The NCAA's Game Changing Antitrust Settlement: Paving the Way for Colleges to Directly Pay Athletes

Client Alert
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As we know, the NCAA's famously coined term "amateurism" has become essentially meaningless since the introduction of Name, Image, and Likeness ("NIL") in 2021. Since the NCAA rule change in 2021, athletes have been able to receive compensation from third parties (including donor driven collectives) for the use of an athletes' NIL. Even though this change represented a fundamental shift in college athletics, the prohibition on schools paying athletes directly remained in place. However, that rule has now also reached the beginning of its end.

On Monday, October 7, 2024, Judge Claudia Wilken, from the Northern District of California, granted preliminary approval of a $2.78 billion dollar settlement for a trio of antitrust cases involving the NCAA (*House v. NCAA*, *Hubbard v. NCAA* and *Carter v. NCAA*). This settlement has historic implications on the future of college athletics and could prove to be the most consequential progeny to date of the 2021 United States Supreme Court decision, *NCAA v. Alston*.

While *Alston* was still pending before the Supreme Court, "[p]laintiffs Grant House and Sedona Prince filed *House v. NCAA* on June 15, 2020, and Plaintiff Tymir Oliver filed *Oliver v. NCAA* on July 8, 2020. Both cases challenged the NCAA's restrictions on NIL compensation. They were consolidated as *In re College Athlete NIL Litigation*. On December 7, 2023, Plaintiffs DeWayne Carter, Nya Harrison, and Sedona Prince filed *Carter v. NCAA*. . .renewing the challenge against the NCAA's prohibition on compensation for athletic services that began with Alston."[1] *Hubbard v. NCAA* was filed April 4, 2023, and is a class action led by now NFL running back Chubba Hubbard and Auburn Track athlete Kiera McCarrell. *Hubbard* sought to recover damages for being denied education-related benefits and financial rewards directly from schools going back to the 2019-2020 school year.

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The latest preliminary settlement approval addresses relief for all three cases and sets the groundwork for college sports going forward. The approval came as a shock to many as Judge Wilken originally declined to grant preliminary approval at the beginning of September, citing concerns with multiple parts of the settlement deal, including the use of the word "booster." However, the two sides obviously addressed Wilken's concerns within an updated Motion for Preliminary Settlement Approval that was filed on September 26, 2024, and then approved October 7, 2024.

What are some of the settlement terms?

- The settlement grants $2.78 billion in damages to the Plaintiffs, to be paid over a 10-year period. This amounts to around $280 million in damages being distributed annually.
- Perhaps most importantly, the settlement will allow the traditional power 5 conferences (Atlantic Coast Conference, Big Ten Conference, Big 12 Conference, Pac-12 Conference and Southeastern Conference) to share revenue with student-athletes. Starting in the 2025-2026 school year, Power 5 schools will be able to provide student-athletes with direct benefits worth up to 22% of the average Power 5 school's annual athletic revenue. This is estimated to be more than $20 million in the first year.
- Going forward, student-athletes will need to obtain approval from an NCAA ran "NIL clearinghouse" for NIL deals that are entered into with collectives/boosters for over $600. These deals could then be denied if they are seen as "pay for play," as opposed to a legitimate fair market deal.
- Scholarship limits will be replaced with roster caps. Notably, in football, teams will be permitted to have 105 players on scholarship instead of 85. However, not all scholarships will be required to be "full scholarships" anymore, and schools will have discretion to award partial or full scholarships so long as they stay within the roster cap limits.

What comes next with the settlement?

Going forward, current and former student athletes affected by the settlement should expect to see some sort of notification about the preliminary approval starting in the coming weeks if they haven't already. According to the NCAA, "class members with claims for monetary damages based on prior conduct will have an opportunity to opt out of the settlement if they choose. Class members, including incoming student-athletes—will also receive notice and be allowed to present objections to the future relief/model to the court."[2] The deadline for objections to the settlement is scheduled for January 31, 2025. Additionally, that same day is the deadline for any athletes impacted by the settlement to opt out. The final approval and fairness hearing for the matter is scheduled for 10 am on April 7, 2025, coincidentally the day of the NCAA Men's Basketball Championship Game.

Between now and April 7, 2025, athletes, collectives, and other third parties can continue entering into NIL deals as they have previously. However, many schools have now opted to have recruits sign agreements that guarantee compensation directly from the school to the recruits. These deals all contain a contingency clause and are obviously contingent on the settlement's approval and implementation next school year.

Other schools have opted to allow their student athletes to work with related collectives and continue to sign recruits to NIL contracts. Under this model, collectives then can include an assignment clause within their contracts, which allows the schools the opportunity to essentially take over the deals (from the collectives) when the settlement is finalized, and the revenue sharing model is implemented.

Many of the current deals being signed between athletes and collectives are being frontloaded. This means that deals are being signed and paid out as quickly as possible in an effort to avoid review from the "clearinghouse" entity that is expected to be formed next year as result of the settlement. By frontloading the contracts, it allows collectives (boosters) to pay a large portion of the compensation related to the deal upfront, thus preventing the deal from being paid out after the revenue sharing model's implementation. In theory, the deal would then never be subject to review by the clearinghouse (allowing it to be over fair market value) and it also would not count towards a school's revenue cap in the first year.

Outstanding issues?

The NCAA notes that "the settlement does not resolve the patchwork of state laws, many of which may conflict with the settlement. . . [t]he settlement does not address ongoing efforts to designate student-athletes as employees under state and federal labor and employment laws."[3] The uncertainty surrounding those two issues remains. Additionally, another concern going forward will be surrounding Title IX and whether revenue sharing funds will be dispersed evenly to all athletes regardless of sport and gender. According to an X post by Ross Dellenger, a senior college football reporter with Yahoo Sports, schools will be able to distribute revenue at own discretion and "most plan to use back-pay formula for distribution: 75-85% FB, 10-15% MBB, 10-15% others."[4] Schools will need to keep Title IX concerns in mind before finalizing a respective revenue sharing model.

What can Butzel do to help?

With huge change on the horizon, our Sports and Entertainment Law Team at Butzel can help prepare clients for the future and navigate NCAA rule changes, state law changes, and case law developments. We help universities, athletes, collectives, and donors alike during this rapidly changing era of college athletics. This settlement is sure to forever change the economics of college athletics. Our team at Butzel can help ensure that clients are not only adequately prepared to survive the change but are set up in a position to thrive because of it. From athletes to universities and everyone in between, our team at Butzel can help make sure that you are successful in the future college athletics ecosystem. Please feel free to reach out to the authors of this Client Alert or your Butzel Attorney with any questions or concerns.

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[1] Plaintiff's Notice Of Motion And Motion For Preliminary Settlement Approval, at 3, *In Re College Athlete NIL Litigation,* No. 4:20-cv-03919-CW, (N.D. Cal. Oakland Div.).

[2] Michelle Brutlag Hosick, *Settlement Documents Filed in College Athletics Class Action Lawsuits,* NCAA.org (July 26, 2024, 5:04 PM).

[3] Michelle Brutlag Hosick, *Settlement Documents Filed in College Athletics Class Action Lawsuits,* NCAA.org (July 26, 2024, 5:04 PM).

[4] Ross Dellenger (@RossDellenger), X.com (Oct. 7, 2024, 3:47 PM).