

**Women's Basketball Coaches Association
2009 National Convention
Coaches Contracts Session**
**“Everything you wanted to know and were afraid to ask.
And how much does she make?”**

Notes submitted by Dr. Anastasios Kaburakis
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(Contract=K)

“Wherever you are, work as if you were going to stay for 10 years. But always keep a suitcase under your bed, ready to go the next morning.”

Dragan Šakota

The Law of random distribution: What hits the fan is unevenly distributed

Failure to prepare is preparing to fail.

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Major lessons:

First and foremost, you need to seek thoughtful counsel. This is a competitive and demanding business, and optimum representation will allow for best results. Regardless of whether you have a good lawyer or an experienced agent, however, there are some important points you should keep in mind:

1) The institution wants to have first and last say on interpreting questionable clauses in the K. In the case of termination clauses, contemporary instrumental operative words are: “termination for cause includes, but is not limited to”, “as determined by the institution”, “in the sole judgment of the University”, “as Employer may reasonably conclude”, “school’s reasonable judgment”, “crime, whether prosecuted or not”, “rule violation, major infraction, etc. regardless of final outcome of investigation/Committee of Infractions (COI) decision”, “Employee knew or should have known”, “maintain an environment in which all the members of the coaching staff comply”, “any action of the NCAA that would materially impair the Employee’s ability to perform”, “any conduct, including acts or omissions, of the Employee, assistant coach, or any other staff member that may give rise to a finding of a violation”, “any violation by the Employee of any term or condition of this Agreement which is not specified above and which is not remedied by the Employee...”

2) (a) If you are a Head Coach, make sure you know who you hire and maintain on staff, and know what they are engaging in at all times. It might be your job if they mess up.

(b) If you are an Assistant Coach/DOBO/Volunteer Coach/GA/support staff member, your actions might lead to both you and your Head Coach putting your jobs on the line. Be extra careful and always check with the Head Coach and Compliance/AD.

3) Prepare for the worst. Think that this might be your last job, your last chance to make it. Feel this as if it was a position you landed after major infractions and having to satisfy the strictest of compliance and monitoring requirements. No room for error. Take extra care.

4) (a) If the institution's offer does not feature a liquidated damages clause for a termination by you, the employee, good! Don't bring it up! Nonetheless, more likely than not institutions will wish to cover their bases, so they would like to see such a clause included in the K. If so, this shouldn't be a point of contention, especially if the total buyout sum does not appear unreasonable, i.e. around the total of the base annual salary. Depending on your leverage and bargaining power, you may also wish to consider requesting that for the final year or two of the agreement, the liquidated damages provision does not apply, thus intensifying the eagerness to extend the K on the part of the institution, which may also wish to counter with an appropriate clause in their *termination without cause* section of the K. Lastly, sliding scales work well for many too, as they balance the desire of the coach to pursue other opportunities, and the institution's investment and security. Again, depending on the situation, after a sliding scale for e.g. years 1-3 (400, 300, 200 to buyout, etc.) one can negotiate so that such a buyout for the coach to terminate the K would not apply within the last couple of years. Main goal would be to renew early... or move on without having to pay inordinate amounts, which might make the next employer's decision-making process more entangled.

(b) If the institution wants to include a maximum buyout for them to be able to terminate the K *without cause*, you don't have to agree to it. Most Ks posit that upon termination without cause prior to the expiration of the K, the employee is entitled to the total compensation owed through the expiration of the K (usually institutions exclude perks and limit compensation owed to the total amount of base salary over years remaining). Of course, certain circumstances may pose otherwise, as in the case of a "destination position", i.e. Tom Crean and Indiana University (Crean accepted a \$3mil. max buyout, should IU desire to terminate the K prematurely). Even then, there may be room to negotiate in regard to the sliding scale for termination of the K by the employee, i.e. Crean could negotiate for a more beneficial sliding scale, or even remove the liquidated damages clause for the last two years of his K with Indiana, making him a more flexible candidate, as well as more likely to be renewed by Indiana at that time.

5) Don't start thinking of winning in court (or even an internal grievance for that matter).

There is no contractual substitute for a good working relationship with AD/Compliance!

6) Many coaches know how to operate within the NCAA rules' system... as well as bend questionable regulations (especially recruiting) which are difficult even for the most experienced Compliance Directors and NCAA staff to clarify. The ultimate question you may be called to answer prior to engaging in something you know may provide you with a considerable recruiting advantage, with a strong possibility of not being investigated, is simply this:

Is it worth the risk?

We, and a number of coaches who are looking for a job right now, would argue it is not.

7) Although this negotiation and contractual discussion appears intense, and it should as it only pertains to your professional life and family's livelihood, you can simplify matters and create more chances for a successful tenure at your institution. You need to seriously delve into each clause of your K, and have an experienced professional review it, but at the same time, continue to assume the most kind-mannered and well-intentioned composure you can. You do and will work together with the administration for the institution's benefit, and your own. There will always be something... you are there to solve it... together.

New trends in termination clauses include APR and GSR-related grounds for termination, should there be historical penalties, loss of scholarships, etc.

(<http://www.al.com/sports/birminghamnews/index.ssf?/base/sports/122198503055380.xml&coll=2>)

A very recent development also comes from the U.S. Dept. of Labor (DOL), clarifying the Fair Labor Standards Act (FLSA) application in coaches' cases. Now institutions may ensure that they include mention in their coaches Ks of apportionment between teaching/coaching duties and recruiting/non-coaching duties. As long as coaches spend more than 50 percent of their time on teaching/coaching activities, the DOL said they would qualify for exemption from the FLSA's minimum wage and overtime pay requirements.

According to the last (8/2004) FLSA modifications, employees earning less than \$23,660 would be non-exempt and thus subject to overtime pay regardless of their job descriptions, unless they fall within an exception, such as teaching. Additionally, there are exemptions available for employees who earn more than \$23,660, thus institutions continue to seek guidance from DOL. Coaches and athletic administrators need to keep tabs on (even lobby for) Congressional discussions and labor policy developments which will impact them directly. Such Labor Law progress is sure to take place with the new Congress.

