

ORIGINAL

U.S. DISTRICT COURT  
NORTHERN DIST. OF TX  
FT. WORTH DIVISION

WLB

2015 NOV -9 PM 4: 04

CLERK OF COURT

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**IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF TEXAS  
FORT WORTH DIVISION**

**KRISTIN BROWN, et al.,**  
Plaintiffs.

v.

**TEXAS A&M UNIVERSITY  
SCHOOL OF LAW, et al.**  
Defendants

§  
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§ No. 4:15-CV-613-A  
§ CLASS ACTION  
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**PLAINTIFFS' OBJECTION AND RESPONSE TO  
DEFENDANTS TEXAS WESLEYAN UNIVERSITY AND  
FREDERICK SLABACH'S MOTION TO DISMISS "ORIGINAL  
COMPLAINT-CLASS ACTION"**

TO THE HONORABLE JUDGE JOHN McBRYDE:

Plaintiffs file this objection and response to the Motion to Dismiss ("Motion") filed by Frederick Slabach and Texas Wesleyan University ("TWU Defendants"), and Plaintiffs have filed an Amended Complaint to address the Motion, making the allegations more clear.

## A. General Response

1. Plaintiffs' First Amended Complaint adds additional verbiage to better define which defendants are liable for which claims, making much of the Motion moot.
2. The main of the TWU Defendants' argument is that the Pre-Acquisition Graduates have suffered only minor injury and therefore their claims should be dismissed. Plaintiffs contend that such reasoning is improper in a motion to dismiss.
3. Plaintiffs will refrain from responding to TWU Defendants' pontification regarding the option of TWU just closing the law school or case law discussing impossible duties.
4. The TWU Defendants do eventually address merits of the case, claiming that universities have no kind of duty to alumni, citing *Brzica v. Trs. of Dartmouth College*, 791 A.2d 990 (N.H. 2002), a case really addressing the use of college donations.
5. However, *Ad Hoc Comm. of Baruch Black & Hispanic Alumni Ass'n v. Bernard M. Baruch College*, 726 F. Supp. 522 (S.D.N.Y. 1989) recognized that colleges do have at least the duty to verify grades and academic achievement.

6. None of these cases are addressing a highly regulated profession and accreditations that are significant in the life of a professional.

7. Plaintiffs have not asserted that TWU had the obligation to keep the doors of the law school open. Plaintiffs have not stated that TWU had a mystical or legal power to require TAMU to handle any particular aspect – verbiage in the Complaint was a simple example of the many ways in which TWU could have resolved this issue before it existed.

8. TWU wants to say that plaintiffs are TWU alumni, but no graduate of TWU School of Law can find TWU School of Law on the list of accredited law schools.

9. TWU citation of cases discussing alleged loss of academic reputation belie the seriousness of the damages to plaintiffs, which is not theoretical, even if difficult to compute.

10. TWU cites *Krause v. Case W Reserve Univ.*, 1996 Ohio App. LEXIS 5771, \*9 (Ohio Ct. App., Cuyahoga County 1996) for the teaching that a medical school has no responsibility to protect its alumni.

11. However, TWU emphasized phrases and characterization of the case is misleading. In *Krause*, an intern sued her medical school for its failure to provide what can be summarized as continuing education. *Id.*

12. Plaintiffs are not suing TWU for its failure to keep them in mind during negotiations, though that would have solved the problem. Plaintiffs are not suing TWU for ephemeral vague failures. Plaintiffs are suing TWU because it acted in such a manner as to eliminate a fundamental component of what its students purchased. Plaintiffs cannot function today as they could three years ago, and it is not because the law school closed, but because TWU management took the money and ran.

13. Plaintiffs admit that TWU Defendants did not have any sort of superhuman obligation to save the law school at any cost, and no such allegation has been made. It is that TWU Defendants had a duty to do what they said they would do during the acquisition process. The Amended Complaint provides a number of promises made during the acquisition process which turned out not to be true. The events and promises surrounding the acquisition process created duties that otherwise may not have existed – if the alumni realized what was about to happen to them, they could have gotten involved in the acquisition process and forced the issue earlier, rather than finding out about these issues when the acquisition was approved and over.

14. TWU argues that Breach of Good Faith and Fair Dealing is inapplicable because the duties involved require a contract. Whether a contract exists or not is in dispute, and thus and not appropriate to be dismissed when the existence of the contract is properly pled.

**B. Conclusion**

Plaintiffs ask that the Court deny the Motion and grant such other relief as plaintiffs are justly entitled.

Respectfully submitted this November 9, 2015,



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