

Florida State vs. ACC: Answering Legal Questions on ‘Dueling Lawsuits,’ Grant of Rights

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Mark Wilhelm, a partner with Troutman Pepper, was quoted in the December 29, 2023 *The Sporting News* article, [“Florida State vs. ACC: Answering Legal Questions on ‘Dueling Lawsuits,’ Grant of Rights.”](#)

That could lead to an unprecedented legal battle between the school and conference with no easy settlement solution. Mark Wilhelm, a partner at Troutman Pepper, wrote an article about the topic of Grant of Rights for the *Harvard Journal of Sports and Entertainment Law*. He has a grasp on the Grant of Rights and ACC constitution and offered his opinions about how this legal battle could shake out.

Wilhelm uses an analogy that describes the situation between the ACC and Florida State.

“Imagine it like a lease for an apartment,” Wilhelm told *Sporting News*. “In the lease (Florida State) was offered, what they were giving away was their media rights or the ability to change conferences for a while. In return, they were getting cash. It turns out it just wasn’t a very good deal for them. Now, they are looking for a way to get out of it.”

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Wilhelm says it’s important to make a few distinctions between the two lawsuits, the two contracts (withdrawal fee, Grant of Rights) and two different battles. There is a legal battle, of course. This has become an emotional case of sorts, for Florida State and the ACC.

“There is a political battle being fought, and we see that in Florida State and how they are coming out with a lot of statements about how they view these cases, how they view their situation with the ACC and a lot of the views they have around their general situation,” Wilhelm said. “I have to imagine at least a portion of those are informed by how the College Football Playoff selection had gone for Florida State.”

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“Florida State does make some compelling arguments as to why these contracts might not be enforceable, but I think they are what I would call defensive arguments,” Wilhelm said. “Florida State isn’t necessarily saying, ‘I didn’t enter into that contract.’ What Florida State is saying is, ‘Yeah, we signed that agreement, but ... ‘ and then they are hoping the courts will come in and accept the ‘but’ and use it as a reason to excuse the school from the

conference.”

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“I think that it would be tough for any lawyer to say that any contract is ironclad,” Wilhelm said. “Where the Grant of Rights might be successful is in that it does not say a lot. It’s only a few pages long.”

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“There really isn’t a mechanism in the Grant of Rights itself to talk about getting out of the Grant of Rights,” Wilhelm said. “So, I think the natural implication is that the way to get out of it is to wait until 2036 and not re-sign it. What Florida State is trying to do is to go outside of the contract, and they’re trying to find other legal means to get them out of the contract.”

Will the courts answer the \$572 million question?

Part of Florida State’s argument is the excessive cost of leaving the ACC, a number that was put at approximately \$572 million in the complaint. Wilhelm said it is important to look at the number in two parts. That means challenging two contracts – the \$130 million withdrawal fee and the approximate total of \$442 million in Grant of Rights revenue through 2036.

“The way we characterize that payment is going to be important for each side’s view of this case,” Wilhelm said. “What Florida State is trying to do in their complaint, they are trying to say this big number is the amount of money it is going to cost to leave the ACC. The ACC is going to take a position that, ‘Well, that’s not right.’ How do we bridge that number from the larger number? That comes from the Grant of Rights discussion.”

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“It very easily could have gone the other way around,” Wilhelm said. “It turned out there are people out there, Florida State included, who think the ACC entered into a bad deal and left money on the table. When they entered into these contracts, they didn’t know that would be the case.

“It was a risk protection mechanism for the ACC to enter into such a long agreement, where they were effectively betting the market for media rights would go down when in fact it went up,” he said. “What Florida State is doing is questioning the business decision of the ACC about whether this was a good deal to begin with. Florida State is within its rights to ask any question it wants, but that is a really difficult argument to make.”

How long will it be before a resolution between ACC, Florida State?

That question of time always comes first, but Wilhelm said most lawsuits do not operate on a quick timetable. Plus, there is the issue that there are lawsuits in separate states.

“It’s unclear from this complaint if Florida State wants to leave the ACC or just wants a disproportionate share of revenue,” Wilhelm said. “That remains to be seen. I think the fact there are dueling lawsuits complicates this even

more.

“It’s not clear to me or probably anyone else in the world right now how that is going to work out,” he said. “What you effectively have is dueling lawsuits and the ACC prefers to be in North Carolina litigating this and FSU prefers to be in Florida litigating this. At some point, there is going to need to be a decision made by a court somewhere of which lawsuit is the one that is going to be able to move forward. That is going to take time. ... This could go for years and years before we have an answer.”

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“I think that they are going to have a very difficult time getting out of the Grant of Rights,” Wilhelm said. “Some of the things going against them are that they are a very large institution that has access to some of the best legal resources in the country. So, what courts will many times do is they will look at the relative sophistication of the parties when they entered into those agreements. It’s hard to say in this case that Florida State didn’t have access to those sorts of things that the ACC did, right? I think they are on relatively common ground in terms of size and sophistication.”

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