

TEMPLATE
FEDERAL

Honorable Barbara J. Rothstein

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

ANDREW COATES, a single individual;
and PETER and TREACY COATES,
husband and wife, and their marital
community,

Plaintiffs,

v.

NORTHWESTERN UNIVERSITY, an
Illinois not-for-profit corporation; and
KEVIN O'NEILL,

Defendants.

NO. C00-0466R

AMENDED COMPLAINT

Plaintiffs allege as follows:

I.

INTRODUCTION



1. This case involves the unlawful, deceitful, and dishonest recruiting practices of a major national university and the head coach of its men's basketball team. This case concerns important policies, including the protection of minor athletes and their families from the deceptive recruiting tactics of a college athletic program.

2. Beginning in early 1998, Northwestern University, through Kevin O'Neill, the head coach of the school's men's basketball team, and his assistant coaches, heavily recruited Andrew Coates, then a junior at Eastside Catholic High School in

Bellevue, Washington. Northwestern, through Coach O'Neill, and through assistant coaches Bob Beyer, Billy Schmidt, and Brian Gregory, made a series of representations indicating the school's commitment to recruiting Andrew. Northwestern, through Coach O'Neill, offered Andrew a full athletic scholarship for basketball. Coach O'Neill and the assistant coaches, at all times material, were employees and agents of Northwestern. Andrew and his parents relied on Defendants' representations and offer, and Andrew accepted. Coach O'Neill then repudiated the agreement to have Andrew attend Northwestern. Upon information and belief, Coach O'Neill repudiated the agreement in order to give Andrew's basketball scholarship to another player.

3. Andrew and his parents bring this action against Northwestern and Coach O'Neill for breach of contract, fraud, negligent misrepresentation, violation of Washington's Unfair Business Practices Act, violation of the Consumer Fraud and Deceptive Business Practices Act of Illinois, and defamation. In this action, the Plaintiffs seek all damages caused by Defendants' wrongful conduct, including all monetary loss, emotional distress damages, punitive damages, treble damages, general/presumed damages, and all costs and attorneys' fees incurred in bringing this action.

II.

PARTIES

4. Plaintiff Andrew Coates is a resident of Philadelphia, Pennsylvania.

5. Plaintiffs Peter and Treacy Coates are residents of Issaquah, King County, Washington; they constitute a Washington marital community; and at all times material to this action they have been the parents and guardians of Andrew Coates.

6. Defendant Northwestern University ("Northwestern") is an Illinois not-for-profit organization with its principal place of business in Evanston, Cook County, Illinois, and it has transacted business and has committed torts causing injury in King County, Washington.

7. Upon information and belief, defendant Kevin O'Neill is a resident of the State of New York.

III.

JURISDICTION AND VENUE

JURISDICTION
? ←

8. This Court has jurisdiction over the subject matter of this Complaint pursuant to 28 U.S.C. § 1332.

9. Venue is proper before this Court pursuant to 28 U.S.C. § 1391.

IV.

NORTHWESTERN AND COACH O'NEILL ENGAGED IN WRONGFUL CONDUCT IN RECRUITING ANDREW COATES

10. Beginning in early 1998, when Andrew was a high-school junior, the coaching staff of Northwestern's men's basketball team aggressively recruited him for the small forward position. This position is also referred to as "the 3-man position" and "the wing forward position." Defendants sent Andrew much recruitment mail. Defendants requested that Andrew send a videotape recording of his playing basketball.

11. Pursuant to Defendants' request, Andrew sent a videotape to the Northwestern Basketball Program. The tape met with enthusiasm on the part of Northwestern's coaching staff. Billy Schmidt, one of Northwestern's assistant coaches, sent Andrew an electronic mail message dated April 30, 1998, providing in part as follows:

I wanted to let you know that we received your tape today ← Attachment
Everyone on the coaching staff has already watched the tape.
All of us were very impressed with your overall play.

