games are the premier bowl games for collegiate football and serve to distinguish further the athletic caliber of intercollegiate athletic conferences.

97. There are five “power conferences” within the AQ Conferences. The “Power 5 Conferences,” or “5 Power Conferences” as they are sometimes called, include the ACC, the SEC, the Big Ten, the Big 12, and the Pac-12. A relevant antitrust product market exists in the form of the market for conference affiliation/membership among the Power 5 Conferences. No other conferences are a reasonable substitute for membership/affiliation with a Power 5 Conference.

98. The ACC recognizes the distinctiveness of the Power 5 Conferences. The ACC has conducted a competitive market analysis in which the ACC evaluates “the current day competitiveness of the ACC and the long-term growth opportunities and positioning of the conference in the industry” in the context of the Power 5 Conferences. In that analysis, the ACC focuses on the Power 5 Conferences and considers itself as being one of the Power 5 Conferences. According to the ACC’s Competitive Market Analysis, “from a competitive and long-term perspective,” the most important attributes for defining the competitiveness of another conference to the ACC are academics, geographic footprint, football, basketball, television, and financial.

99. The ACC has been a particularly aggressive competitor in attempting to convince universities to leave their existing conferences and to become members of the ACC. Upon information and belief, the ACC’s actions are driven in large part by the ACC’s desire to obtain the maximum revenues possible from broadcasting networks such as ESPN. Thus, the ACC

competes with other conferences by aggressively recruiting universities that the ACC believes will enable the ACC to obtain larger, more lucrative television rights contracts. The ACC maintains an expansion committee that works to recruit additional universities to leave their existing conferences and join the ACC. The ACC is pursuing this strategy based in large part on counsel and direction that the Conference received from ESPN. As the former athletic director of Boston College (then a member of the ACC's 4-4-4 Expansion Committee) candidly explained after the Conference got Pittsburgh and Syracuse to abandon the Big East and agree to join the ACC, "We always keep our television partners close to us. You don't get extra money for basketball. It's 85 percent football money. TV – ESPN— is the one who told us what to do." Upon information and belief, the counsel given to the ACC by ESPN, whether that guidance was given formally or informally, has incentivized the ACC to compete more aggressively in the market for conference affiliation/membership as the ACC attempts to create a more appealing product to offer to ESPN and other potential network partners to increase what the ACC can charge for the Conference's television rights.

100. The ACC's conduct immediately after Maryland announced its intent to join the Big Ten further confirms a relevant product market of Power 5 Conference affiliation/membership. After Maryland's announcement that it planned to leave the ACC, the ACC recruited Louisville (a university with nationally-ranked football and basketball programs) to join the ACC. Upon information and belief, at the direction and on behalf of the ACC, a representative of the athletic program at Wake Forest and a representative of the athletic department at Pittsburgh each contacted a Big Ten university in an attempt by the ACC to recruit at least two Big Ten schools to leave the Big Ten and join the ACC. Upon information and belief, these actions were part of the ACC's competitive reaction to Maryland's announcement

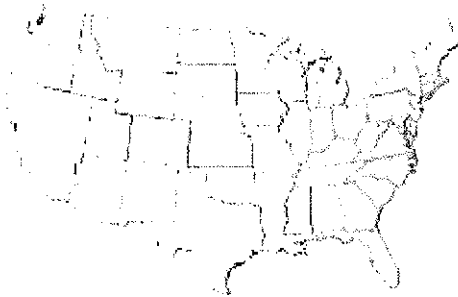
that it planned to leave the ACC to join the Big Ten and these actions by the ACC were designed by the ACC to enable the ACC (and its member universities) to extract more lucrative terms from potential broadcast partners, including from ESPN. For the foregoing reasons, the relevant product market for purposes of analyzing the anticompetitive effects of the ACC's conduct consists of only Power 5 intercollegiate conference membership/affiliation.

Geographic Market

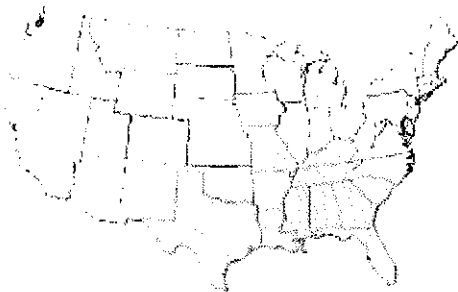
101. Members of the Power 5 Conferences compete for students, student-athletes, recruitment and retention of coaches and athletic directors, research opportunities, and sponsorships. The competition among universities for students, student-athletes, coaches, and faculty may be national, but there exist practical geographic limits on which of the Power 5 Conferences is a viable and available conference option for a particular university for conference affiliation/membership. From the perspective of a prospective Power 5 Conference member, geographic considerations limit the number of conferences that fall within the relevant geographic market such that only a few of those conferences within the Power 5 Conferences present realistic potential conference affiliation options for East Coast universities comparable to Maryland.

102. Conference play requires the athletic teams (including teams for non-revenue-generating sports) of the member universities to travel to compete at athletic events at the sites of other member universities. As a result, and as the maps below (created by the ACC) show, conferences typically draw their members from a geographic area within which each member's teams can travel economically and without undue interruption of the student-athletes' academic responsibilities. In addition to geographical proximity, conferences or divisions within athletic conferences often include universities that offer historic and/or regional rivalries that are of great

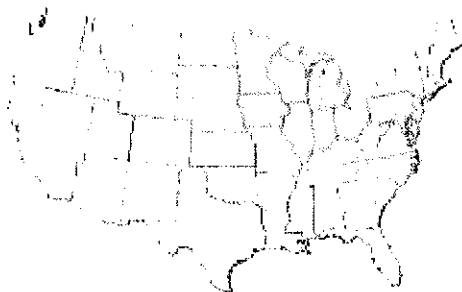
interest to the alumni and fan base of the respective institutions (e.g., Duke vs. North Carolina, Ohio State vs. Michigan, and USC vs. UCLA).



