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O'Bannon vs. NCAA: What Does It Mean for Most NCAA Institutions?

On Friday, August 8, 2014, the United States District Court for the Northern District of California issued its decision in a case that has been followed for several years and referenced as often on ESPN as on network and cable news programs: *O'Bannon vs. NCAA*.

Despite the hype that the case has drawn and the speculation about what the ruling will mean for college athletics, the question remains: "What impact will this decision have on the majority of colleges and universities throughout the country?" In the short term, the answer is likely to be not much. As described in more detail below, the court's ruling in favor of plaintiffs' claims alleging antitrust violations is limited in nature and the court's imposed remedy is not likely to drastically change the face of college athletics or college and university administration. In the long run, however, the case represents another example of the increasing pressure for reform of the NCAA and is perhaps a signal of bigger changes to come.

Background

A class of plaintiffs comprised of current and former NCAA student-athletes, led by former UCLA basketball player Ed O'Bannon, brought an antitrust lawsuit in 2009 challenging the NCAA's rules that restrict compensation for Football Bowl Subdivision (FBS) football players and Division I basketball players. The suit focused on NCAA rules that prevent student-athletes from sharing in the revenue that the NCAA and member schools receive when licensing the use of student-athletes' names, images, and likenesses in live game broadcasts, re-broadcasts, video games, advertisements, and other footage.

The plaintiffs alleged that the NCAA rules restricting such compensation violated the Sherman Antitrust Act because they were an unreasonable

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restraint on trade. The NCAA denied this assertion and argued that its restrictions on student-athlete compensation were necessary to uphold its educational mission and protect the popularity of collegiate sports through the promotion of amateurism and competitive balance.

Plaintiffs proposed three alternatives to the NCAA's rules and asserted that each would allow the NCAA to achieve its goals in a less restrictive manner. These alternatives were: (1) raise the "grant-in-aid" limit (the maximum amount of financial aid a student-athlete can currently receive based on athletic ability under NCAA rules) to allow schools to award stipends, derived from specified sources of licensing revenue, to student-athletes; (2) allow schools to deposit a share of licensing revenue into a trust fund for student-athletes which could be paid after the student-athletes' eligibility expires or when they leave school for other reasons; or (3) permit student-athletes to receive limited compensation for third-party endorsement opportunities approved by their schools.

Ruling

In a limited ruling, the court held that the NCAA's rules were an unreasonable restraint on trade in violation of the Sherman Antitrust Act and agreed with two of the plaintiffs' three proposed alternatives. Specifically, the court held that the NCAA's rules prohibiting student-athletes from receiving compensation for the use of their names and likenesses restrained competition among schools. The court rejected the NCAA's argument that the rules promoted competitive balance and increased the NCAA's ability to increase the market for athletics.

As its remedy to the antitrust violations, the court imposed an injunction preventing the NCAA from enforcing any rules or bylaws that prohibit its member schools and conferences from offering their FBS football or Division I basketball recruits a limited share of the revenue generated from the use of their names, images, and likenesses in addition to a full grant-in-aid. Notwithstanding, the ruling allows the NCAA to cap that amount so long as the cap is not set below the full "cost of attendance" (which varies from school to school but is typically a few thousand dollars more than the grant-in-aid).

The injunction also prohibits the NCAA from enforcing any rules that prevent its member schools and conferences from depositing a limited share of licensing revenue in a trust to be paid when student-athletes' eligibility expires or they leave school. Again, the NCAA can cap the amount to be held in trust, but it cannot be below $5,000 (in 2014 dollars) per year for every year that the student-athlete is academically eligible to compete.

Notably, this ruling does not require schools to provide the contemplated additional compensation payments; it only enjoins the NCAA from prohibiting such payments. Also, the court stated that the NCAA may enact rules for the purpose of ensuring that no school offers a single recruit a greater share of licensing revenue than other recruits in the same class on the same team and that it may continue

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to enforce all of its other rules, such as prohibiting student-athletes from endorsing commercial products, setting eligibility requirements, and setting limits on scholarships and practice hours.

What This Means to You

Unless an institution has an FBS football program and/or Division I basketball program, this ruling has little practical effect and day-to-day operations will remain the same. Even for those institutions with these athletic programs, the immediate impact is likely to be minimal given the limited scope of the remedy. More broadly, this ruling, along with the Northwestern case involving the unionization of student-athletes, the NCAA's recent decision to grant the Big 5 conferences more autonomy, and the barrage of other lawsuits that have been filed (or will be filed) against the NCAA, reflects the proposition that more significant changes to the NCAA's core structure are on the horizon. If and when more sweeping changes occur, it is likely that smaller Division I, Division II, and Division III schools will also be affected to some degree.

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