

**IN THE CIRCUIT COURT OF COOK COUNTY, ILLINOIS
COUNTY DEPARTMENT, CHANCERY DIVISION**

NAVIGATE MARKETING, INC.,)
an Illinois corporation,)
)
)
)
Plaintiff,)
)
vs.)
)
THE BIG 12 CONFERENCE, INC.,)
a Delaware not-for-profit corporation,)
Defendant.)

Case No. 2018CH15767

JURY DEMAND

COMPLAINT

Plaintiff Navigate Marketing, Inc. d/b/a Navigate Research (“Navigate”) hereby complains of defendant the Big 12 Conference, Inc. (the “Defendant” or the “Big 12”) and states as follows:

INTRODUCTION

1. This lawsuit is a breach of contract action against the Big 12 for failing to perform its contractual obligations to Navigate under the Parties’ consulting agreement (hereinafter, the “Agreement”).

2. Under the Agreement, Navigate provided the Big 12 with consulting services regarding, among other things:

- Projecting revenue associated with a potential conference expansion;
- Conducting scenario analysis for television and other multi-media rights;
- Consulting the Conference on how to approach multi-media partners for negotiation purposes; and
- Provide the Conference ongoing support and consultation on conference expansion concepts and rights negotiations.

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In exchange, the Big 12 promised to pay Navigate a 1% fee on any newly-negotiated media rights deals resulting in an increase in the incremental revenue to the Big 12.

3. The Big 12 has successfully negotiated at least one new multi-media rights deal, generating millions of dollars in increased revenue for the conference. On information and belief, the Big 12 is close to negotiating another such deal that will result in millions of dollars more in revenue to the conference.

4. The Big 12 has refused to pay Navigate its fee in breach of the Agreement.

5. Accordingly, Navigate now brings this action for damages in excess of \$1 million.

THE PARTIES

6. Navigate is an Illinois Corporation with its headquarters located in Chicago, Illinois.

7. The Big 12 is a Delaware not-for-profit corporation with its headquarters located at 400 E John Carpenter Freeway, Irving, Texas 75062.

JURISDICTION AND VENUE

8. This Court has jurisdiction over the Big 12 because the parties explicitly agreed to the jurisdiction of any state court sitting in Chicago, Illinois in the Agreement. Moreover, the Big 12 has transacted business in Illinois, and the Agreement at issue was performed in, and is substantially connected to, Illinois.

9. Venue is proper in this Court pursuant to 735 ILCS 5/2-101 because the parties agreed that any action to enforce the parties' contract would be brought exclusively in a state court sitting in Chicago, Illinois, and also because a significant portion of the transaction and events giving rise to this action occurred in Cook County.

FACTUAL BACKGROUND

NAVIGATE RESEARCH

10. Navigate is an industry leader in evaluating and measuring marketing investments, primarily in sports and entertainment. Based in Chicago, Navigate helps clients determine the value of their marketing investments and understand how they are performing.

11. Navigate has measured the impact and ROI of hundreds of sponsorship deals and has valued billions of dollars in sponsorship transactions on behalf of brands, properties, universities, networks, and agencies.

12. Navigate's clients include Fortune 500 companies, many of the world's most recognized professional sports leagues, leaders in sports television, and many of the nation's largest public universities.

THE AGREEMENT

13. On February 16, 2015, Navigate and the Big 12 entered into a Statement of Work Agreement (the "Agreement"), pursuant to which Navigate would perform research and consulting services on behalf of the conference. The Agreement is attached as **Exhibit A**.

14. The Agreement detailed the scope of Navigate's research project and the compensation that Navigate would be paid for its services.

15. The Agreement also provided that there was potential for a second phase of the project, ("Phase II") and if the parties decided to pursue Phase II of Navigate's services, an addendum to the Agreement would be executed.

16. On March 9, 2015, Navigate and the Conference executed an addendum to the Agreement, which instructed Navigate to move forward with Phase II of the project (the "Addendum"). The Addendum is attached as **Exhibit B**.

17. Pursuant to the Addendum, Navigate's services related to Phase II of the project included:

- Projecting revenue associated with a potential conference expansion;
- Conducting scenario analysis for television and other multi-media rights;
- Consulting the Conference on how to approach multi-media partners for negotiation purposes; and
- Provide the Conference ongoing support and consultation on conference expansion concepts and rights negotiations.