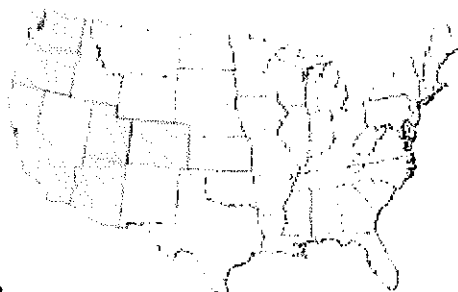
ACC



SEC



BIG Ten



PAC 12



BIG 12

103. For universities like Maryland located on the East Coast, the Pac-12 is not a viable alternative because student-athletes would need to travel too far to compete at athletic events at the sites of other member universities that are located primarily on the West Coast. Both the cost of travel and the time needed for travel make such conference affiliations impractical. The Big 12 presents similar travel difficulties and is therefore not a viable option for East Coast universities such as Maryland because the majority of Big 12 member schools are located in the far Midwest and South Central United States. Although West Virginia University is a member of the Big 12, it is viewed as an “outlier” and, according to the ACC’s own internal competitive market analysis, the associated travel issues resulting from West Virginia’s affiliation with the Big 12 raised questions about the practical long-term viability of that conference affiliation after just one year.

104. The ACC’s reaction to Maryland’s decision to move to the Big Ten further demonstrates the limits on the geographic market. The ACC recruited Louisville to join the ACC and attempted to recruit two Big Ten universities, each of which is located east of the Mississippi River. Upon information and belief, the ACC did not attempt to recruit for membership in the ACC any university located west of the Mississippi.

105. For the foregoing reasons, the relevant geographic market for purposes of analyzing the anticompetitive effects of the ACC’s conduct includes only those Power 5

Conferences with the majority of member institutions located east of the Mississippi River, *i.e.* the ACC, the SEC, and the Big Ten.

Market Power/Anticompetitive Effect

106. As one of only three conferences within the relevant geographic market, the ACC possesses market power in the relevant antitrust market. In fact, the number of Power 5 Conferences with a majority of members east of the Mississippi River understates the market power of the ACC as to universities located on the East Coast seeking conference membership in that other market factors may limit the number of practically available conferences. For a number of schools, such as Maryland, there may exist only one close substitute to ACC membership/affiliation, so that the ACC represents one of only two practical conference choices.

107. In defining what products fall within a relevant market, economists sometimes examine a consumer's ability and willingness to switch to some other product or service substitute in response to a small but significant non-transitory increase in the price of the products or services in a market. Some products may be closer substitutes than others either for geographic reasons or in terms of product attributes. When relatively distant product or geographic substitutes are excluded from the relevant market analysis, a more accurate indicator of the competitive effects of the challenged conduct results, which is more likely to capture the relative competitive significance of the product and provide a properly defined antitrust market. This is particularly true when, as here, the products at issue (conference affiliation/membership) are differentiated products rather than homogeneous ones.

108. Universities compete for membership in conferences by offering to bring the university's various attributes and competitive advantages as a prospective new member to the other conferences. Maryland's athletic, academic and research excellence make Maryland an

attractive candidate for larger, more prestigious conferences that desire to add members with these attributes. Similarly, in assessing viable options for conference affiliation, Maryland can only realistically consider conferences that share its traditions of athletic success and academic excellence, that are competitive with its current conference membership, and to which Maryland can practically turn for membership.

109. Here, given the bundle of attributes available to members of the ACC, the SEC, and the Big Ten, a university such as Maryland would not consider an SEC affiliation a reasonably practical substitute for a Big Ten or ACC affiliation. The 2012 U.S. News and World Report (“U.S. News”) Rankings of Colleges and Universities ranks colleges and universities based on incoming SAT scores, acceptance rate, retention rate, and graduation rate. Upon information and belief and as reflected in the ACC’s competitive market analysis study, the average U.S. News ranking of conference member institutions for the ACC and the Big Ten is much superior to that of the SEC. Upon information and belief, graduation rates at the SEC member institutions fall well behind the graduation rates for Big Ten and ACC schools. Further, SEC members are more defined by the strength of their emphasis on football programs and include no natural rivalries with Maryland. These factors weigh heavily against the SEC existing as a viability substitute conference option for Maryland, so that ACC has even greater market power than one would expect in an industry with only three suppliers.

110. For certain other schools currently within the ACC, the SEC might provide more appealing natural rivalries and those universities might consider the SEC as the only or much more realistic substitute to membership in the ACC. These factors also increase the amount of market power that the ACC possesses in the relevant market.

111. The ACC's Withdrawal Penalty will have an anticompetitive effect and will unreasonably restrain trade in the relevant antitrust market for conference affiliation. The purpose and intent of the Withdrawal Penalty is to prevent schools from leaving the ACC or to penalize them severely if they do. This anticompetitive effect will result in a chilling effect on the ability of intercollegiate athletic conferences to build the most competitive conferences, to promote their member institutions, and to increase the total output of intercollegiate athletics. This anticompetitive effect further demonstrates that the ACC has market power in the relevant antitrust market.