You are an extremely versatile offensive player. I know that Coach O'Neill would do a great job of utilizing ALL of your abilities and helping you reach your potential.

At Northwestern you would have the opportunity to contribute immediately in one of America's toughest

conferences. Handling that kind of responsibility will accelerate your development and make you a better player.

Please give our office a call if you get a chance. We would welcome the chance to say hello and get to know you a little bit.

A copy of this message is attached as Exhibit A to this Complaint.

12. In May 11, 1998, Coach O'Neill sent an electronic mail message to Andrew indicating "Scholarship offer" as the subject of the message. Coach O'Neill made the following offer in the message:

I just wanted to let you know I have received your tape and watched it closely. I have been away from the office so I have not had the chance to get in touch with you sooner.

I want to make sure you realize how impressed I was with your performance. I am also aware that you are an exceptional student. We are offering you a full scholarship to attend NU - we will make sure that one is available to you! We want to make you a Wildcat.

I know that Northwestern would be a perfect fit for you.

Please give me a call when you get a chance so that we can talk about Northwestern and your spring/summer schedule.

(emphasis added). A copy of this electronic mail message is attached as Exhibit B to this Complaint.

13. Coach O'Neill offered Andrew an athletic scholarship for basketball merely to secure Andrew's commitment. He wanted to keep Andrew as an option for the 3-man position. Coach O'Neill, however, did not advise either Andrew or Andrew's parents that Northwestern was not making a firm commitment to Andrew.

14. After making the foregoing offer, Defendants employed aggressive tactics to persuade Andrew to accept the offer. Defendants sent Andrew and his parents a

series of correspondence indicating their great desire to recruit Andrew and inviting Andrew to visit the school.

15. Coach O'Neill sent Andrew a note providing in part as follows:

I really hope you can make a trip to campus this month. You are our #1 prospect at the 3 spot. This would be a great opportunity for your future.

A copy of this note is attached as Exhibit C to this Complaint.

16. On May 13, 1998, Bob Beyer, a Northwestern assistant coach, sent Andrew's father a note providing in part as follows:

As I'm sure you can tell, our entire staff is really excited about recruiting Andrew. Coach O'Neill has talked non stop about Andrew's abilities and without question he would be a HUGE addition to our team.

A copy of this note is attached as Exhibit D to this Complaint.

17. On May 18, 1998, Coach O'Neill sent Andrew's father an electronic mail message providing in part as follows:

We would love to have Andrew visit campus during June - it is a great time of year at Northwestern. I think it would be in Andrew's best interest to visit campus before the July recruiting period. All of our coaches and players will be on campus to spend some time with Andrew and familiarize him with our program. By making an early visit to campus Andrew would be fully prepared to take advantage of the scholarship opportunity available to him.

Andrew's scholarship offer will continue to be available to him, but we are still recruiting other players. We have a huge need for a '3-man' and we think Andrew would fill our need perfectly. If Andrew were to commit to Northwestern we would no longer recruit any players at his position.

A copy of this message is attached as Exhibit E to this Complaint.

18. On June 1, 1998, Coach O'Neill sent Andrew's parents a letter providing in part as follows:

[W]e are quite confident that Northwestern offers Andrew the best possible environment for his college experience. When you analyze all of the facts and consider all of your options, we feel that Northwestern is the school that can best meet all of Andrew's needs.

A copy of this letter is attached as Exhibit F to this Complaint.

19. Coach O'Neill followed up on Northwestern's offer by sending Andrew letters regarding other players who had committed to playing at Northwestern.

20. In a letter to Andrew dated June 17, 1998, Coach O'Neill related that a high school player named Adam Robinson had committed to Northwestern. The letter provides in part:

You are certainly our top prospect at the wing spot. We want this to be a top 10 recruiting class. You would help us achieve this goal.

A copy of this letter is attached as Exhibit G to this Complaint.