(<http://www.ncaa.org/wps/ncaa?ContentID=44843>)

O'Brien v Ohio St. notes

Facts (Kaburakis, Sharp, Sheilley, and Dahlberg, 2008):

- O'Brien hired as BK coach at OSU in 1997
- In May, 1998 Alex Radojevic, BK player from Serbia came for unofficial visit
- Fall, 1998 O'Brien learned Radojevic had played pro BK in Europe
- O'Brien continued to recruit Radojevic and in Nov 1998 Radojevic signed NLI
- In December 1998 O'Brien gave the Radojevic family \$6000
- O'Brien said that this "loan" did not violate NCAA rules since Radojevic not eligible to be college player
- In Feb 1999 O'Brien told OSU AD that Radojevic could regain amateur status
- Radojevic never enrolled at OSU
- March 1999 OSU gets to Final Four
- O'Brien gets new employment K effective September 1999
- In Sept 1999 O'Brien signs NCAA Certificate of Compliance that he has reported any knowledge of NCAA violations for 1998-99 academic year
- O'Brien does not disclose "loan" to AD until April 2004
- O'Brien terminated for cause in June 2004
- OSU alleged that plaintiff violated Section 4.1(d) that required him to "know, recognize, and comply" with all rules of NCAA and to "immediately report to AD" if he had "reasonable cause to believe that any person had violated such laws, policies or regulations"

- OSU argued that failure to report loan to Radojevic violated this section and was a material breach of contract and university could terminate under Section 5.1(a)
- Section 5.1(a) stated that OSU can terminate a contract if a material breach occurred
 - O'Brien won in OH Courts appx. \$3mil in wrongful termination suit
 - They found, erroneously according to Kaburakis et al. (2008), that OSU shouldn't have used the "material breach clause", i.e. O'Brien's breach of K was not "material"
 - O'Brien's expert witness, D. Swank, OK Law Prof. and past Chair of the NCAA DI Committee of Infractions, could not answer the Q: "If O'Brien knew that Radojevic was a professional and would have been declared ineligible, which would make a loan permissible, why did he keep recruiting him, invited him on an official visit to campus, and have him sign the NLI for OSU?"

O'Brien K Sec 5.1 – Termination for Cause:

Ohio State may terminate this agreement at any time for cause, which, for the purposes of this agreement, shall be limited to the occurrence of one or more of the following:

- (a) a material breach of this agreement by Coach, which Coach fails to remedy to OSU's reasonable satisfaction, within a reasonable time period, not to exceed thirty (30) days, after receipt of a written notice from Ohio State specifying the act(s), conduct or omission(s) constituting such breach;
- (b) a violation by Coach (or a violation by a MBB Coaching Staff member about which Coach knew or should have known and did not report to appropriate Ohio St. personnel) of applicable law, policy, rule or regulation of the NCAA or the Big Ten Conference which leads to a "major" infraction investigation by the NCAA or the Big Ten Conference and which results in a finding by the NCAA or the Big Ten Conference of lack of institutional control over the men's basketball program or which results in Ohio State being sanctioned by the NCAA or the Big Ten Conference in one or more of the following ways:
 - (i) A reduction in the number of scholarship permitted to be allocated
 - (ii) A limitation on recruiting activities or reduction in the number of evaluation days
 - (iii) A reduction in the number of expense-paid official recruiting visits
 - (iv) Placement of the MBB program or Ohio St. on probation
 - (v) Being banned from NCAA post-season play for at least one season
 - (vi) Being banned from regional or national television coverage for at least one basketball season with a consequent loss by Ohio St. of television revenues for at least one basketball season; or
- (c) any criminal conduct by Coach that constitutes moral turpitude or other improper conduct that, in Ohio State's reasonable judgment, reflects adversely on Ohio State or its athletic programs

Compare to Thad Matta K termination for cause:

5.1 Termination by Ohio State for Cause - Ohio State may terminate this agreement at any time for cause, which, for the purposes of this agreement, shall be limited to the occurrence of one or more of the following (the same conduct may constitute cause in one or more of the following subsections):

- a. Neglect or inattention by Coach to the duties of head basketball coach or Coach's refusal or unwillingness or inability to perform such duties in good faith after reasonably specific written notice has been given to Coach by the Director, and Coach has continued such neglect, inattention, refusal, unwillingness or inability during a subsequent reasonable period specified by Ohio State; or
- b. A material, as determined by Ohio State, breach of this agreement by Coach after receipt of a written notice from Ohio State specifying the act(s), conduct, or omission(s) constituting such breach which breach cannot be or has not been cured within thirty (30) days after the date that a written notice by Ohio State identifying such breach is sent; or
- c. Commission by Coach of a crime whether prosecuted or not (excluding minor traffic offenses) or violation by Coach of any Ohio State rule, regulation or policy, or violation by Coach of any law of the State of Ohio or the United States, including but not limited to, Ohio's ethics laws; or
- d. Fraud or dishonesty of Coach in the performance of his duties or responsibilities under this agreement; or
- e. Fraud or dishonesty of Coach in preparing, falsifying, submitting or altering documents or records of Ohio State, NCAA or the Big Ten conference, or documents or records required to be prepared or maintained by law, governing athletic rules or Ohio State rules and regulations, or other documents or records pertaining to any recruit or student-athlete, including without limitation, expense reports, transcripts, eligibility forms or compliance reports, or permitting, encouraging or condoning such fraudulent or dishonest acts by any other person, provided that Coach had actual knowledge of such fraudulent or dishonest acts or reasonably should have known about such fraudulent or dishonest acts; or
- Failure by Coach to respond accurately and fully within a reasonable time to any reasonable request or inquiry relating to the performance of his duties hereunder or the performance of his duties during his prior employment at any other institution of higher learning propounded by Ohio State, NCAA, the Big Ten conference or other governing body having supervision over the athletic programs of Ohio State or such other institution of higher learning, or required by law, governing athletic rules or Ohio State rules and regulations; or
- g. Failure by Coach to manage the Team in a manner that reflects the academic values of Ohio State as set forth in this agreement; or
- h. Counseling or instructing by Coach of any coach, student or other

person to fail to respond accurately and fully within a reasonable time to any reasonable request or inquiry concerning a matter relevant to Ohio State's athletic programs or other institution of higher learning which shall be propounded by Ohio State, NCAA, the Big Ten conference or other governing body having supervision over the athletic programs of Ohio State or such other institution of higher learning, or required by law, governing athletic rules or Ohio State rules and regulations; or