112. Where no prohibitive withdrawal fees limit universities from switching conferences, competition in the market for conference affiliation/membership has resulted in changes in the alignment of colleges and universities within athletic conferences. Over the past several years, major revisions in membership have occurred or have been announced not only with respect to the ACC, but also in other collegiate athletic conferences. Conference realignment can create conferences that are more appealing to intercollegiate athletics fans, which results in greater competition and greater benefits to consumers from the products offered by those conferences.

113. Switching conference affiliation is a method by which an academic institution can enhance its reputation and brand and its ability to attract student-athletes, students, faculty, and coaches. Realignment also presents an opportunity for universities to join conferences with universities with common attributes and missions. The rapid conference realignment that has occurred in recent years (and that is likely to continue, absent unreasonable restraints on competition) has enabled institutions of higher learning to enhance the academic, athletic, and

research opportunities available to their students, student-athletes, and faculty through both increased revenues and enhanced visibility and reputational benefits.

114. Both historically and recently, the ACC has been an active participant in the market to recruit universities to become athletic conference members by aggressively pursuing and adding members. The ACC was founded in 1953 by seven universities that left the Southern Conference. Shortly thereafter, the University of Virginia withdrew from the Southern Conference to join the ACC. In 1971, the University of South Carolina withdrew from the ACC and later joined the SEC. Thereafter, Georgia Tech, once part of the SEC and a charter member of the Southern Intercollegiate Athletic Association, joined the ACC. In 1991, the ACC extended membership to Florida State, a charter member of the Dixie Conference and former member of the Metropolitan Collegiate Athletic Conference. The ACC's membership remained the same until approximately 2004, when the ACC initiated the most recent trend of conference realignment. That year, the University of Miami and Virginia Tech left the Big East to join the ACC. One year later, Boston College followed.

115. For many years, the ACC has been extremely active in the market for new conference members. Recently, those efforts have focused on recruiting new members from the Big East. The ACC recruited Syracuse and Pittsburgh to join its conference in 2011, with a vote taken in September 2011 accepting the two schools as members effective July 1, 2013. Pittsburgh withdrew from the Big East and joined the ACC in 2013. Similarly, on September 12, 2012, the ACC announced that the University of Notre Dame would join the Conference for all conference-sponsored sports except football (although Notre Dame agreed to play five ACC football teams each season) and hockey. Notre Dame subsequently withdrew from the Big East and joined the ACC in 2013. On November 28, 2012, ACC presidents and chancellors voted to

admit the University of Louisville (in a meeting from which Maryland was improperly and illegally excluded). Louisville is scheduled to leave the American Athletic Conference (formerly the Big East) and become an ACC member later in 2014.

116. Pursuant to Section IV-3(g) of the ACC Constitution, each of these new members has been required to pay a fee to the ACC in order to join the Conference. Upon information and belief, the ACC imposed entry fees of approximately \$2 million to \$2.4 million with respect to the institutions that joined the ACC in 2013.

117. Conference realignment can create more appealing conferences that promote and increase consumer welfare by allowing the member universities not only to compete more effectively against other universities but also, through major sports programs such as football and basketball, to attract consumers and entertainment spending that might otherwise be spent on professional sports or other forms of entertainment. Thus, a move by a university to another conference can increase the output of the newly-joined conference and its university members in an amount that exceeds any loss to the former conference. Given the benefits offered by the Big Ten and the natural fit of Maryland within the Big Ten, Maryland's move to the Big Ten would be expected – absent the effects of the Withdrawal Penalty – to result in increased output and enhanced consumer benefits compared to the status quo if Maryland remained in the ACC. Upon information and belief, that increase in consumer welfare and competitive benefits would also occur if certain other members of the ACC were to leave the Conference to join the Big Ten or the SEC.

118. The ACC's recent conduct demonstrates that the lure of lucrative broadcasting contracts with ESPN or other television networks should cause Power 5 Conferences to compete with each other to create the strongest and most appealing conference. The ACC, which had

received advice from ESPN on what factors would maximize the television revenues, has continued to try to compete to convince non-ACC members to join the ACC but wants to prevent competition by other Power 5 Conferences that would cause the ACC to lose members.

119. The adoption and enforcement of the Withdrawal Penalty hampers the efficient function of the market for conference affiliation/membership and the benefits to consumer welfare that flow from an efficient market. Faced with a sizable exit fee, a university seeking to participate in the market for conference realignment has three choices. It must either pay any exit penalty itself (which would weaken the university's ability to compete in other markets), condition its move to the new conference on that conference paying the exit fee (which adds unjustified costs to the affiliation and causes a competing conference to forego otherwise procompetitive realignments), or abandon the opportunity to join a conference that provides better athletic, academic, and research opportunities for the university.

120. The ACC and its members knew that by denying Maryland funds that it was due as an ACC member and by imposing the Withdrawal Penalty, they would eliminate a significant portion of the revenues that Maryland would use for its athletic teams that compete with the teams of those ACC member universities. The ACC and its members knew that the effect of their conduct would be two-fold. First, the Withdrawal Penalty benefits the other ACC members while significantly weakening Maryland both on the field and in recruiting student-athletes and coaches. This affects the Big Ten as well, since stronger and more competitive teams from member universities increase the appeal of conference events and the appeal of a conference to potential new conference members. Second, the Withdrawal Penalty interjects an artificial, unjustified, and anticompetitive restriction that hinders competition in the market for conference

affiliation/membership, particularly in the ability of other conferences to entice other schools to leave the ACC to join those other conferences.