21. In a letter to Andrew dated June 23, 1998, Coach O'Neill related that a high school player named Aaron Jennings had committed to Northwestern. The letter provides in part:

We are committed to putting together a Top 10 recruiting class. That is why, you are our top priority at the small forward spot. The future is bright for our team and we want you to be a big part of it!

* * *

Now we need you at the 3-spot. That's all YOURS!!

A copy of this letter is attached as Exhibit H to this Complaint.

22. In reasonable and justified reliance on Coach O'Neill's athletic scholarship offer and his various representations and other statements, Andrew and his father visited Northwestern from June 25 to June 28, 1998. Peter Coates paid for the trip.

23. During the trip to Northwestern, Andrew and his father met with members of the school's basketball program. Northwestern also arranged for the two of them to meet with the President of Northwestern, Henry Bienen. At the meeting, President Bienen explained his ideas for improving the university. He emphasized his commitment to Northwestern's athletics programs. President Bienen also stated that this was only the second time he had been asked to help recruit an athlete.

24. Coach O'Neill pushed for Andrew to accept the offer of an athletic scholarship by July 1, 1998. But he also told Andrew not to accept the offer unless Andrew was absolutely sure that he was committed to Northwestern. Coach O'Neill stated to Andrew, "We don't want to have to recruit you again in September." Coach O'Neill stated to Peter Coates, "Andrew is our number one choice at the three spot. If Andrew accepts our offer, we won't recruit anyone else for that position." Coach O'Neill also stated that he anticipated that Andrew would play 20 to 25 minutes per game as a first-year college student.

25. Immediately after Andrew and his father's visit to campus, Northwestern's coaching staff sent a series of correspondence to Andrew designed to persuade him to accept Northwestern's offer of a basketball scholarship. Excerpts from this correspondence provide as follows:

We have a perfect situation for you!

* * *

Thank you for making the trip to our campus. We really enjoyed getting to know you better and showing you the great opportunity that we can offer you at N.U. This

university can give you all that you are looking for. The best is waiting for you at Northwestern.

* * *

You know that Northwestern offers you a world-class education. You also know that you can make an impact in the Big Ten for us during your first year. However, the biggest reason Northwestern is a perfect fit for you is because of the people. Nothing will determine your happiness more than the people around you.

At Northwestern, you will love your college experience because our players are a great group of guys, and our players are a 'team' in the truest sense of the word. You will be comfortable with each and every one of them.

I also think it goes without saying that no other coaching staff believes in you more and will work harder for you than we will.

WE ARE COMMITTED TO YOU!

* * *

Life is too short to make mistakes. Don't waste a golden opportunity - come to Northwestern. Pursue your dreams of playing in the NBA and receive a great education. You will be rewarded for your decision every day for the rest of your life.

Copies of the foregoing correspondence are attached as Exhibit I to this Complaint.

26. Northwestern sent similar correspondence to Andrew's father, Peter Coates. Excerpts from such correspondence provide as follows:

This would be a great place for your son!

* * *

We certainly believe we have the ideal situation for your son based on everything he is looking for in a school. Like Coach O'Neill, I'm hopeful that Andrew will want to

commit to attend our school because this is the perfect environment for him.

* * *

Andrew is a super person and he deserves nothing but the best. Northwestern will provide him the finest education possible. Just as importantly, Coach O'Neill and all of us are committed to Andrew's success. No coaching staff in the country will work harder to make sure that everything possible is done to provide for Andrew's success and happiness as a student, an athlete, and a person. Northwestern is a perfect fit!

Copies of the foregoing correspondence are attached as Exhibit J to this Complaint.

27. Bob Beyer sent to Andrew a note dated June 29, 1998, providing in part as follows:

Without question, Andrew, we can provide for you one of the country's most elite education along with the chance to compete at the highest level of college basketball in the Big Ten. This is the perfect place for you to consider the start of your future!!! All you have to do is call us to let us know you want to become a Wildcat.

A copy of this note is attached as Exhibit K to this Complaint.