i. Soliciting, placing or accepting by Coach of a bet on any intercollegiate or professional athletic contest, or permitting, condoning or encouraging by Coach of any illegal gambling, bookmaking or illegal betting involving any intercollegiate or professional athletic contest whether through a bookmaker, a parlay card, a pool or any other method of organized gambling; or furnishing by Coach of information or data relating in any manner to basketball or any other sport to any individual known by Coach to be or whom he should reasonably know to be a gambler, better or bookmaker, or an agent of any such person, or the consorting or associating by Coach with such persons; or

j. Use or consumption by Coach of alcoholic beverages, drugs, controlled substances, steroids or other chemicals in such degree and for such appreciable period as to impair significantly or materially his ability to perform his duties hereunder; or failure by Coach to fully cooperate in the enforcement and implementation of any drug testing program established by Ohio State for student-athletes; or

k. Coach's sale, use or possession, or Coach's permitting, encouraging or condoning by a student-athlete, assistant coach or other athletic staff member of the sale, use or possession of any narcotics, drugs, controlled substances, steroids or other chemicals, the sale, use or possession of which by Coach or such student-athlete is prohibited by law or by governing athletic rules; or
l. Failure by Coach to report promptly to the Director and the Office of Compliance Services in writing any violations known to Coach of governing athletic rules or Ohio State rules and regulations by Coach, the assistant coaches, students or other persons under the direct control or supervision of Coach; or

m. Failure by Coach to obtain prior approval for outside activities as required by Section 4.5 of this agreement and by NCAA rules or to report accurately all sources and amounts of all income and benefits as required by NCAA rules and Section 4.5 of this agreement; or

n. Commission of or participation in by Coach of any act, situation, or occurrence which, in Ohio State's reasonable judgment, brings Coach into public disrepute, contempt, scandal or ridicule or failure by Coach to conform his personal conduct to conventional

standards of good citizenship, with such conduct offending prevailing social mores and values and/or reflecting unfavorably upon Ohio State's reputation and overall primary mission and objectives, including but not limited to, acts of dishonesty, misrepresentation, fraud or violence that may or may not rise to a level warranting criminal prosecution by the relevant authorities. It is recognized that this sub-section (5.1 a-n) encompasses findings or determinations of violations during employment of Coach at Ohio State or any other institution of higher learning As required by NCAA Bylaw 11.2.1, Coach is hereby notified that in addition to the actions Ohio State may take in accordance with this agreement, Coach is also subject to disciplinary or corrective action by the NCAA as set forth in the provisions of the NCAA enforcement procedures if Coach is found by the NCAA or Ohio State to be in violation of NCAA Bylaws.

5.1 .I Notice. If Ohio State terminates this agreement for cause under this Section 5.1, it shall give written notice to Coach of its intention to so terminate this agreement and the intended effective date of termination.

5.1.2 Termination for Cause/Loss of Compensation and Benefits. In the event this agreement is terminated for cause under this Section 5.1, Coach shall not be entitled to receive any further compensation or benefits under this agreement. In no case shall Ohio State be liable to Coach for the loss of any collateral business opportunities, or any other benefits, perquisites, income or consequential damages suffered by Coach as a result of Ohio State's termination for cause under this Section 5.1.

Indiana University Bloomington MBB Coaching Ks termination clauses:

Coach Knight:

9. Change of Status. If University at any time desires, Coach shall cease to serve as Head Basketball Coach, when so advised in writing...

11. ...Should the Athletic Director advise the President that the Coach has failed in serious ways to comply with the expressed terms of this employment agreement, .has engaged in conduct contrary to generally accepted standards in the coaching profession or has been guilty of personal conduct which would be grounds for punitive discharge of any employee of the University generally, and the Athletic Director recommends his discharge, then the University may terminate his employment for cause. Before any such action is taken he will be notified by the President of such a recommendation and shall be given the opportunity to have in writing the specific reasons on which that recommendation is based and to discuss and offer explanations to the President or his delegate. If after such opportunity the President's opinion is that the recommendation is proper, he will be notified in writing of the decision and the termination will take effect

on the dates specified in the President's final notification... the delivery to the Coach of the original notice. The President's decision will be final.

Mike Davis:

6.02.B. Action By University for Just Cause. The University shall have the right to end this Employment Agreement for just cause prior to its normal expiration on June 30, 2008. The term "just cause" shall include, in addition to and as examples of its normally understood meaning in employment contracts, any of the following:

1. deliberate and serious violations of the duties outlined in Section 2.01 of this Agreement or refusal or unwillingness to perform such duties in good faith and to the best of the Employee's abilities;
2. violations by the Employee of any of the other terms and conditions of this Agreement not remedied after thirty (30) days' written notice thereof to the Employee;
3. any conduct of the Employee in violation of any criminal statute of moral turpitude;
4. a serious or intentional violation of any rule, regulation, constitutional provision, bylaw or interpretation of the University, the Big Ten Conference or the NCAA by the Employee or a member of the men's basketball coaching staff or any other person under the Employee's supervision and direction, including student-athletes in the men's basketball program, which violation may, in the sole reasonable judgment of the University, reflect adversely upon the University or its athletic program, including any serious violation which may result in the University being placed on probation by the Big Ten Conference or the NCAA;
5. conduct of the Employee seriously prejudicial to the best interests of the University or its athletics program or which violates the University's stated mission;
6. prolonged absence from duty without the consent of the Employee's supervisor; or
7. any cause adequate to sustain the termination of any other University employee of the Employee's classification.
8. failure to obtain University's permission (from the Director of Athletics) to enter into an agreement for Outside or Promotional Income.