121. The detrimental impact on Maryland, the Big Ten, and ACC member institutions will chill the market for intercollegiate conference realignment for Power 5 Conferences located in the eastern United States since few, if any, schools will be willing to forego long-term competitiveness due to a desire to switch conferences. The conduct by the ACC and its members, effected by an agreement of horizontal competitors, unreasonably restrains competition in the relevant market by distorting the markets and interfering with the most efficient allocation of athletic program outputs and conference affiliations/memberships.

122. The ACC is adopting a course of action to render Maryland's athletic teams less competitive even though the ACC should want Maryland to have a strong program while Maryland is still a member of the ACC. Members of a conference should have an interest in having each member of the conference be a strong competitor that will enable the conference events to have greater entertainment appeal and attraction due to the uncertain outcome of an athletic event. Power 5 Conferences should also have an incentive to encourage robust competition among the conference schools to enhance consumer appeal of conference athletic events and to enhance the "strength of schedule" factor for post-season selection of football teams in bowl games and basketball teams in the NCAA tournament. The conduct undertaken by the ACC is inconsistent with what should be the economic interest of the Conference and instead is consistent with an effort to suppress and to limit competition among conferences and universities, as schools such as Maryland consider whether another conference may best serve the students, faculty, alumni, and research activities of the university.

123. The ACC and its members also knew that their horizontal agreement to impose the withdrawal penalty would harm Maryland and benefit the other members of the ACC in other markets in which those other members competed with Maryland. Universities compete with each other in many ways. Most obviously, universities compete for students. Universities also compete with one another for faculty and faculty resources, research opportunities and grants, presidents, chancellors, and other high-ranking university administrators, alumni-giving, fundraising, and endowments. In the athletics area, universities compete not only for victories in athletic contests but also with respect to recruitment of student-athletes, recruitment and retention of coaches, athletic directors, and other athletic department personnel, sales of tickets, broadcasting rights, school merchandise, and other promotional and advertising rights. The ACC and its members knew that by enforcing an exorbitant and anticompetitive withdrawal penalty, they could inflict significant harm upon Maryland and upon any other university that sought to leave the ACC. The adoption and enforcement of the draconian Withdrawal Penalty by the ACC (and those ACC members who supported the Withdrawal Penalty) reflect an intent to send a warning to any other members of the ACC that might be considering leaving the ACC because they are unhappy with the leadership or direction of the ACC or because they believe that another conference offers better opportunities and advantages for their university, students, student-athletes, faculty, and fans.

124. The magnitude of the Withdrawal Penalty (twenty-five times the size of the admission fee), a penalty adopted by the affirmative vote of some but not all of competing universities in the ACC, reflects an agreement among those competitors to deter schools from leaving the ACC or to penalize them severely if they decide to pursue affiliations that could lead to increased quality and quantity of intercollegiate athletics.

125. The anticompetitive impact of the Withdrawal Penalty is illustrated by assuming that every intercollegiate conference adopted an exit fee as draconian as the challenged Withdrawal Penalty. In that paradigm, the current competition among conferences for member institutions would end or would be significantly deterred, and the current membership of intercollegiate conferences would be largely frozen because most academic institutions could not afford to incur the financial penalties associated with a school leaving an existing conference to join another more appealing and arguably better conference – even if a move by the university to another conference would improve the product and service offering of that university and conference and would result in an overall increase in consumer welfare. Universities would be financially trapped in their existing conferences and competition among conferences to recruit new university members would disappear.

126. No other member institution has announced an intention to withdraw from the ACC since the imposition of the Withdrawal Penalty and the ACC's prospective application of the penalty prior to Maryland's formal withdrawal from the ACC. Upon information and belief, other members of the ACC have considered leaving the ACC but have not done so because of the magnitude of Withdrawal Penalty and its potential impact on the financial stability of their respective university athletic programs.

127. That other institutions have joined the ACC does not undercut the anticompetitive effect of the Withdrawal Penalty in the market for intercollegiate conference affiliation/membership for those Power 5 Conferences with most of their member universities located east of the Mississippi River. The schools that agreed to join the ACC after the Withdrawal Penalty was adopted – Pittsburgh, Syracuse, Notre Dame, and Louisville – were fleeing a crumbling Big East, seeking to better their competitive position by joining the ACC.

Upon information and belief, if the Big East (and now American Athletic Conference) had an exit fee of the size and scope of the Withdrawal Penalty, Pittsburgh, Syracuse, Notre Dame, and Louisville would have been unable to join the ACC. The ACC's addition of these schools for only a minimal conference admission fee (approximately \$2 million to \$2.4 million) demonstrates that the \$50 million Withdrawal Penalty grossly exceeds any reasonable estimate of harm to the ACC from losing Maryland to the Big Ten.

128. The ACC's conduct unreasonably restrains competition in the relevant product and geographic markets, specifically including competition within the State of Maryland.

Standing

129. Maryland has standing to pursue this antitrust claim because Maryland is a competitor with other universities who compete for membership/affiliation in Power 5 Conferences and because Maryland is, in effect, a consumer of conference membership offers from competing conferences.