28. On June 29, 1998, Andrew accepted Northwestern's offer to play on its basketball team and to receive a full scholarship. Northwestern's coaching staff confirmed Andrew's acceptance in written correspondence as follows:

Congratulations on your decision to attend Northwestern and welcome to our basketball family. Our entire staff is extremely happy of your decision as we believe the opportunities for you at Northwestern are second to none. We look forward to seeing you throughout the July recruiting period. Keep working hard and again welcome to our TEAM!!!

A copy of this note is attached as Exhibit L to this Complaint.

29. In addition to accepting Defendants' offer of a basketball scholarship, Andrew relied on his agreement with them. For example, Andrew advised other college recruiters that he would be attending Northwestern and he did not try to impress or attract the attention of other college recruiters.

30. On the evening of July 14, 1998, Coach O'Neill telephoned Andrew's father and informed Mr. Coates of his decision to repudiate the agreement to have Andrew play at Northwestern and attend school on a full scholarship. He stated to Mr. Coates, "Andrew cannot help our program. We are no longer interested in Andrew. I'm sorry. It's my fault."

31. As a result of Defendants' wrongful conduct, Andrew lost the opportunity to play basketball at Northwestern and he lost the opportunity to attend Northwestern with a full scholarship. Furthermore, Andrew lost the opportunity to play basketball at certain other schools. Also, as a result of Defendants' wrongful conduct, Peter and Treacy, who will be responsible for paying for Andrew's college education, have lost the opportunity to have their son attend Northwestern on a full scholarship. Plaintiffs also spent significant amounts of resources in going along with Defendants' recruitment efforts, including incurring the cost of visiting Northwestern University. Further, Defendants' wrongful conduct has caused Plaintiffs emotional distress.

V.

CAUSES OF ACTION

32. As more fully set forth below, in this action, Plaintiffs assert six separate causes of action against Defendants: breach of contract, fraud, negligent misrepresentation, violation of Washington's Unfair Business Practices Act, violation of the Consumer Fraud and Deceptive Business Practices Act of Illinois, and defamation.

A.

Breach of Contract

33. Plaintiffs reallege paragraphs 1 through 32 above.

34. Under Washington and Illinois law, Defendants' conduct constitutes breach of contract. Andrew and Defendants had a contract for Andrew to attend Northwestern on a full basketball scholarship. Plaintiffs relied to their detriment on Defendants' promise. Defendants breached the contract by repudiating the agreement. This breach has caused Plaintiffs to suffer damages in an amount to be proven at trial.

B.

Fraud/Intentional Misrepresentation

35. Plaintiffs reallege paragraphs 1 through 34 above.

← Reallege

36. Under Washington and Illinois law, Defendants' conduct constitutes fraud.

37. Defendants made a series of misrepresentations to Plaintiffs. These misrepresentations include without limitation: statements that Andrew was Defendants' "#1 prospect at the 3 spot"; statements indicating Defendants' commitment to recruiting Andrew; and the offer of a full athletic scholarship for basketball. These statements were false. Defendants knew that they were false. These misrepresentations were material. Defendants intended that their misrepresentations be acted upon by Andrew and his parents. Andrew and his parents did not know of the falsity of the representations. Andrew and his parents relied on the misrepresentations by devoting much time, energy, and resources to the Northwestern recruiting process and by foregoing opportunities for Andrew to play basketball and attend college elsewhere. This reliance was justified and reasonable. Andrew and his parents were damaged by Defendants' misrepresentations in an amount to be proven at trial.

38. Defendants' fraudulent conduct was carried out with reckless indifference to Plaintiffs' rights. Therefore, punitive damages should be assessed against Northwestern under Illinois law.

C.

Negligent Misrepresentation

39. Plaintiffs reallege paragraphs 1 through 38 above.

40. Under Washington and Illinois law,¹ Defendants' conduct constitutes negligent misrepresentation. Defendants made a series of misrepresentations as set forth in the foregoing paragraphs. These misrepresentations were made in Defendants' professional capacity. These misrepresentations constitute a breach of Defendants' duties to Plaintiffs. Plaintiffs justifiably and reasonably relied on the misrepresentations. Defendants' negligent misrepresentations caused Plaintiffs damage in an amount to be proven at trial.