Kelvin Sampson:

6.02.B. Action By University for Just Cause. The University shall have the right to end this Employment Agreement for just cause prior to its normal expiration on June 30, 2013. The term "just cause" shall include, in addition to and as examples of its normally understood meaning in employment contracts, any of the following:

1. Deliberate and serious violations of the duties outlined in Section 2.01 of this Agreement or refusal or unwillingness to perform such duties in good faith to the best of the Employee's abilities;
2. A material or significant violation by the Employee of any of the other terms and conditions of this Agreement not remedied after fourteen (14) days' written notice thereof to the Employee;
3. Any conduct of the Employee in violation of any criminal statute (excluding minor traffic offenses) whether prosecuted or not, or any act of moral turpitude;
4. A significant, intentional, or repetitive violation of any law, rule, regulation, constitutional provision, bylaw or interpretation of the University, the Big Ten

Conference or NCAA, which violation may, in the sole judgment of the University, reflect adversely upon the University or its athletic program, including but not limited to any significant, intentional, or repetitive violation which may result in the University being placed on probation by the Big Ten Conference or the NCAA and including any violation which may have occurred during any prior employment of the Employee at another NCAA member institution and for which the NCAA could hold the Coach responsible;

5. A significant, intentional, or repetitive violation of any law, rule, regulation, constitutional provision, bylaw or interpretation of the University, the Big Ten Conference or the NCAA by a member of the intercollegiate men's basketball coaching staff or any other person under the Employee's supervision and direction, including student athletes in the program, which violation the Employee knew or should have known of and which violation may, in the sole judgment of the University, reflect adversely upon the University and its athletic program, including but not limited to any significant, intentional, or repetitive violation which may result in the University being placed on probation by the Big Ten Conference or the NCAA;
6. Conduct of the Employee seriously prejudicial to the best interests of the University or its athletics program or which violates the University's stated mission;
7. Prolonged absence from duty without the consent of the Employee's supervisor;
8. Any cause adequate to sustain the termination of any other University employee of the Employee's classification;
9. Failure to obtain University's permission (from the Director of Athletics) to enter into an agreement for Outside or Promotional Income as set forth in Section 4.05.B.4;
10. Fraud or dishonesty of Employee in the performance of his duties or responsibilities under this Agreement;
11. Failure to maintain an environment in which the coaching staff complies with NCAA, Big Ten and University rules and regulations;
12. Failure to comply with Article VII of this Agreement regarding Unique Services; knowingly misleading the University about any matters related to the men's basketball program, its assistant coaches or student athletes;
13. Failure or refusal to recognize and cooperate with the Athletic Director or other University officials;
14. Findings of the NCAA infractions committee referenced in Section 4.08 that demonstrate serious, intentional, repetitive violations and that result in additional significant penalties or sanctions against the Employee beyond the University of Oklahoma's self-imposed sanctions taken against the Employee, including any action of the NCAA that would materially impair the Employee's ability to perform under this Agreement.

Tom Crean:

6.02.B. Action by the University for Cause. The University may terminate the employment of the Employee by the University under this Agreement prior to the Normal Expiration Date for Cause. The term "Cause" shall include, in addition to and as examples of its normally understood meaning in employment contracts, any of the following:

1. Any violation by the Employee of any of the obligations, duties or responsibilities outlined in Section 2.01 or any refusal or unwillingness to perform any of such obligations, duties or responsibilities in good faith and to the best of the Employee's abilities;
2. Any conduct, including acts or omissions, of the Employee in violation of any criminal statute (excluding minor traffic offenses) whether prosecuted or not, or any act of moral turpitude;
3. Any conduct, including acts or omissions, of the Employee that may give rise to a finding of a violation of any of the Governing Rules, including but not limited to any conduct which may have occurred during any prior employment of the Employee at another NCAA member institution and for which the NCAA could hold the Employee responsible;
4. Any conduct, including acts or omissions, that may give rise to a finding of a violation of any of the Governing Rules by an assistant coach or any other staff member of the men's basketball staff or any other person under the Employee's supervision and direction, including student-athletes in the program, which violation the Employee knew or should have known of;
5. Any conduct, including acts or omissions, of the Employee which, in the sole judgment of the University, is seriously prejudicial to the best interests of the University or the Athletics Department or which violates the University's stated mission or which conduct may, in the sole judgment of the University, reflect adversely upon the University or its athletic program;
6. Any prolonged absence from the performance of the Employee's obligations, duties and responsibilities under this Agreement without the prior consent of the Director of Athletics;
7. Any cause adequate to sustain the termination of any other employee of the University of the Employee's classification;
8. Any failure to obtain the University's permission from the Director of Athletics to enter into an agreement for outside or promotional income as set forth in Section 4.05.B.4;
9. Any fraud or dishonesty of the Employee in the performance of any of his obligations, duties or responsibilities under this Agreement;
10. Any failure to maintain an environment in which all the members of the coaching staff and other members of the men's basketball staff comply with the Governing Rules;
11. Any failure by the Employee to comply with his obligations, duties and responsibilities under Section 7.01 or any material breach of the representations and warranties of the Employee in Section 7.02;
12. Any conduct, including acts or omissions, that misleads the University or the Director of Athletics about any matters related to the men's basketball program, including matters related to the Employee, any assistant coaches or other staff members or any student-athletes;
13. Any failure or refusal to recognize or cooperate with the Director of Athletics or other University officials, including any compliance personnel;
14. Fraud or dishonesty of the Employee in preparing, falsifying, submitting or altering documents or records of or to the University, the NCAA or the Big Ten, or documents or records required to be prepared or maintained by law, any of the Governing

Rules, or other documents or records pertaining to any recruit or student-athlete, including without limitation expense reports, transcripts, eligibility forms or compliance reports, or permitting, encouraging or condoning such fraudulent or dishonest acts by any other person, provided that the Employee had actual knowledge of such fraudulent or dishonest acts or reasonably should have known about such fraudulent or dishonest acts;

15. Use or consumption by the Employee of alcoholic beverages, drugs, controlled substances, steroids or other chemicals in such degree and for such appreciable period as to impair significantly or materially his ability to perform his duties hereunder; or failure by the Employee to fully cooperate in the enforcement and implementation of any drug testing program established by the University for student-athletes;

16. The Employee's sale, use or possession of (or the Employee's permitting, encouraging or condoning a student-athlete, assistant coach or other athletic staff member to sell, use or possess) any narcotics, drugs, controlled substances, steroids or other chemicals, the sale, use or possession of which by the Employee, assistant coach, athletic staff member or student-athlete is prohibited by law or by the Governing Rules;

17. Soliciting, placing or accepting by the Employee of any bet on any intercollegiate or professional athletic contest, or permitting, condoning or encouraging by the Employee of any illegal gambling, bookmaking or illegal betting involving any intercollegiate or professional athletic contest, whether through a bookmaker, a parlay card, a pool or any other method of organized gambling, or the furnishing by the Employee of information or data relating in any manner to basketball or any other sport to any individual known by the Employee to be or whom he should reasonably know to be a gambler, better or bookmaker, or an agent of any such person, or the consorting or associating by the Employee with any of such persons; or

18. Any violation by the Employee of any term or condition of this Agreement which is not specified above and which is not remedied by the Employee within ten (10) days following receipt of written notice thereof provided such violation is susceptible of being remedied.