130. Universities such as Maryland would be expected to pursue membership in the Big Ten. Membership in the Big Ten, and the enhanced competitive opportunities that it will provide to Maryland, will increase Maryland's national visibility and reputation in the field of intercollegiate athletics and beyond. Becoming a part of the Big Ten will also expand Maryland's presence, visibility, and reputation beyond the mid-Atlantic region. For the Big Ten, adding Maryland and Rutgers University enables the Big Ten to expand the appeal of the Big Ten Network ("BTN") to the large number of households (viewing audiences) along the East Coast from Washington, D.C. to New York City. Adding Maryland also will restore a geographic rivalry with Penn State, a historic athletic powerhouse. Participation in the Big Ten will enhance the competitive opportunities available to Maryland's athletic teams. During both

the 2011-2012 and 2012-2013 seasons, the Big Ten claimed seven team national championships. Among other things, as a member of the Big Ten, Maryland will have the opportunity to engage in conference play with the storied Big Ten football and basketball programs.

131. Membership in the Big Ten also brings with it academic and research resources that are superior in comparison to the ACC and the SEC offerings, will enrich the experience of Maryland's students and faculty, and help fulfill the university's core academic mission. The Big Ten universities outpace the members of any other conference by providing over \$136 million in direct financial aid to nearly 10,000 student-athletes. Further, the Big Ten has the highest number of ranked graduate school programs among all conferences. Its thirty top twenty-five programs in the fields of law, medicine (research and primary care), business, engineering, and education place the Big Ten first among all conferences.

132. Furthermore, membership in the Big Ten brings with it membership in the Committee on Institutional Cooperation ("the CIC"), a premier consortium of outstanding institutions consisting of the Big Ten universities and the University of Chicago. Membership in the CIC will significantly enrich academic, research, and collaborative opportunities for Maryland's students and faculty, enhancing Maryland's ability to compete for, attract, and retain exceptional students and faculty. Membership in the ACC or SEC does not afford its members anything comparable to the CIC. In addition, currently 11 schools within the Big Ten are members in the Association of American Universities, an association of leading research institutions in the United States and Canada, which far outnumbers member institutions from the ACC (5, not including Maryland) and the SEC (4).

133. From the perspective of conferences competing to convince universities to become conference members, Maryland is a university with the athletic, academic, and research

attributes that are highly appealing to a Power 5 Conference east of the Mississippi River that is seeking additional member universities.

134. Maryland has a long-standing tradition of athletic success. Maryland teams have won national championships in football, men's basketball, women's basketball, men's lacrosse (10), field hockey (8), women's lacrosse (11), men's soccer (3), and acrobatics and tumbling (4). Maryland is one of only three NCAA members to have won national championships in men's basketball, women's basketball, and football. In 2011-2012, nineteen of Maryland's varsity teams earned trips to post-season competition. More than forty Maryland student-athletes have participated in the Olympics. Since 2009, Maryland has increased its overall student-athlete Graduation Success Rate ("GSR") each year. Maryland's 86% GSR in 2013 was its highest ever and above the national average.

135. Maryland's history of academic and research excellence is equally impressive and adds to its appeal to a Power 5 Conference. Maryland boasts three Nobel Prize winners since 1997 and is known for its advanced research and educational expertise. Maryland also boasts five Pulitzer Prize winners and over forty members of the U.S. National Academies among its faculty. Maryland has over twenty academic programs ranked among the U.S. News Top 10 and over fifty academic programs in the U.S. News Top 25. Overall, Maryland ranks 38th among global universities, 29th among U.S. universities, and 21st among U.S. public universities. Maryland is also among the top public universities with respect to the graduation of African Americans. Maryland's close proximity to Washington, D.C. and the nation's largest concentration of federal research facilities has made it a leading partner on cutting-edge, high impact issues such as climate change, advanced language skills, food safety, and nutrition.

Adding Maryland to a conference would be expected to further enhance that conference's reputation for academic and research excellence.

136. Maryland is the type of university that one would expect to be (and that was) a candidate for recruitment by a competitor conference to the ACC. Maryland is also the type of entity expected to be directly harmed by an antitrust violation of the type alleged. Maryland has standing to pursue its antitrust claim based on the injury suffered by Maryland.

Antitrust Injury

137. The Withdrawal Penalty is far more than just an injury to Maryland and its students, student-athletes, coaches, and faculty. There exists significant competition among conferences for member schools, sales of tickets, sale of broadcasting rights, advertising and sponsorships, and opportunities for members to compete in lucrative athletic contests. Conference realignment continues to occur with increased frequency as various conferences and universities seek the affiliations and memberships that best enable them to compete with other universities, with the private sector, and with other forms of sports and entertainment products. This competition and the resulting realignment enable an academic institution to enhance its reputation and brand as well as its ability to attract student-athletes, students, faculty, and coaches.

138. The injuries sustained by and threatened to Maryland flow from the ACC's conduct in imposing artificial barriers and denying Maryland and other ACC member institutions a viable, free choice between what should be conference alternatives. Through the Withdrawal Penalty, the ACC seeks to hinder Maryland's and the Big Ten's attempts to act in their best competitive interests, which has had a cognizable effect on Maryland's ability to operate an intercollegiate athletics program and may impact that of the Big Ten and its member institutions

if the Big Ten is forced to absorb all or part of the Withdrawal Penalty for any other university that might want to move from the ACC to the Big Ten.

139. The Withdrawal Penalty further prevents other conferences from competing for and offering procompetitive opportunities to the ACC's current members and will result in a chilling effect on the ability of intercollegiate athletic conferences to add to and promote their member institutions.