18. For Navigate's Phase II services, the Big 12 was obligated to pay Navigate: (1) \$15,000 a month and (2) a one percent (1%) variable fee based upon all incremental revenue from multi-media rights deals entered into by the Conference.

19. Any variable fee owed to Navigate was to be paid to Navigate in one net present value payment ("NPV payment") for each newly negotiated multi-media rights deal that resulted in an increase in the incremental revenue to the conference.

20. The calculation for each NPV payment would use three percent (3%) as the discount rate for future incremental annual cash flows.

21. For example, if the Big 12 increased its annual payout from \$200 million per year to \$220 million per year over a 10-year term by negotiating a new multi-media rights deal with one of its broadcast partners, Navigate would be owed one percent (1%) of the incremental \$20 million increase per year for the full term, which would equate to a NPV payment of approximately \$1.71 million owed to Navigate.

22. Further, full payment was due to Navigate within ninety (90) days of each signed multi-media rights deal, whether occurring during or subsequent to the term of the Agreement/Addendum.

23. The Addendum also specifies that in the event that the Agreement terminates, the Big 12 is still obligated to pay Navigate the one percent (1%) variable fee on all incremental revenue from multi-media rights deals signed by the Big 12 to the extent that information provided by Navigate was used or referred to in the negotiations.

THE BIG 12'S BREACH OF CONTRACT

24. In 2017, the Big 12 entered into a newly negotiated multi-media rights deal with one of its broadcast partners (Broadcaster #1).

25. As a result of the deal, the Big 12 will earn an additional \$230 million in revenue.

26. Navigate is entitled to its 1% fee on such deal because, among other things, it resulted in an increase of the Big 12's incremental revenue, and information provided by Navigate was both used and referred to in the negotiations.

27. Furthermore, representatives of the Big 12 have regularly praised the quality and impact of the services that Navigate provided to the Big 12.

28. The Big 12 has refused, however, to pay Navigate its fee.

29. Meanwhile, the Big 12 is also in the process of negotiating another new multi-media rights deal with a second company (Broadcaster #2).

30. On information and belief, the Big 12's negotiations with Broadcaster #2 are still ongoing, but the Big 12 is expected to earn at least an additional \$112 million in incremental revenue.

31. The Big 12 has informed Navigate that the Big 12 will not pay Navigate its fee for any newly-negotiated deal with Broadcaster #2.

32. On information and belief, the Big 12 is nevertheless using and/or referring to information provided by Navigate in the Big 12's negotiations with Broadcaster #2.

COUNT I

BREACH OF CONTRACT

33. Navigate incorporates by reference and thereby re-alleges the foregoing paragraphs as if fully set forth herein.

34. The Agreement and Addendum are an enforceable contract formed under and governed by Illinois law.

35. Navigate has fully performed all of its obligations under the Agreement and Addendum.

36. The Big 12 has breached its obligations under the Agreement and Addendum by refusing to pay Navigate its fee for the incremental revenue that the conference has negotiated with Broadcaster #1.

37. As a result of the Conference's breach of the Agreement and Addendum, Navigate has been damaged in excess of \$1 million.

WHEREFORE, Navigate Marketing, Inc. prays this Court award the following relief:

- a. Damages to be proved at trial;
- b. An award of Navigate's costs and expenses;
- c. Pre- and post- judgment interest; and
- d. Such other relief as this Court deems just and proper.

COUNT II

DECLARATORY JUDGMENT

38. Navigate incorporates by reference and thereby re-alleges the foregoing paragraphs as if fully set forth herein.

39. A real and immediate controversy exists between Navigate and the Big 12 regarding Navigate's right to a variable fee on the Big 12's potential deal with Broadcaster #2

should it be consummated, because under the plain terms of the Agreement, regardless of when it is terminated, the Big 12 is still required to pay Navigate its 1% variable fee on all incremental revenue from multi-media rights deals signed by the Big 12 to the extent that information provided by Navigate is used or referred to in the negotiations.

WHEREFORE, Navigate prays for the following relief:

- a. A declaration of Navigate's rights under the Agreement;
- b. Such other relief that the Court deems just and proper.

JURY DEMAND

Navigate hereby demands a jury on all issues so triable.

* * * *

Date: October 25, 2018

Respectfully submitted,

/s/ John C. Gekas

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