Interesting note from Crean's K, in the case of termination by Indiana *without* cause:

6.F. ... the University's sole obligation to the Employee shall be to continue to pay the Employee an amount representing the lesser of his then-current base annual salary as defined in Section 4.01 for the remainder of the Agreement, or Three Million Dollars (\$3,000,000).

Note: Usually, there is not set maximum limit as such posed in the K, and upon termination without cause the employee is entitled to the remainder of his/her salary.

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Indiana University Bloomington WBB Coaching Ks termination clauses:

Kathi Bennett:

6.B. *Termination by University for Just Cause.* The University shall have the right to terminate this Employment Agreement for just cause prior to its normal expiration on April 30,2005. The term "just cause" shall include:

- (i) Deliberate and serious violations of the duties and responsibilities outlined in Section 3 of this Employment Agreement or refusal or unwillingness to perform such duties in good faith and to the best of Coach's abilities.
- (ii) Violations by Coach of any of the other material terms and conditions of this Employment Agreement not remedied after fifteen (15) days' written notice thereof to Coach.
- (iii) Any conduct of Coach in violation of any criminal statute (not including routine traffic offenses) or which constitutes moral turpitude.
- (iv) A serious and intentional violation of any law, rule, regulation, constitutional provision, bylaw or interpretation of the University, the Big Ten Conference or the NCAA, including any violation which may result in the University being placed on probation by the Big Ten Conference or the NCAA and including any violation which may have occurred during prior employment of Coach at another NCAA member institution.
- (v) A serious and intentional violation of any law, rule, regulation, constitutional provision, bylaw or interpretation of the University, the Big Ten Conference or the NCAA by a member of the women's basketball coaching staff or any other person under Coach's supervision and direction, including student-athletes in the women's basketball program, including any serious violation which may result in the University being placed on probation by the Big Ten Conference or the NCAA, which violation is known by the Coach and not promptly reported by the Coach to the Athletic Director or the Compliance Coordinator.
- (vi) Conduct by Coach which is seriously prejudicial to the best interests of the University or its athletic program or which violates the University's mission.
- (vii) Prolonged absence from duty without the consent of the Athletic Director.
- (viii) Coach's failure to include the University as a party to an agreement with a Promotion Source without prior University approval.
- (ix) Any cause adequate to sustain the termination of any other Professional Staff Employee of the University on the Bloomington Campus.

Sharon Versyp:

6.01.B. Action By University for Just Cause. The University shall have the right to end this Employment Agreement for just cause prior to its normal expiration on April 30, 2010. The term "just cause" shall include, in addition to and as examples of its normally understood meaning in employment contracts, any of the following:

1. violations of the duties outlined in Section 2.01 or refusal or unwillingness to perform such duties in good faith and to the best of the Employee's abilities. This does not include the Employee's win-loss record;
2. violations by the Employee of any of the other terms and conditions of this Employment Agreement not remedied after thirty (30) days' written notice thereof to the Employee;
3. any conduct of the Employee in violation of any criminal statute of moral turpitude;
4. significant or repetitive violations of a rule, regulation, constitutional provision, or bylaw of the University, the Big Ten Conference or the NCAA by the Employee;

5. conduct of the Employee prejudicial to the best interests of the University or its athletics program or which violates the University's stated mission;
6. prolonged absence from duty without the consent of the Director of Athletics;
7. any cause adequate to sustain the termination of any other University employee of the Employee's University personnel classification;
8. failure to obtain University's permission (from the Director of Athletics) to enter into an agreement for outside or promotional income; and
9. failure to maintain an environment in which the coaching staff complies with NCAA rules and regulations.

(Important Note: Coach Versyp's Indiana K did not include a liquidated damages clause for the case of her departure for another position prior to the completion of the K; sure enough, after her move to Purdue, Coach Versyp and Purdue did not have to compensate Indiana for her premature departure. Promptly, the next WBB K, Coach Legette-Jack's, included a pretty elaborate liquidated damages clause, initially of \$350,000 payable by the coach within 30 days, or by the next institution/third party within 15 days; one year after Coach Legette-Jack signed her first IU K, there was an amendment which raised the amount to \$500,000 payable by the coach within 60 days, or 15 days by a third party/the next institution. Subsequently, one year after that amendment, Coach Legette-Jack signed a new addendum (11/13/08), aligning her K with MBB Coach Crean's liquidated damages clause, creating a sliding liquidated damages clause, whereby she would pay \$400,000, \$300,000, \$200,000, and \$100,000 during each subsequent year of her Indiana employment, should she wish to depart prior to her K's expiration.)

Felisha Legette-Jack:

- 6.02.B. Action By University for Just Cause. The University shall have the right to end this Employment Agreement for just cause prior to its normal expiration on June 30, 2011. The term "just cause" shall include, in addition to and as examples of its normally understood meaning in employment contracts, any of the following:
1. violations of the duties outlined in Section 2.01 or refusal or unwillingness to perform such duties in good faith and to the best of the Employee's abilities. This does not include the Employee's win-loss record;
 2. violations by the Employee of any of the other terms and conditions of this Employment Agreement not remedied after thirty (30) days' written notice thereof to the Employee;
 3. any conduct of the Employee in violation of any criminal statute of moral turpitude.
 4. any conduct of the Employee prejudicial to the best interests of the University or its athletics program or which violates the University's stated mission;
 5. prolonged absence from duty without the consent of the Director of Athletics;
 6. any cause adequate to sustain the termination of any other University employee of the Employee's University personnel classification;
 7. failure to obtain University's permission (from the Director of Athletics) to enter into an agreement for outside or promotional income;
 8. failure to maintain an environment in which the coaching staff complies with NCAA rules and regulations;

9. Any significant, intentional, or repetitive violation of any law, rule, regulation, constitutional provision, bylaw or interpretation of the University, the Big Ten Conference or the NCAA, which violation may, in the sole judgment of the University, reflect adversely upon the University or its athletic program, including but not limited to any significant, intentional, or repetitive violation which may result in the University being placed on probation by the Big Ten Conference or the NCAA and including any violation which may have occurred during any prior employment of the Employee at another NCAA member institution and for which the NCAA could hold the Coach responsible; and

10. A significant, intentional or repetitive violation of any law, rule, regulation, constitutional provision, bylaw or interpretation of the University, the Big Ten Conference or the NCAA by a member of the intercollegiate women's basketball coaching staff or any other person under the Employee's supervision and direction, including student athletes in the program, which violation the Employee knew or should have known, which violation may, in the sole judgment of the University, reflect adversely upon the University and its athletic program, including but not limited to any significant, intentional, or repetitive violation which may result in the University being placed on probation by the Big Ten Conference or the NCAA.