140. A weakening of Maryland athletics or a reduction in the quality of Maryland teams as a result of the ACC's Withdrawal Penalty and withholding of funds due to Maryland will also harm consumers who are fans of Maryland athletic teams in the Baltimore-Washington area and will also harm consumers of the Big Ten Network by reducing the quality of play and popularity of televised sporting events involving Maryland.

141. As a result of the ACC's anticompetitive actions, consumers are harmed by deterioration in the quality of goods and services, by not receiving the most efficient, desirable, and effective intercollegiate leagues, conferences, and competitions, and by any increases in price or other fees needed to offset the financial penalty imposed by the ACC. In addition, Maryland has incurred and will incur substantial damage and injury from any resulting curtailment of its intercollegiate athletic programs and its ability to compete and participate in various markets.

142. These anticompetitive injuries have been felt by the University of Maryland in the State of Maryland and throughout the states where the other ACC member universities are located.

143. The ACC's adoption of the Withdrawal Penalty and attempt to enforce the Withdrawal Penalty and cut off ACC membership benefits owed to Maryland are illegal under

the Maryland Antitrust Act under a “quick look” and/or more complete rule of reason analysis in that the restrictions reflect an agreement among competitors to impose a restriction on another competitor that is not reasonably ancillary to the legitimate purposes of the ACC. The anticompetitive effects of the Withdrawal Penalty are obvious, and there exist no procompetitive justification sufficient to defend the exorbitant fee. In the alternative, the joint action in adopting the Withdrawal Penalty and seeking to impose it against Maryland is illegal under the Rule of Reason as an unreasonable restraint of trade. The ACC has significant market power in a relevant antitrust market for conference membership and affiliation that, in its broadest form, includes no more than the ACC, the Big Ten, and the SEC. That the ACC has market power over existing members of the ACC is demonstrated by its ability to use or threaten to use the Withdrawal Penalty to prevent universities from leaving the ACC or to significantly weaken member institutions that opt to leave the ACC and join another conference.

144. These claims are proper under the Maryland Antitrust Act as the ACC’s conduct restrains competition in the market for conference affiliation throughout the states where the ACC member universities are located, including within the State of Maryland.

145. Maryland neither voted in favor of nor supported the Withdrawal Penalty adopted by other ACC members. Moreover, the Withdrawal Penalty was not adopted in accordance with the ACC Constitution. Neither the adoption of the Withdrawal Penalty fee nor the ACC’s method of extracting the Withdrawal Penalty falls within any semblance of a policy or conduct required for the success of any legitimate joint activities of the ACC and its members.

146. The ACC’s extraction of the Withdrawal Penalty while Maryland remains a member of the ACC is not reasonably ancillary to any legitimate joint conduct by the ACC and its association members.

147. Under the Maryland Antitrust Act, any member of an illegal conspiracy is jointly and severally liable for three times all damages incurred as a result of the illegal conduct. Each of the members of the ACC is a competitor of Maryland in a number of ways, including as to the recruitment of faculty, student-athletes, non-athlete students, research grants, and as to the sale of sponsorship and advertising and ticket sales. The Withdrawal Penalty is of an amount that would wipe out nearly the entire intercollegiate athletic budget of Maryland or that would impair the Big Ten if it were to absorb the exit fee to the detriment of its existing member institutions. The adoption and enforcement of the Withdrawal Penalty, by a vote of competitors of Maryland, to be enforced by the ACC, is illegal under the Maryland Antitrust Act. The ACC, as a participant in that conspiracy, is jointly and severally liable for the entire amount of damages (trebled) plus attorneys' fees. Further, an injunction against the ACC would have the effect of stopping the illegal conduct.

148. Under § 11-209(b)(4) of the Commercial Law Article of the Annotated Code of Maryland, Maryland is entitled to treble damages as a result of the actions of the ACC.

149. Section 11-209(b)(3) requires that Maryland be awarded costs and reasonable attorneys' fees if an injunction is issued.

COUNT V
(Breach of Fiduciary Duty)

150. Counter-Claimants repeat and incorporate by reference the allegations contained in paragraphs 1 through 149, as if fully set forth herein.

151. Maryland, as a member of the ACC, reposed trust and confidence in the ACC to handle athletics and related financial matters, including receipt and distribution of the Maryland NCAA Funds. This trust and confidence reposed by Maryland in the ACC resulted in

domination and influence over Maryland with respect to athletics and related financial matters, including the receipt and distribution of the Maryland NCAA Funds.

152. The ACC owed a fiduciary duty to Maryland with respect to athletics and related financial matters, including but not limited to fiduciary duties with respect to the receipt, handling and distribution of the Maryland NCAA Funds.

153. The ACC breached its fiduciary duty to Maryland by its receipt and refusal to distribute to Maryland, the Maryland NCAA Funds.

154. The ACC's breaches of fiduciary duties owed to Maryland as alleged herein have proximately caused damages to Maryland and entitle Maryland to a judgment against the ACC in an amount in excess of \$10,000.00 as will be proven at trial.

COUNT VI
(Constructive Fraud)

155. Counter-Claimants repeat and incorporate by reference the allegations contained in paragraphs 1 through 154, as if fully set forth herein.

156. The ACC took advantage of its position of trust and confidence with respect to Maryland in order to benefit itself and its member institutions by its receipt and refusal to distribute to Maryland, the Maryland NCAA funds.

157. The actions of the ACC with respect to the Maryland NCAA Funds as alleged herein constitute constructive fraud.

158. The ACC's constructive fraud as to Maryland as alleged herein has proximately caused damages to Maryland and entitles Maryland to a judgment against the ACC in an amount in excess of \$10,000.00 as will be proven at trial.

