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Student-Athletes Prevail in Antitrust Action Against the National Collegiate Athletic Association to Secure Education-Related Benefits

By Michael Lauricella and Stephen Thiele

Michael Lauricella
Summer Student
416.865.8256
mlauricella@grllp.com

Stephen Thiele
Partner
416.865.6651
sthiele@grllp.com

Last week, in the case of *National Collegiate Athletic Association v. Alston et al.* 594 U.S., the Supreme Court of the United States unanimously held that the rules of the National Collegiate Athletic Association prohibiting student athletes from receiving education-related benefits and compensation violated federal antitrust laws under the *Sherman Antitrust Act*.

The syllabus to the decision states:

> Colleges and universities across the country have leveraged sports to bring in revenue, attract attention, boost enrollment, and raise money from alumni. That profitable enterprise relies on "amateur" student-athletes who compete under horizontal restraints that restrict how the schools may compensate them for their play. The National Collegiate Athletic Association ("NCAA") issues and enforces these rules, which restrict compensation for student-athletes in various ways. These rules depress compensation for at least some student-athletes below what a competitive market would yield.

In 2014, Shawne Alston, a former running back at West Virginia University, and Justine Hartman, a former centre at the University of California, brought a Federal District Court antitrust action against the NCAA as representatives for a class of former men's and women's college football and basketball players.

At first instance, the plaintiffs alleged that the NCAA's eligibility rules violated s 1 of the *Sherman Act*, which prohibits contracts, combinations, or conspiracies in restraint of trade or commerce, because they limit the types and amounts of compensation to which student-athletes are entitled. The court employed a three-part "rule of reason" test to determine whether the alleged restraint was unreasonable.

Firstly, the plaintiffs had to show that the impugned practice unreasonably restrained competition in a relevant market. The plaintiffs surmounted this burden by proving that the eligibility

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rules artificially capped their compensation and therefore restricted competition in the market for athletic services in men's and women's Division 1 basketball and football.

Secondly, the burden shifted to the defendants to show a pro-competitive justification for the impugned practice. In hurdling this burden, the NCAA relied on the defence of "amateurism", which effectively distinguishes college sports from professional sports, and therefore widens consumer choice by providing a unique product.

Thirdly, the final burden shifted back to the plaintiffs to show that a less-restrictive alternative was available and that the defendants failed to employ it. The plaintiffs met this burden by successfully arguing that allowing for education-related benefits such as paid internships, tutors, computers, science equipment and musical instruments, is a less-restrictive alternative to complete prohibitions on compensation for student athletes.

The Federal District Court found that such education-related benefits would not harm the NCAA's amateur-athlete product because allowing these reasonable adjustments would not blur the lines between a professional and an amateur sports product; "if anything, they emphasize that the recipients are students".

On appeal, The Ninth Circuit Court of Appeals upheld the antitrust violation and found that the district court "struck the right balance in crafting a remedy that both prevents anti-competitive harm to student-athletes while serving the pro-competitive purpose of preserving the popularity of college sports".

Last week, the US Supreme Court ruled that the NCAA could not bar these relatively modest education-related payments and benefits to student-athletes. The Supreme Court upheld the rationale of the district court, which, in essence, is that schools can provide education-related benefits without sacrificing amateurism.

Writing the majority judgment for a unanimous court, Justice Gorsuch affirmed that the NCAA cannot run afoul of, or receive special dispensation from, antitrust laws because it serves a purported "uniquely important social objective" of providing amateur sports to consumers.

The Supreme Court rejected the NCAA's antiquated argument that compensating athletes would disaffect sports fans who endorse the amateur status of student athletes, holding that "uncapping certain education-related benefits would preserve consumer demand for college athletics just as well as the challenged rules do … such benefits are easily distinguishable from professional salaries", as they can be provided in kind, rather than in cash. In the Supreme Court's view, the NCAA is "free to forbid in-kind benefits unrelated to a student's actual education; nothing stops it from enforcing a 'no Lamborghini' rule."

Justice Gorsuch took a balanced account of the competing points of view on this issue, writing that "some will think that the district court did not go far enough by permitting colleges and universities to offer enhanced education-related benefits and allowing student-athletes a measure of compensation more consistent with the value they bring to their schools" while noting that "others will think the district court went too far by undervaluing the social benefits associated with amateur athletics".

In a separate concurring opinion, Justice Kavanaugh was much less reticent and heavily scrutinized the conduct of the NCAA relative to

antitrust violations. He stated that "there are serious questions whether the NCAA's remaining compensation rules can pass legal muster … the NCAA couches its arguments for not paying student athletes in innocuous labels, but the labels cannot disguise the reality: the NCAA's business model would be flatly illegal in almost any other industry in America".

Justice Kavanaugh analogized the NCAA's reliance on the defence of amateurism to law firms conspiring to cabin lawyers' salaries in the name of providing legal services out of a "love of the law", or hospitals capping nurses' income in order to create a "purer" form of helping the sick. He stated that "price-fixing labour is price-fixing labour, and price-fixing labour is ordinarily a textbook antitrust problem because it extinguishes the free market in which individuals can otherwise obtain fair compensation for their work".

Justice Kavanaugh went on, stating that;

> "the bottom line is that the NCAA and its member colleges are suppressing the pay of student athletes who collectively generate billions of dollars in revenues for colleges every year. Those enormous sums of money flow to seemingly everyone except the student athletes. College presidents, athletic directors, coaches, conference commissioners, and NCAA executives take in six- and seven-figure salaries. Colleges build lavish new facilities. But the student athletes who generate the revenues, many of whom are African American and from lower-income backgrounds, end up with little or nothing"

While Justice Kavanaugh acknowledged that several important traditions facilitated by the NCAA "have become part of the fabric of America", he concluded that;

> "Those traditions alone cannot justify the NCAA's decision to build a massive money-raising enterprise on the backs of student athletes who are not fairly compensated. Nowhere else in America can businesses get away with agreeing not to pay their workers a fair market rate on the theory that their product is defined by not paying their workers a fair market rate. And under ordinary principles of antitrust law, it is not evident why college sports should be any different.

Justice Kavanaugh affirmatively ended by stating, point blank, that "the NCAA is not above the law".

This decision, in illuminating that the NCAA engages in "admitted horizontal price fixing in a market where the defendants exercise monopoly control", highlights the pretence of NCAA executives being handsomely remunerated while denying market-value compensation to student athletes.

The decision also raises several considerations that ought to be deliberated by college and university athletic departments moving forward. Namely, concerning recruitment efforts, schools will likely have to include robust education-related benefits within their recruitment regimes. Further, athletic directors will likely have to discern the confines of "education-related benefits" including but not limited to: who will receive them, who will pay for them, and what is an education-related benefit? Will these benefits be available to division 1 athletes only?; Can these benefits be provided via donations or by boosters?; Does the definition of an education-related benefit extend beyond science equipment and laptops, *inter alia*? Perhaps the

NCAA will be quick to establish *Alston*-related parameters. However, if this is not the case, these are pertinent decisions that ought to be made by colleges and universities in the imminent future.

Lastly, although this decision does not directly impact Canadian Universities, it may have positive effects for Canadian student athletes, who may now be offered greater incentives to attend U.S. schools to continue their education rather than opting to remain here to pursue an education.

Contact us

If you have a litigation matter and are in need of legal advice, please contact **Michael Lauricella**, at 416.865.8256 or mlauricella@grllp.com.

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