Coaches' litigation data:

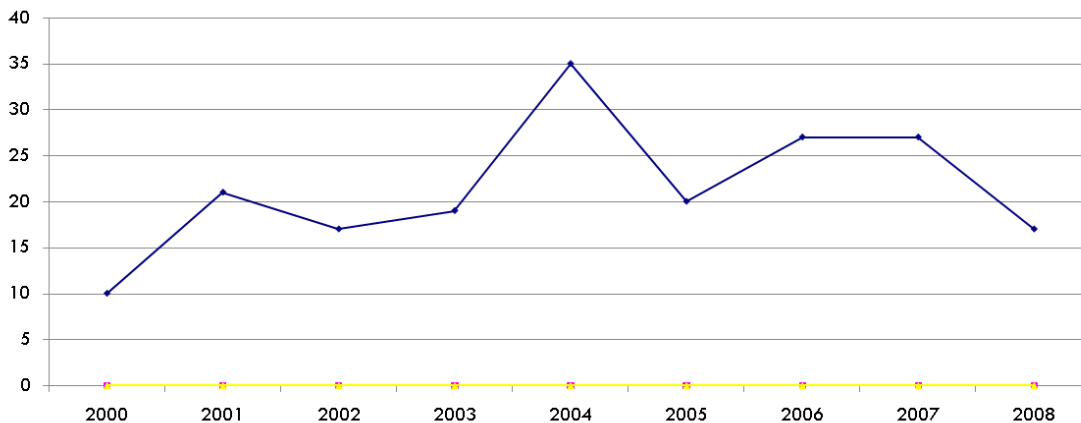
(Anderson & Osborne, 2009)

□ **TOTAL NUMBER OF CASES = 193 cases from 2000 until 2008**

■ Average per year = 21 cases

■ Highest Number = 2004 (35)

■ Lowest Number = 2000 (10)



■ 2009 as of February 26 = WESTLAW = 5 cases

- ❑ Top States (40%)
 - California = 17
 - Ohio = 16
 - North Carolina & Alabama = 12
 - Kansas = 11
 - Pennsylvania = 10

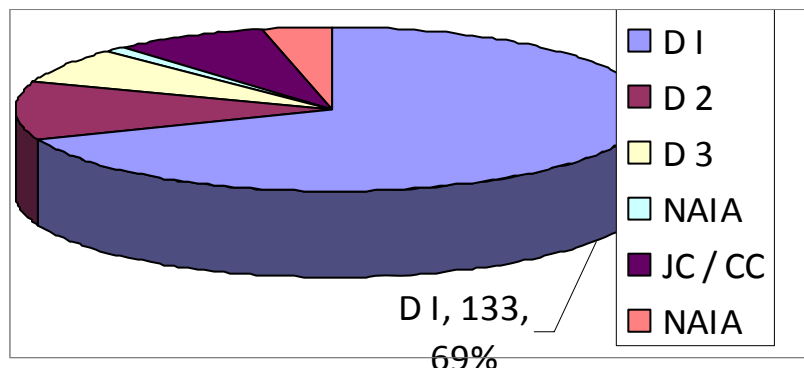
- ❑ Least amount of cases
 - Alaska, Hawaii, Maine, Nevada, New Hampshire, North Dakota, Oregon, Rhode Island, South Dakota, Utah, Vermont = 0

- ❑ 185 cases = involved individual coaches (96%)
- ❑ 8 = involved general category of coaches

- ❑ Brought by Coach = 128 (66%)
- ❑ Brought against Coach = 65
- ❑ Head coach = 96 (50%)
- ❑ Assistant coach = 28
- ❑ Both Head & Assistant Coach = 21
- ❑ Not specified = 39
- ❑ Class of coaches = 6
- ❑ Associate Head Coach = 2
- ❑ Athletic Instructor/Coordinator = 1

- ❑ Men' Sports – 104 (54%)
- ❑ Women's Sports – 45 (23%)
- ❑ Not Specified – 37
- ❑ Not Available – 7
- ❑ Both Men's and Women's – 1

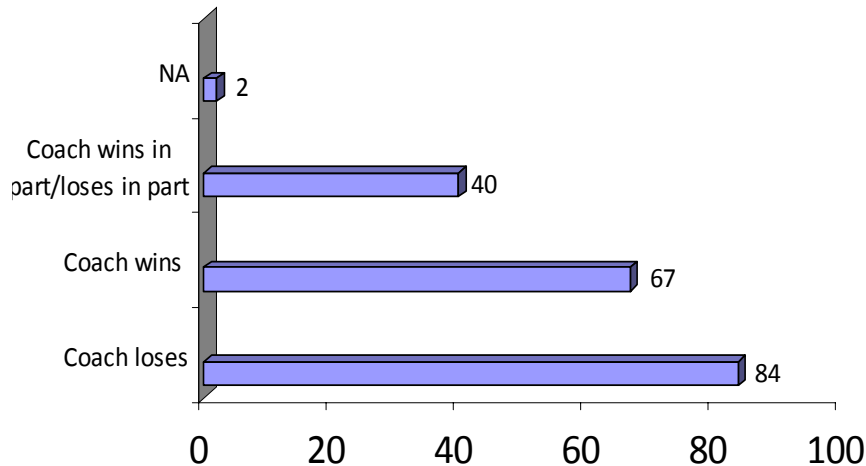
- ❑ 19 different sports involved
 - 1) Basketball = 63 (33%)
 - 2) Football = 46 (24%)
 - 3) Baseball = 16
 - 4) Soccer = 10
 - 5) Volleyball = 8
 - 6) Track/Track and Field & Unknown Sport = 7
 - 7) Golf & Wrestling = 7



62 different collegiate conferences involved
(SEC: 28, Big 10: 18, Big12: 12, ACC: 9)