COUNT VII
(Constructive Trust)

159. Counter-Claimants repeat and incorporate by reference the allegations contained in paragraphs 1 through 158, as if fully set forth herein.

160. Due to the conversion, breaches of fiduciary duty, constructive fraud, and otherwise inequitable conduct of the ACC with respect to the Maryland NCAA Funds, a constructive trust should result with respect to the Maryland NCAA Funds against the ACC, its member institutions and all other entities and all persons acting for or on behalf of the ACC or in privity or concert therewith, wherever and however located or situated, and the ACC should be required to account to the Court and Maryland for all of Maryland's NCAA Funds which the ACC has obtained.

COUNT VIII
(Tortious Interference with Prospective Advantage)

161. Counter-Claimants repeat and incorporate by reference the allegations contained in paragraphs 1 through 160, as if fully set forth herein.

162. The ACC's attempt to amend the ACC Constitution and adopt the Withdrawal Penalty, actions to enforce the Withdrawal Penalty by withholding distributions of Maryland's share of Conference revenues, denying Maryland equal access and treatment as a member of the ACC, and withholding Maryland's NCAA Funds constitute intentional, deliberate and willful acts calculated to cause damage to Maryland in the conduct of its lawful affairs and business.

163. The actions of the ACC are intentional, willful, and calculated to cause damage to Maryland's lawful business affairs, including its ability to conduct its athletic affairs on level financial and competitive playing fields. The ACC's conduct was perpetrated with the intentional and improper purpose of causing damage and was without justifiable cause.

164. As a result of the ACC's tortious and wrongful misconduct, Maryland has suffered and will continue to suffer damages in an amount in excess of \$10,000 which will be proven at trial.

COUNT IX
Tortious Interference with Contract

165. The preceding paragraphs 1 – 164 are hereby incorporated by reference as if fully re-alleged herein.

166. The ACC was and is aware of the contractual and business relationship between Maryland and the NCAA.

167. The ACC has, without justification, interfered with the business relationship between the NCAA and Maryland and has caused the contract between the NCAA and Maryland not to be performed.

168. The ACC's actions with respect to the NCAA and the Maryland NCAA Funds constitute tortious interference with Maryland's contractual relations with the NCAA.

169. The ACC's tortious interference as alleged herein has proximately caused damages to Maryland and entitles Maryland to a judgment against the ACC in an amount in excess of \$10,000.

COUNT X
(Violations of N.C. Gen. Stat. § 75-1.1 – Unfair Competition and Unfair and Deceptive Trade Practices)

170. Counter-Claimants repeat and incorporate by reference the allegations contained in paragraphs 1 through 169, as if fully set forth herein.

171. As alleged and detailed in the foregoing Counterclaims, the ACC has committed unfair acts or practices including, but not limited to, the ACC's adoption and implementation of an excessive, unreasonable, and punitive Withdrawal Penalty and the imposition of that penalty

upon Maryland and the withholding of funds owed to Maryland, including the Maryland NCAA Funds. Further, the ACC's imposition of the punitive Withdrawal Penalty constitutes an unfair method of competition because it is a horizontal agreement, combination or conspiracy among the ACC and ACC member institutions who voted for the draconian Withdrawal Penalty in order to prevent member institutions from leaving the ACC or severely penalize them if they do.

172. Certain of the unfair and deceptive conduct alleged herein which forms the basis of Maryland's claims for unfair competition and unfair or deceptive trade practices took place in North Carolina. Maryland has significant dealings within the State of North Carolina, and conducts continuing business transactions with the ACC, an in-state counter-defendant. Maryland has directed its commercial efforts toward North Carolina as a member of the ACC, as its representatives conduct business in North Carolina through meetings and athletic competitions with other ACC member institutions.

173. The ACC committed unfair acts or practices as alleged above in North Carolina, the location of its headquarters and business operations. Upon information and belief, the funds withheld by the ACC, including the Maryland NCAA Funds are and/or were held and administered in North Carolina.

174. The unfair acts or practices of the ACC committed in North Carolina were conducted in the trade or commerce of North Carolina to the detriment of Maryland in violation of Chapter 75 of the North Carolina General Statutes.

175. As alleged herein, the ACC's Withdrawal Penalty will have an anticompetitive effect and will unreasonably restrain competition in or affecting trade or commerce in the market for conference affiliation. This anticompetitive conduct and the resulting damage and injury to

Maryland will have a chilling effect on the ability of intercollegiate athletic conferences to build the most competitive conferences and to promote their member institutions.

176. The ACC's conduct as alleged herein restrains competition in the market for Power 5 conference affiliation throughout the states where the ACC member institutions are located, including within the state of North Carolina.

177. North Carolina has a substantial state interest in litigation of the conduct of the ACC at issue, and application of the Unfair or Deceptive Trade Practices Act is not arbitrary or in any way unfair to the ACC since the ACC is headquartered in North Carolina and the key portions of the conduct upon which this claim for unfair competition and unfair trade took place in North Carolina.

178. The ACC's unfair competition and unfair or deceptive trade practices in violation of N.C. Gen. Stat. § 75-1.1 as alleged herein has proximately caused damages to Maryland and entitles Maryland to a judgment against the ACC in an amount in excess of \$10,000.00 as will be proven at trial, plus treble damages pursuant to N.C. Gen. Stat. § 75-16, and attorneys' fees pursuant to N.C. Gen. Stat. § 75-16.1.

