

New Chapter in U. of Louisville Foundation Saga

08.29.18 | Linda J. Rosenthal, JD



Last year, [we wrote](#) about the deep – self-inflicted – troubles plaguing the University of Louisville (Kentucky) Foundation. At that time, in July 2017, The Nonprofit Quarterly wrote: “The [last shoe may have dropped](#).”

The University of Kentucky had commissioned a costly independent forensic audit covering the years 2014-2016 as well as certain earlier events. The 269-page audit report was released to the board and to the general public in early June 2017; “the “specific findings ... are a simple statement of transactions and issues [resulting in a complex and destructive situation](#).”

The problems arose from many years of overspending – depleting the endowment – as well as egregious conflicts of interest. Among the most significant problems was the overlap of senior personnel. James Ramsey, who was president of the University of Louisville, was also the president of the foundation – at the same time. “The situation was rife with ‘[conflicts of interest](#)’ yet “[d]espite this coziness, there was a “lack of communication and transparency.’

Although Ramsey and others were forced out and there was a turnover of the full board, significant damage was done with longer-term consequences: Donations plunged and the long-term stability of the foundation was undermined.

Key Individuals Named in Foundation Lawsuit

The last shoe had not – alas – dropped last year. “The [newest chapter](#) in the story of the University of Louisville Foundation, which is quickly becoming a case study for [how not to run](#) a philanthropic foundation, is all about a lawsuit.”

The university and its affiliated organization (under new management, as indicated above) have [filed a lawsuit](#) naming six people as individual defendants – including the former president and top aide as well as a law firm that represented both the university and the foundation at the time of the alleged problematic transactions. Also named is a board member of the U of L Foundation (who was a member of the executive committee and a paid consultant) as well as two assistant treasurers.

The 35-page complaint (full text [here](#)) makes detailed claims, with no punches pulled. For instance, the first several paragraphs in the “Factual Allegations” section, read:

The Defendants knowingly caused the Foundation to spend Endowment funds at an excessive and unsustainable rate.

- *The Defendants took Endowment money that should have been invested and diverted it to speculative ventures, loans, and gifts that had little realistic chance of repayment.*
- *The Defendants depleted the Endowment through intentionally complicated—and often unauthorized—transactions.*
- *While engaged in this disloyal conduct, Ramsey and Smith paid themselves (and others) excessive compensation out of the Foundation.*
- *The Defendants disguised these transactions to avoid scrutiny and circumvent the Foundation’s approved spending limit and annual budget.*
- *The Defendants’ bad faith actions and other wrongful conduct caused the Endowment to lose millions of dollars.*

The next several pages flesh out these factual allegations. The legal claims include breach of fiduciary duty, aiding and abetting breach of fiduciary duty, breach of statutory rules, and fraudulent misrepresentation, suppression, and omission.

The law-firm defendant is alleged to have committed legal malpractice and aided and abetted the breaches of fiduciary duty. According to a current attorney for the foundation, the named law firm “stepped over the line from simply being legal consultants and providing legal advice to a much more active role.”

Reasons for the Lawsuit

The new board of the foundation made the decision to proceed with a *personal* lawsuit against these people – in their *individual* capacities – for two reasons.

First, the financial hit incurred by the foundation has been enormous. The price tag for the forensic audit was \$2 million; legal fees so far have been \$1.5 million, and the endowment suffered a loss of at least \$42 million and counting.

Second, the actions of these people were simply too egregious to ignore.

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‘When you keep on peeling the onion back and you see what some of the actions that were taken, it boils down to it’s the right thing to do,’ U of L Foundation chair Earl Reed said. ‘When certain activities occur that are so egregious and wrong for the future of the university and the foundation and our donors, you just can’t sit back and let it go.’

In addition to going forward with the lawsuit, the University of Louisville Foundation has put in place significant checks and balances to ensure that problems like the ones uncovered cannot happen again.

Conclusion

“Philanthropic foundations would do well to pay attention to the cautionary saga of U of L Foundation, from the start of its small governance missteps up to the apparent misuse of dollars for personal gain.”