

## THOUGHT LEADERSHIP

LEGAL UPDATES

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## *House v. NCAA: Top Five Takeaways*

In July 2024, the National Collegiate Athletic Association (NCAA) and major athletic conferences reached an agreement with plaintiffs in connection with *House v. NCAA* that portends significant changes for college athletics. Here are the top five takeaways for higher education leaders.

### **1. NCAA Survives and Advances—The NCAA maintains its authority over college sports... kind of.**

Art. 4, Sec. 2 of the proposed Injunctive Relief Settlement Agreement provides that the NCAA rules not modified by the injunctive relief remain the same **and** the plaintiffs will ask the court to approve the rules. This would include oldies but goodies like Bylaw 12, “Amateurism and Athletics Eligibility” (yes, it still exists in the 2024-25 NCAA Division Manual); Bylaw 13, “Recruiting” (communications restrictions are everyone’s favorite); and Bylaw 17, “Playing and Practice Seasons” (schools will have to pay student-athletes and manage their time commitments to the sports for which they are receiving compensation—interesting duality). However, a separate system possibly involving a new entity may be established to enforce the agreement, and disputes related to that enforcement will be resolved through arbitration.

### **2. Booster Busters—No love for Name, Image, and Likeness (NIL) collectives.**

The agreement appears to provide a method to rein in booster collectives that are paying what amounts to salaries to college athletes ostensibly for their NIL or NIL activities (e.g., an appearance or social media post). Art. 2, Sec. 3 of the agreement permits the NCAA and autonomy conferences to make new rules, which must be approved by the court, that may include, “prohibiting boosters from entering NIL deals with current or prospective student-athletes unless (1) for a valid business purpose, and (2) with compensation rates consistent with those for similarly situated non-student-athletes.” In addition, schools would be able to directly enter into NIL deals with student-athletes. (Art. 2, Sec. 2).

Third party NIL activities cannot be prohibited, and deals in excess of \$600 must be reported to the school and a clearinghouse. (Art. 2, Sec. 3, and Sec. 4). Finally, organizations owned or controlled by the schools are not considered third parties, and funds from those parties must count against the benefits pool.

### **3. College Athletes and TV Revenue—There are no Broadcast NIL (BNIL) rights, yet the largest percentage of the settlement is damages based on BNIL.**

The agreement makes it clear that the NCAA and autonomy conferences do not concede that college athletes have any rights in BNIL as it pertains to the NCAA's and schools' revenues from the sale of rights to broadcast live sporting events. Specifically, schools cannot authorize payments for rights to use a student-athletes' NIL for broadcast footage. However, one of the eight categories of revenue used to calculate the 22% benefits pool is "media rights revenue." (Art. 3, Sec. 1). Further complicating the TV revenue conundrum is that the proposed settlement recovery for football and men's basketball athletes from BNIL damages is estimated to be \$1.729 billion for those two classes alone.<sup>[1]</sup> This amounts to 86% of the \$1.976 billion NIL settlement fund and 67% of the total damages of \$2.576 billion. By way of comparison, recovery for women's basketball BNIL damages is estimated to be just \$69 million. Therefore, the largest category of damages is BNIL, to which the NCAA and autonomy conferences do not agree athletes are entitled. This makes a market-based justification for different percentages of pool distribution between men's and women's sports on the basis of TV revenue more difficult.

### **4. More Scholarships, More Problems—Elimination of scholarship limits in favor of roster limits may not have the intended effect.**

The agreement eliminates all Division I scholarship limits in favor of roster limits and makes all scholarships equivalencies, meaning they can be provided as percentages of the total cost of attendance up to the roster limit. One of the purposes of this provision was likely an attempt by the NCAA and autonomy conferences to avoid further litigation regarding scholarship limitations.

However, on August 6, 2024, a former college baseball player, Riley Cornelio, filed suit against the NCAA on behalf of himself and other similarly situated college athletes who only received partial scholarships based on the theory that the NCAA artificially capped scholarships and violated antitrust law in doing so. So, strike one on the agreement preventing such suits. Likewise, there has been some discussion that roster limits will better position schools to invest in sports other than football and men's basketball, if they so choose. However, this may be wishful thinking. The elimination of scholarship limits could pressure some schools into devoting more money to sports that generate revenue, e.g., baseball at some schools, at the expense of other sports, including women's sports. The previous NCAA scholarship limits had built-in parameters for coaches and hedged against the number of full football scholarships by offering more "head count" (i.e., full scholarship) opportunities in

women's sports, thereby creating a baseline of necessary parity between men's and women's sports. Schools are now left to their own devices, which may result in unintended consequences.

## **5. The Enforcement Paradox Continues—Everyone wants a level playing field except when the rules apply to them.**

The agreement provides that discipline imposed pursuant to the agreement or any new rules made to implement the injunctive agreement will be arbitrated. (Art. 6, Sec. 2). The agreement contemplates either the NCAA or a new enforcement entity having the power to enforce the rules subject to arbitration. The last NCAA enforcement experiment with independent decision-makers, the Independent Accountability Resolution Process (IARP), was purported by the NCAA to be a failure in part because of some of the Independent Resolution Panel's decisions related to the application of NCAA rules in high-profile cases. Any new enforcement entity will have limited authority to enforce some specific NIL rules, but not all rules, and those rules again will have to be agreed upon by a group of individuals with divergent interests. Without a framework for Division I governance that better positions member institutions to make real decisions regarding what constitutes meaningful and enforceable rules, and without an agreement on what is important by all stakeholders, including athletes and coaches, it may be difficult for any type of enforcement mechanism to be successful.

The full *House* agreement can be found [here](#).

### **What this means to you**

The *House* settlement—both the prescribed damages and injunctive relief—will have significant impact on student-athletes, recruiting, and institutional operations.

Schools that choose to provide additional NIL-related assistance, additional scholarships, and/or additional benefits to student-athletes should be prepared to address compliance with Title IX gender equity and the remaining NCAA NIL rules.

It is important to note, the *House* settlement has not yet been formally approved (the preliminary approval hearing is scheduled for September 5), and there are already some current challenges to the settlement.

### **Contact us**

For more information about the effect of recent legal and Division I NCAA rule changes on your institution, please contact your Husch Blackwell Collegiate Athletics Team. Husch Blackwell regularly publishes updates on industry trends and new developments in the law for our clients and friends. The 2024 edition of our annual white paper, which dives into the evolution of NCAA-related legal

issues like NIL, can be found here. Please fill out this quick form if you would like to receive electronic updates and newsletters.

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[1] *See Plaintiff's Notice of Motion and Motion for Preliminary Settlement Approval, Exhibit A, Settlement Recovery Information by Class and Type of Damages Claimed.*