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The U.S. District Court for the Northern District of California finds that an athletic association's cap on grants given to athletes is an anticompetitive restraint of trade *(National Collegiate Athletic Association)*

ANTICOMPETITIVE PRACTICES, AGREEMENT, SPORTS, PRICE FIXING, UNITED STATES OF AMERICA, ANTICOMPETITIVE OBJECT / EFFECT

US District Court for the Northern District of California, No. 4:14-md-02541-CW, *In re: National Collegiate Athletic Association Athletic Grant-in-Aid Cap Antitrust Litigation*, 8 March 2019

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NCAA May Have Lost Antitrust Case to Student-Athletes, But How Much Did It Really Lose?*

Friday's 104-page ruling in the antitrust case challenging the compensation rules of the National Collegiate Athletic Association ("NCAA") is not a clear-cut victory for either side.

Although Judge Claudia Wilken of the U.S. District Court for the Northern District of California ruled in Alston V. NCAA that the NCAA and its 11 major conferences are violating antitrust law by capping the value of athletic scholarships, she did not give the Plaintiffs much of what they asked for. The court held that student-athletes should be allowed to receive additional compensation from their schools but only if such compensation is tied to education.

On the one hand, the decision can be viewed as a victory for student-athletes as it gives them the opportunity to receive greater compensation than they currently do. On the other hand, the decision permits the NCAA to continue restricting payments unrelated to education.

Alston v NCAA

Plaintiffs are current and former student-athletes who played college football and basketball during the relevant class period. They challenged the NCAA's rules that restrict the compensation student-athletes can receive in exchange for their athletic services. Plaintiffs argued that the NCAA's rules violate federal antitrust laws as they are enforced by agreement among Defendants and, without these limitations, student-athletes would receive

greater compensation.

Defendants are the NCAA and 11 of its conferences. Defendants argued that the rules at issue are procompetitive because they "help preserve the demand for college sports because consumers value amateurism." They further argued the rules "promote integration of student-athletes into their academic communities, which in turn improves the college education they receive in exchange for their services."

The Court held that the NCAA violated federal antitrust laws after concluding that the compensation rules restrained trade and resulted in anticompetitive effects. Judge Wilken acknowledged that there is a "great disparity" between the "extraordinary revenue" that the NCAA and the schools receive and the "modest benefits" that student-athletes are provided in exchange for their athletic services. Accordingly, the Court ruled that restricting education-related compensation is not necessary to preserving consumer demand for college sports. The Court stated that permitting colleges to provide education-related benefits without Defendants' restrictions will "ameliorate their anticompetitive effects and may provide some of the compensation student-athletes would have received absent Defendants' agreement to restrain trade."

NCAA lost, but did student-athletes really win?

Despite Judge Wilken's seemingly straightforward ruling in favor of the Plaintiff class, it is arguable whether the decision is truly a win for the Plaintiffs. Although the decision held that the NCAA had violated the antitrust laws, Judge Wilken did not overturn the NCAA's rules completely, allowing the organization to continue to cap payments to student-athletes except for the limited exception for education-related expenses. Judge Wilken essentially followed a controlling precedent set by the United States Court of Appeals for the Ninth Circuit. In O'Bannon v. NCAA, 802 F.3d 1049 (9th Cir. 2015), the Ninth Circuit reversed Judge Wilken's ruling that student-athletes should receive up to $5,000 annually in exchange for the commercial use of their names, images, and likenesses. The Ninth Circuit's reasoning was that type of compensation is not education-related.

What's next?

Because of the mixed result, both sides have incentive to appeal. Donald Remy, the NCAA's chief legal officer, stated, "Although the court rejected the plaintiffs' desire for a free market system, we will explore our next steps as appropriate. We believe the ruling is inconsistent with the decision by the 9th Circuit Court of Appeals in O'Bannon."

Moreover, although student-athletes will receive greater compensation than they currently do, the Plaintiffs wanted an outcome that would completely transform the business model of college sports and create a free market for college athletes. Plaintiffs sought to abolish the NCAA's "amateurism" and open the way for unrestricted compensation for student-athletes. However, as discussed above, the ruling supports the NCAA's limitation on compensation unrelated to education. Thus, Plaintiffs may also wish to appeal the decision. It is very likely that this decision will be appealed by at least one of the parties. But if there is no appeal, the ruling will become effective 90 days from the date of Judge Wilken's decision.

Finally, the decision stated that the NCAA must allow colleges to offer students education-related items such as "computers, science equipment, musical instruments and other tangible items not included in the cost of attendance calculation but nonetheless related to the pursuit of academic studies." Accordingly, further clarity and guidance is needed as to what "education-related" really means in addition to the examples provided in the

decision. The decision allows the NCAA to define "related to education." Judge Wilken stated, "The NCAA will retain the right to define, in an exercise of discretion and good faith, education-related benefits and to regulate how schools provide them to student-athletes."

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