Final Buzzer for NCAA Amateurism? What Preliminary Approval of the House Settlement Means for College Sports

Insights
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Despite previously raising several important concerns relating to the NCAA's proposed $2.8 billion antitrust settlement in *House v. NCAA*, federal Judge Claudia Wilken recently granted preliminary approval of the deal in an October 7 order. The tentative settlement, which would provide compensation to past and future student-athletes, now enters its final phase before a final approval hearing next spring. If approved, the settlement will reshape the college sports landscape, replacing the traditional NCAA amateurism model with a system that would permit schools to make direct payments to student-athletes for the first time ever. What does your college or university athletic department need to know about this latest development?

How Did We Get Here?

The *House v. NCAA* plaintiffs, led by former collegiate swimmer Graham House, filed a federal lawsuit alleging college athletes should receive compensation for the commercial use of their NIL. The athletes agreed to a settlement with the NCAA and filed for preliminary approval of the deal in July.

However, the deal appeared to stall last month when Judge Wilken questioned plaintiffs' attorneys on several issues during a court hearing. She especially focused on including regulation of name, image and likeness (NIL) deals, damages, and gender disparities. Following the hearing, the parties submitted a revised deal, which contained updated language regarding restrictions on NIL deals. This revised deal was subsequently approved by Judge Wilken. Objections to the settlement are due in January with a fairness hearing set for April 2025.

Finer Points of Settlement

Past collegiate athletes from 2017-2020 are set to receive compensation under the settlement, which could cost the NCAA, major conferences, and individual member institutions over $1 billion.

Future athletes would also be bound by a revenue sharing model under the deal. They would receive a portion of schools' athletic revenue through direct payments and benefits worth up to 22% of the Power Five Conferences schools' average athletic annual revenue. It has been estimated that this portion of the settlement could lead to over $20 billion in new payments and benefits to future athletes over the period of the agreement.

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Furthermore, the deal would eliminate all scholarship limits for collegiate sports, which had been the primary form of collegiate athlete compensation under the traditional NCAA amateurism model. The scholarship limits would instead be replaced with roster limits. In football, for example, roster sizes will be reduced to 105, but all athletes on the roster would be eligible for a scholarship (currently roster sizes are capped at 120 players, with only 85 eligible for scholarships).

The "Employee" Question

House is an antitrust case. It does not directly resolve or address the longstanding debate over whether student-athletes are employees under the National Labor Relations Act (NLRA) and Fair Labor Standards Act (FLSA). However, the settlement, which would introduce revenue-sharing components for student-athletes, may impact several of the legal actions involving student-athlete reclassification that are pending before the National Labor Relations Board and federal courts.

One legal action the settlement may impact is *Johnson v. NCAA*. This case was brought by a group of former student-athletes, alleging the former athletes were "employees" under federal and state wage and hour law and thus entitled to minimum wage and overtime for their time spent representing their institution in collegiate sports.

In finding that the plaintiffs had "plausibly" alleged an employment relationship, the Third Circuit Court of Appeals created new test to analyze student athletes' status under the FLSA. The Third Circuit recently held that college athletes may be employees under the FLSA when they:

- perform services for another party;
- necessarily and primarily for the other party's benefit;
- are under that party's control or right of control, and
- do so in return for express or implied compensation or in-kind benefits.

Because the *House* settlement will impact the compensation available for student-athletes, it may impact the future of the Third Circuit's test.

Challenges Ahead

In large part due to the lack of uniformity within the class that would be bound by the *House* settlement, there remain significant obstacles that will need to be cleared prior to the adoption of the agreement. Several groups have already voiced concerns with the settlement, and attorneys acting on behalf of these objectors have formally filed oppositions in court. We could see even more objections filed before the January deadline. These oppositions shine a light on several issues that are likely to be addressed during the fairness hearing scheduled for April 2025.

- Other objectors to the settlement have criticized the damages amount as too low, arguing that the revenue sharing amount with athletes is significantly less than what it should be. Although the

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settlement pegs damages at roughly $2.8 billion, objectors assert that the proper number is north of $6 billion.

- Regarding the revenue sharing agreement, objectors criticize the cap on the amount of revenue that would be shared with athletes as a cost control mechanism for institutions. They contend that the 22% cap represents a limit on earnings negotiated outside of the collective bargaining process.
- Finally, smaller Division I athletics programs argue that they will be footing a disproportionate percentage of the settlement bill.

Potential Impact on College Sports

One of the most significant repercussions of the *House* settlement may be its Title IX implications. Universities would need to ensure that compensation paid to athletes under the settlement is compliant with Title IX, which was enacted to ensure equal opportunity in college and athletic programs. With schools incentivized to pay players for sports that generate the most revenue, such as football and basketball, the possibility of legal liability under Title IX looms large.

Furthermore, if student-athletes are ever recognized as employees, universities will be forced to adapt their financial models, establish frameworks for compliance with relevant employment and labor laws, and monitor athlete NIL deals – all while ensuring gender equity and inclusion under Title IX.

Conclusion

Make sure you are subscribed to Fisher Phillips' Insight System to get the most up-to-date information direct to your inbox. Should you have any questions on the implications of these developments and how they may impact your operations, please do not hesitate to contact your Fisher Phillips attorney, the author of this Insight, or any member of our Sports Industry Group, our Labor Relations Group, or our Higher Education Team for additional guidance.

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