COUNT IX
(Punitive Damages)

179. Counter-Claimants repeat and incorporate by reference the allegations contained in paragraphs 1 through 178, as if fully set forth herein.

180. The foregoing actions of the ACC were fraudulent, malicious, willful and wanton and entitle Maryland to an award of punitive damages.

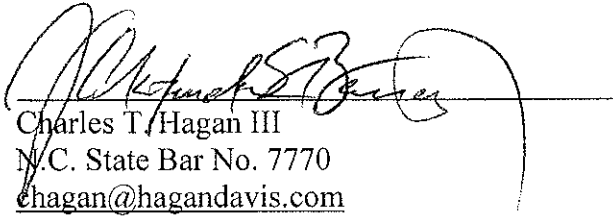
WHEREFORE, Counter-Claimants respectfully pray unto the Court as follows:

1. That this Court determine the rights and liabilities of the parties with respect to the subject ACC Constitution and that this Court find and declare that:

- (a) The Withdrawal Penalty set forth in Section IV-5 of the ACC Constitution is invalid and unenforceable;
 - (b) The purported September 11, 2012 amendment to that Section IV-5 of the ACC Constitution was not properly adopted and, therefore, is invalid;
 - (c) Even if properly adopted, the purported September 11, 2012 amendment to Section IV-5 of the ACC Constitution would apply only to ACC members that provide official notice of withdrawal from the Conference on or after July 1, 2013; and
 - (d) Maryland is entitled to and should receive its share of all distributions of conference revenues, including the aggregate payments in excess of \$16 million that the ACC has withheld to date;
2. That this Court Order the ACC be enjoined from denying Maryland all of its rights as an ACC member;
3. That this Court permanently enjoin the ACC from engaging in unreasonable restraints of trade in violation of the Maryland Antitrust Act and, specifically, enjoin the ACC from enforcing the Withdrawal Penalty against Maryland or any other ACC member and enjoin the ACC from withholding funds owing to Maryland and from otherwise harming the University of Maryland;
4. That this Court enter judgment in favor of Counter-Claimants in the amount of all compensatory damages suffered by Maryland and that the Court award Maryland Judgment:
- (a) In an amount equivalent to all amounts of Maryland's NCAA Funds converted or misappropriated in any way by the ACC;
 - (b) Of not less than \$16 million for the ACC's breaches of contract; and

- (c) Of damages of \$156,799,026.00, constituting a multiple of three times the amount of compensatory damages for the ACC's violations of the Maryland Antitrust laws;
5. That the amount of any compensatory damages be trebled pursuant to N.C. Gen. Stat. § 75-16.1;
6. That Counter-Claimants have and recover a judgment for punitive damages from the ACC in an amount to be determined at trial;
7. That Counter-Claimants be awarded interest on any judgment amounts at the maximum legal rate;
8. That a constructive trust be imposed against the ACC, its member institutions and all persons and entities participating or acting in concert with them in the ACC's retention and conversion of Maryland's NCAA Funds, and the ACC's breaches of fiduciary duty and constructive fraud as to Maryland's NCAA Funds;
9. That the Court dismiss Plaintiff's Complaint with prejudice;
10. That Plaintiff have and recover nothing of Counter-Claimants;
11. That Counter-Claimants recover their costs, including reasonable attorneys' fees as may be allowed by law;
12. That any and all issues so triable be tried by a jury; and
13. That Counter-Claimants have such other and further relief as the Court deems just and proper.

This the 13th day of January, 2014.



Charles T. Hagan III
N.C. State Bar No. 7770
chagan@hagandavis.com

J. Alexander S. Barrett
N.C. State Bar No. 12859
abarrett@hagandavis.com

Jason B. Buckland
N.C. State Bar No. 28454
jbuckland@hagandavis.com

Attorneys for Defendants
University of Maryland, College Park;
Board of Regents, University System
of Maryland

OF COUNSEL:

HAGAN DAVIS MANGUM BARRETT
& LANGLEY, PLLC
300 North Greene Street, Suite 200
Greensboro, North Carolina 27401
Telephone: (336) 232-0650
Facsimile: (336) 232-0651

CERTIFICATE OF SERVICE

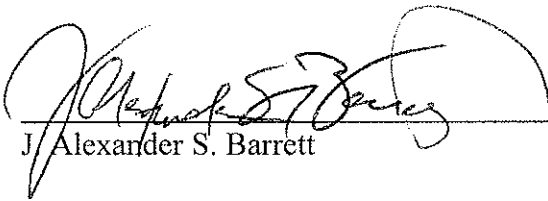
I hereby certify that a true and exact copy of the foregoing Defendants' Amended Answer and Counterclaims has been duly served upon counsel for Plaintiff pursuant to Rule 5 of the North Carolina Rules of Civil Procedure by placing a copy of same in the United States Mail, postage prepaid, addressed to:

D. Clark Smith, Jr., Esq.
Alexander L. Maulsby, Esq.
Smith Moore Leatherwood LLP
P.O. Box 21927
Greensboro, NC 27420

Alan W. Duncan, Esq.
Van Laningham Duncan
300 N. Greene Street, Suite 850
Greensboro, North Carolina 27401

James D. Smeallie, Esq.
Elizabeth M. Mitchell, Esq.
Benjamin M. McGovern, Esq.
Holland & Knight LLP
10 St. James Avenue, 11th Floor
Boston, Massachusetts 02116

This the 13th day of January, 2014.



J. Alexander S. Barrett