

What's The Damage?

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By [Mark Selig](#)

HARRISONBURG - One of the many intriguing questions in Marist's courtroom victory over James Madison University is perhaps the most basic: How much will the ruling cost JMU?

The answer: Nobody is saying.

Marist, in fact, says money wasn't the primary goal of its lawsuit, which claimed that men's basketball coach Matt Brady broke his contract when he left the Red Foxes for JMU in March 2008.

Tim Massie, the small private school's spokesman, said Tuesday there has been "no dollar figure discussed whatsoever" on damages.

"For us, money is a secondary thing," Massie said. "The primary thing is honoring a contract."

At least two national media outlets - CBSsports.com and Rivals.com - on Tuesday ran stories suggesting that Marist's victory would have national ramifications. And Marist's attorney, Paul O. Sullivan, expressed similar sentiments in a press release.

"This case could well set a precedent for college and university athletics nationwide," said Sullivan. "Coaches have to abide by contracts, and other institutions have to respect those agreements. If that contract is breached, damages will be assessed. It's a simple lesson in fiduciary responsibility and contractual obligation."

But the case isn't quite cut-and-dried. While Marist sued both Brady and JMU, New York state judge Charles D. Wood has not yet ruled on the school's suit against Brady. He issued a "default" judgment against Madison after JMU chose not to answer the court's motion to go to trial, Sullivan said. Brady, on the other hand, did submit a response to Marist's allegations.

The default judgment against JMU "essentially accepts that [Marist's] allegations were true," said Dan Fitzgerald, a Connecticut attorney and sports law expert.

If Brady wins his portion of the case by mounting a vigorous defense, though, any precedents that might be set by Madison's loss could be erased.

Damages, meanwhile, might be assessed as early as Monday, the day Wood has summoned JMU and Marist for a conference, either in person in Poughkeepsie, N.Y., or via telephone.

Wood's ruling in favor of Marist came late last month but was first reported Monday. Marist sued JMU and Brady, claiming that Brady broke his contract with the Poughkeepsie school after being hired to

coach at Madison.

Marist said Brady violated the contract by speaking to JMU without Marist's permission and - most notably - by recruiting players to Madison whom he had originally tried to sign for the Red Foxes.

"Contracts should be legally binding on coaches as well as on colleges and universities," Sullivan said in the release. "Coach Brady could have continued under the terms of his old contract but specifically requested a renegotiated four-year agreement to reinforce his commitment to the college. We would have preferred to have settled this matter much more amicably and avoid court, but it was obvious that JMU was not interested. Now, the court has forced JMU to take the steps that should have been taken two years ago."

Legal experts agreed that a precedent might be set.

"Other coaches or colleges might take a look at this and say, 'We want that provision in our contracts or don't,'" said Gabriel Feldman, director of Tulane's sports law program. "If this becomes an example of what schools may do down the road, it is going to perhaps make it more difficult for a coach to leave. Right now, you mostly have buyout clauses, which say if a coach leaves early he has to pay and the universities usually foot that bill."

Said Fitzgerald: "Maybe this will provide schools with the confidence to enforce college coaching contracts more than they have in the past. ...I still think it's a pretty bold move to sue another athletic institution."

"Bold," he said, because it might backfire on Marist, opening it up to a lawsuit if it ever snatches away another school's coach.

After Brady left Marist, the Red Foxes went 10-23 in 2008-09 and 1-29 last season. They were 18-14 in Brady's final season in Poughkeepsie. But one prominent legal expert questioned whether damages could be linked to athletic performance.

"As long as they tie it to the cost of recruiting, then I think they are on pretty solid ground," said Paul H. Haagen, co-director of Duke's center for sports law. "If they try to use some measure of gate or winning or reputation, then I think we're on new grounds and that's really problematic."

Haagen said he thinks that recruiting money could be recouped by Marist because the alleged stipulation in Brady's contract is similar to a non-compete clause in other pacts.

"Basically, the claim is the coach had a responsibility to the institution, essentially not to engage in a kind of non-compete clause," Haagen said. "He's established a relationship with the recruits, money has been expended in them, and it's kind of like a customer list."

Although Massie would not specify what damages Marist would seek, he did say that it would likely want at least repayment of court costs.

Sullivan, in an interview Tuesday, also was vague.

"We're looking for a monetary award that compensates and makes Marist whole for the damages that were caused," he said.

Sullivan, though, refused to comment when asked several times what damages Marist had suffered.

Beyond damages, there's a question of whether the basis of the contract is legitimate: Is a clause prohibiting players from accepting scholarships from Brady to JMU reasonable?

"That arguably impinges on a student-athlete's choice to attend any institution that will take him," Tulane's Feldman said.

Connecticut's Fitzgerald echoed that sentiment.

"I think the athlete is the true big loser in this," Fitzgerald said. "The recruits are once again the ones with no rights, no representation. They didn't agree to these rules, these contracts, and they are impacted from it"

Exhibit A: JMU junior star Julius Wells, who was a lightly recruited forward out of Libbey High School in Ohio. A 2008 high school graduate, he said Brady's coaching staff at Marist showed the most interest in him so he signed with the Red Foxes. When Brady left for JMU, Wells felt loyal to the coach - not to Marist.

"Just his belief in me, his trust in me," Wells said last December when asked why he followed Brady from Marist to Madison. "He seen me as a basketball player playing at this level, and pretty much no other college coach seen that. He seen me becoming the player I'm becoming right now, and no other coach seen that. So I have trust in him."

This type of scenario happens every year at colleges across the country. The difference in this case, is that Brady's contract with Marist prohibited it, according to the school, and Marist didn't want to let it slide.

Three other players whom Brady recruited while at Marist also ended up at JMU. Two of them, along with Wells, played a major role in the Dukes' 21-win season in 2008-09, ending a string of eight losing seasons.

Brady's attorney, Joseph F. Murray, said Tuesday "it's just too early to tell" what might happen to his client.

Calling Wood's ruling in favor of Marist over JMU "procedural" rather than "substantive," Murray said he does not believe that Marist's victory is indicative of how the judge will rule in Brady's portion of the case.

Marist, which is not subject to freedom of information laws, has not released Brady's contract. JMU officials have refused to comment on the case.