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From Chaos to Clarity: Lessons from the UNLV NIL Situation

Client Alert

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A dispute over promised name, image, and likeness (“NIL”) funds that was not fulfilled has resulted in University of Nevada Las Vegas (“UNLV”) starting quarterback, Matthew Sluka, announcing on X (formerly Twitter) that he will be using his redshirt year and not playing in any additional games in the 2024 college football season. The announcement sent shockwaves across college athletics, as the dispute is one of the first that is centered around the transfer portal and an unfulfilled NIL promise. According to Sluka’s X post, his decision to sit out the rest of the season is “based on certain representations that were made [to him], which were not upheld after [he] enrolled.”

Sluka spent the prior four years playing quarterback at FCS Holy Cross and transferred in the offseason to UNLV. According to Sluka’s agent, Marcus Cromartie of Equity Sports, Sluka was verbally promised at least \$100,000 to transfer to UNLV by an assistant UNLV coach. The deal was reportedly to be paid by UNLV’s NIL collective, “Friends of UNLV.” Rather than the six-figure amount that was allegedly promised, Sluka supposedly received just \$3,000 in NIL payments from the collective. A day after Sluka’s announcement on X, teammate and running back Michael Allen also posted that he would be joining Sluka and redshirting the rest of the season. Going forward, Sluka and Allen may have set a precedent for other NCAA student-athletes in similar situations to sit out as well.

This saga marks just the next chapter of what is a chaotic era of college athletics. It also provides several key lessons and highlights the importance of professional representation for both athletes and the entities involved when entering significant NIL deals.

1. Know the NCAA Rules

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The current NCAA rules prohibit schools from making a direct "pay-for-play" offer to recruit a student-athlete, both during high school recruitment and through the transfer portal. NCAA member schools are strictly prohibited from directly paying athletes. As an alternative, around 80% of all NIL deals are paid by donor-driven collectives.

Additionally, in February of this year, the judge in the *Tennessee & Virginia v. NCAA* case granted a preliminary injunction preventing the NCAA from enforcing its "NIL-recruiting ban." As a result, student-athlete recruits are now allowed to negotiate NIL deals with collectives before even enrolling at a school. For the time being, this provides student-athletes with the opportunity to evaluate their value on the open market. In turn, it provides athletes with much needed leverage during negotiations with collectives.

Staying up to date with NCAA rule changes is important to making sure that an athlete is NCAA compliant, stays eligible, and stays on the playing field. It is also important for schools to stay up to date with NCAA NIL rule changes to make sure that athletic programs avoid penalties and sanctions, avoid Title IX complaints, and maintain ethical integrity. Additionally, the same goes for donors who are donating to collectives. Donors want to make sure that their funds are going to their requested cause and that they receive the most beneficial result possible as a result of their donation.

2. Know your State's Laws

Currently, there is no uniform federal NIL legislation. Each state has its own set of NIL laws. Like NCAA rules, all parties dealing in the NIL space (athletes, collectives, universities, and donors alike) must make sure that they comply with applicable NIL state laws. Additionally, athletes should check and make sure that any professional representation retained on their behalf complies with state laws. For example, a twist to the Matthew Sluka story is that his agent, Marcus Cromartie, is not licensed and registered as a sports agent in the state of Nevada. An unregistered athlete agent in Nevada is guilty of a misdemeanor and can be put in jail for up to six-months or fined up to \$50,000. Athletes can better protect themselves by making sure that an "NIL agent" is fully compliant with state laws and make sure they fully understand the fiduciary duties owed to the athlete.

In Michigan, NIL deals are governed by MCL 390.1731, *et al.* Currently, Michigan is a state that does not require "NIL agents" to be licensed with the state. Most schools in Michigan, however, require that agents and representatives notify and register with the school's respective athletic department. This structure makes it even more important for an athlete to obtain NIL representation they can trust. Lawyers often make attractive NIL agents and representatives because they are required to be licensed to practice law within the state, are held to ethical standards, and have significant experience with negotiations and contract law.

Lawyers with knowledge in this space also support collectives, universities, and donors, evolving the body of law and regulation. For example, the success of an NIL program at a school often rests upon the lawyer's involvement in the formation and structure of the collective under the laws of the state. A solid structure and plan in place at the NIL program's formation leads to more success for all parties involved. Lawyers are often the key to facilitating communication and transparency between all

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parties.

3. Getting the Deal in Writing Matters!

A key element of Matthew Sluka's situation is that the deal was not in writing. The absence of a formal written contract is what has led to the current he-said/she-said battle—the issue is not unique to Mr. Sluka. Had the deal been in writing, much of the ambiguity and confusion surrounding the contract could easily be cleared up. Additionally, having an agreement memorialized in writing is important if the contract is ever the subject of litigation in court. It is in all parties' best interests to have written agreements either drafted or reviewed by professional representation. This is important for universities, donors, and collectives as compliance with state law and the NCAA rules require a true bargained for exchange of services for funds, and a written agreement is a great way to capture this.

4. Competent Representation Helps Protect You

Tim Buckley, NCAA Senior Vice President for external affairs, said in a recent statement that "the NCAA fully supports college athletes profiting from their NIL, but unfortunately there is little oversight or accountability in the NIL space and far too often promises made to student-athletes are broken... Positive changes are underway at the NCAA to deliver more benefits to student-athletes but without clear legal authority granted by the courts or by Congress, the NCAA, conferences and schools have limited authority to regulate third parties involved in NIL transactions."

With little to no oversight or accountability in the NIL space, professional representation is important to make sure that athletes are not taken advantage of and don't fall victim to broken promises. While representation seems to be costly upfront, it can better protect a student-athlete from significant challenges down the road.

Professional representation for universities, collectives, and donors is also a benefit—compliance is going to be the key to sustainability as the NCAA and lawmakers continue to work toward a regulatory solution. The best NIL representation does not just try to fix problems after they arise, but they prevent the problems from ever occurring in the first place. Competent and extraordinary representation can ensure that universities, collectives, and donors alike are protected at all levels of NIL.

5. Why Us?

Our team at Butzel has experience from all aspects of the NIL landscape. Butzel is established as a trustworthy, innovative, and highly effective law firm in the state of Michigan. We have tackled our clients' problems and advocated on their behalf for more than 170 years. Our team is experienced in navigating rapidly changing areas of the law, and NIL is no exception. We help protect individuals and entities involved in the NIL space and help advise our clients to maximize the benefit of their NIL dealings.

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Butzel's Sports and Entertainment Law team will continue to monitor NCAA rule changes and NIL policy across the country. Please feel free to contact the authors of this Client Alert or your Butzel attorney for more information.

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