- ❑ Top legal issues involved
 - 1) Tort law = 46 cases
 - Often against coach even though cases against the coach were only 34% of the study
 - 2) Employment discrimination = 44
 - 3) Breach of contract = 29
 - 4) Sexual harassment = 14
 - 5) Constitutional law = 13
- ❑ 5 cases in 2009 as of 2/26/09 cover first 4 issues above

Coach loses 44% | wins 35% | split result 21%



- ❑ Majority of this litigation
 1. Involves a head coach (61%)
 2. Who is the plaintiff (66%)
 3. Of a male sport (i.e. basketball, football) (54%)
 4. At the Division 1 level (69%)
 5. *In a BCS conference* (37%)
 6. Involves a tort issues, or relates to allegations of unlawful discrimination (employment discrimination) (47%)
 7. *Is in one of the following states* (40%)
 - California, Ohio, North Carolina, Alabama, Kansas, Pennsylvania
 8. The university is also a named party to the lawsuit (63%)
 9. Only reviewed at lowest court level (69%)
 10. THE COACH LOSES (54.5%)

WBB litigation data:

(Kaburakis & Little, 2009)

N=36 cases (Plaintiffs = Coaches)

Oldest case: Apr 1977

Most recent: Jan 2009

Coaches' position:

Head Coach: 28

Assistant Coach: 3

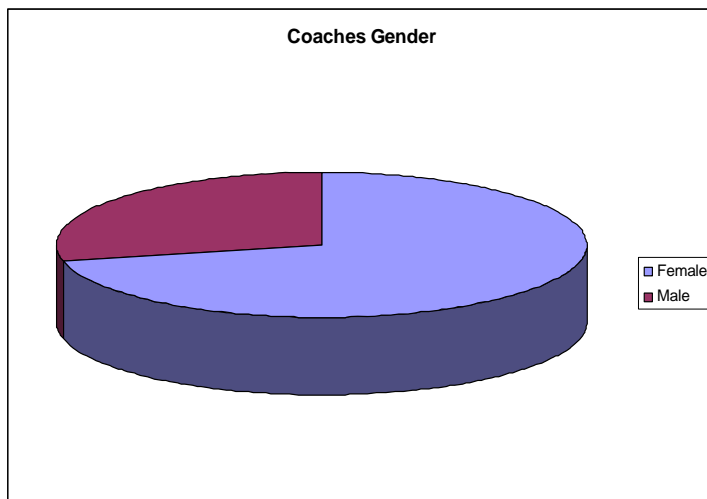
(3 unspecified and 2 cases brought by one HC and one AC – both female – had multiple court decisions and outcomes)

Coaches' gender:

Female: 25

Male: 10

(in one case both M&F WBB coaches jointly sued)



Level:

Division I: 15

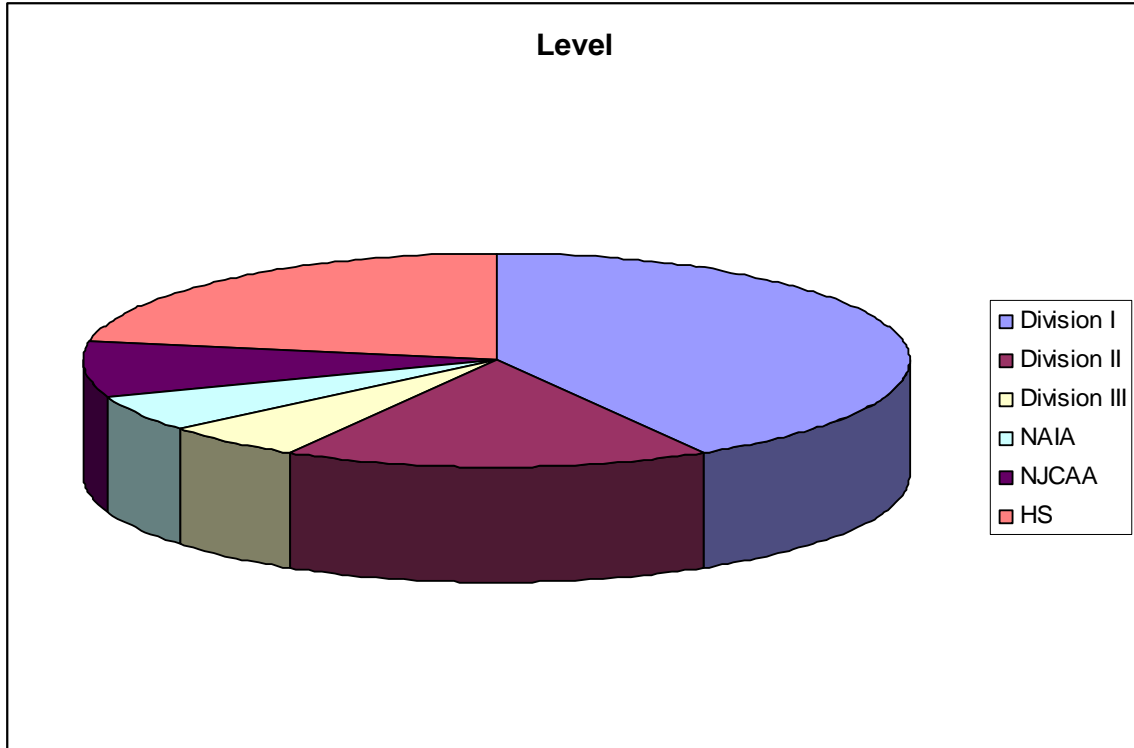
Division II: 6 (one institution was DII-DI)

Division III: 2

NAIA: 2

NJCAA: 3

HS: 8



Claims (most cases feature multiple claims):