D.

Violation of Unfair Business Practices Act of Washington

41. Plaintiffs reallege paragraphs 1 through 40 above.

42. Defendants' conduct constitutes a violation of Washington's Unfair Business Practices Act, RCW Chapter 19.86.

43. Defendants' conduct was both unfair and deceptive to Plaintiffs. This conduct involved commerce directly and indirectly affecting the people of the State of Washington.

44. This conduct affected, and is affecting, the public interest. Among the public interests affected is the interest in protecting minor athletes and their families from fraudulent and deceptive recruiting activities of college athletic programs. There is a

¹ On September 18, 2000, the Court dismissed Plaintiffs' claim of negligent misrepresentation under Illinois law.

likelihood that additional minors and their families have been or will be injured in the same fashion as Plaintiffs in this case. Defendants' conduct was committed in the course of defendant's business. Defendants actively solicited Plaintiffs and indicated potential solicitation of others. Defendants had a bargaining position superior to that of Plaintiffs.

45. Defendants' conduct caused damage to Plaintiffs in an amount to be determined at trial.

E.

**Violation of Consumer Fraud
and Deceptive Business Practices Act of Illinois²**

46. Plaintiffs reallege paragraphs 1 through 45 above.

47. Defendants' conduct constitutes a violation of the Consumer Fraud and Deceptive Business Practices Act of Illinois, 815 ILCS Act 505.

48. Defendants' conduct constitutes deceptive acts and practices. Defendants intended that Plaintiffs rely on the deception. The deception occurred in the course of conduct involving trade and commerce and it caused injury to Plaintiffs.

49. Defendants' violation of this law was carried out with reckless indifference to Plaintiffs' rights. Therefore, punitive damages should be assessed against Northwestern.

F.

Defamation³

50. Plaintiffs reallege paragraphs 1 through 49 above.

51. Under Washington and Illinois law, Defendants committed defamation.

52. Specifically, Defendants' defamatory statement was Coach O'Neill's statement to at least one third party that Northwestern had not made Andrew a

² On September 18, 2000, the Court dismissed this claim.

³ On September 18, 2000, the Court dismissed this claim.

scholarship offer. This statement was false. This statement was defamatory because it indicated that Peter Coates and/or Andrew Coates had lied about whether such an offer was made. Further, the statement was defamatory because it indicated that Andrew was not a sufficiently talented student and athlete to receive such a scholarship offer.

53. Defendants were at least negligent in defaming Plaintiffs. Coach O'Neill defamed Plaintiffs with knowledge that his statement was false, or with reckless disregard as to his statement's truth or falsity.

54. Defendants' defamation caused Plaintiff damages in an amount to be proven at trial. Further, because Defendants committed the defamation with malice, Plaintiffs should be awarded presumed or general damages.

VI.

RELIEF REQUESTED

WHEREFORE, Plaintiffs request the following relief:

1. That Plaintiffs be awarded judgment for all actual damages caused by Defendants' conduct in an amount to be determined at trial;
2. That Plaintiffs be awarded presumed or general damages for Defendants' defamatory conduct;
3. That Plaintiffs be awarded damages for the emotional distress that they have suffered;
4. That Plaintiffs be awarded punitive damages pursuant to Illinois law and other applicable law;
5. That Plaintiffs be awarded treble damages under Washington's Unfair Business Practices Act;
6. That Plaintiffs be awarded their costs and attorneys' fees pursuant to the Washington Unfair Business Practices Act and other applicable law;
7. That Plaintiffs be awarded prejudgment interest and postjudgment

interest at the rate provided by law; and

8. That Plaintiffs be awarded such other and further relief as the Court may deem just and proper.

DATED this _____ day of September, 2000.

MUNDT MacGREGOR L.L.P.

By _____

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