Equal Pay Act: 8

Title VII: 15

Title IX: 13

Breach of Contract: 6

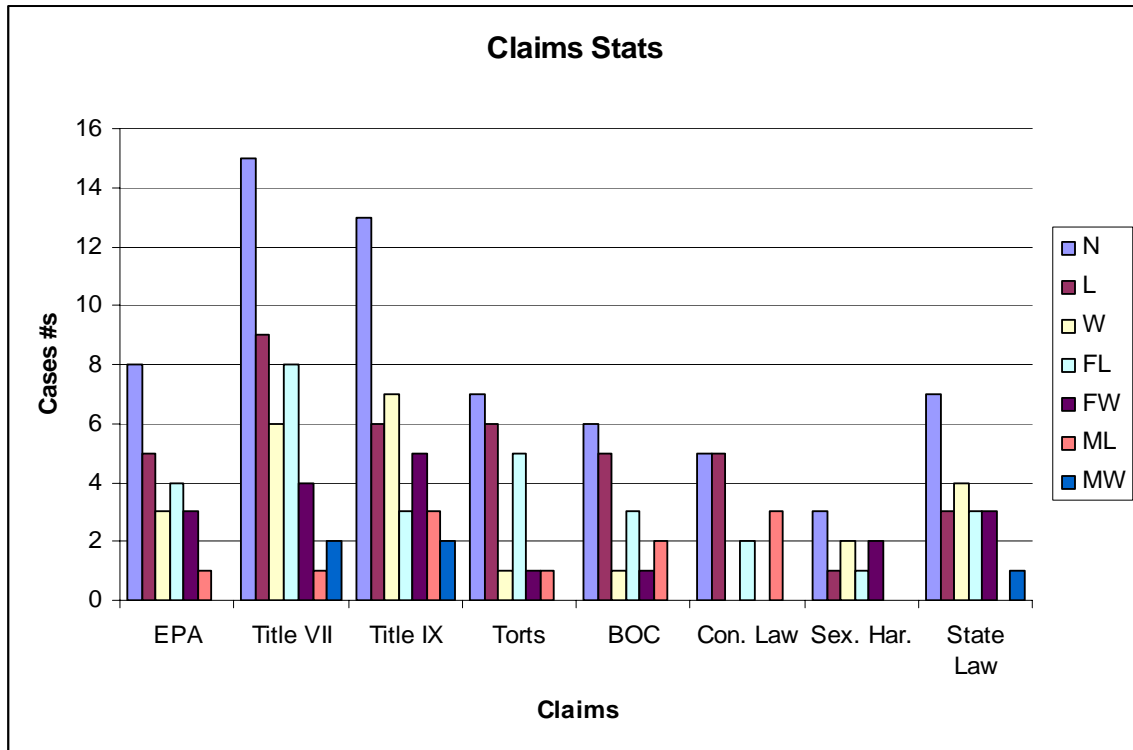
Tort Law: 7

Sexual harassment: 3

State Law misc. (Anti-discrimination/retaliation – Human Rights Law, etc.): 7

Constitutional Law: 5

8-EPA	5- Lose 3-Win	37.5% winning	7-Female (L-4 W-3)	1-Male (L-1 W-0)
15-TVII	9-Lose 6-Win	40% winning	12-Female (L-8 W-4)	3-Male (L-1 W-2)
13-IX	6- Lose 7-Win	54% winning	8-Female (L-3 W-5)	5-Male (L-3 W-2)
6-BOC	5-Lose 1-Win	17% winning	4-Female (L-3 W-1)	2-Male (L-2 W-0)
7-Tort	6-Lose 1-Win	14% winning	6-Female (L-5 W-1)	1-Male (L-1 W-0)
3-St Sex Harsm	1-Lose 2-Win	66% winning	3-Female (L-1 W-2)	Male (L-0 W-0)
4-St Law Misc	2-Lose 2-Win	50% winning	3-Female (L-2 W-1)	1-Male (L-0 W-1)
3-St Sex Discrimination	3-Lose 0-Win	0% winning	3-Female (L-3 W-0)	Male (L-0 W-0)
5-Const. Law	5-Lose 0-Win	0% winning	2-Female (L-2 W-0)	3-Male (L-3 W-0)



Total Claims: 64

Coach loses: 42 – 66%

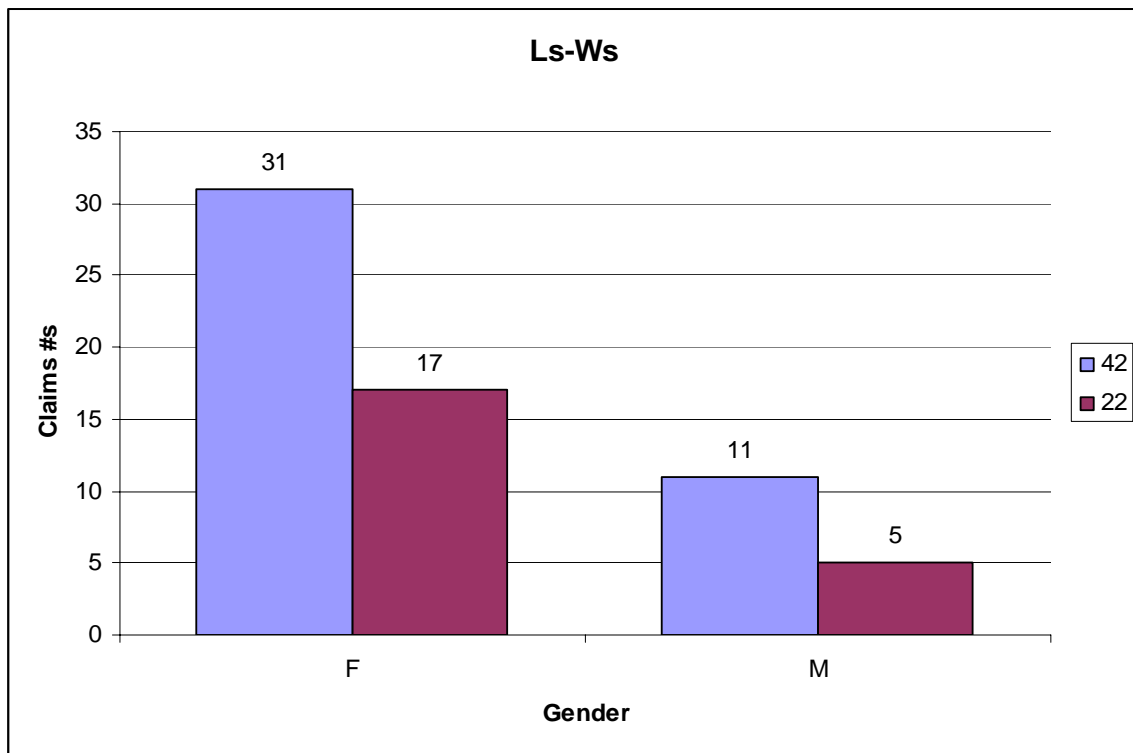
Coach wins: 22 – 34%

Female WBB Coach loses: 31 – 65%

Female WBB Coach wins: 17 – 35%

Male WBB loses: 11 – 69%

Male WBB wins: 5 – 31%



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