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The Formation of a Student-Athlete Trust Fund: Compliance and tax Implications

Stephanie Gratto

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By
Stephanie Gratto

Under the mentorship of Britton McKay

ABSTRACT

This study reviews the possible tax and compliance issues of a student athlete trust fund as proposed in the case O'Bannon v. NCAA. With the possibility of the creation of a trust fund comes a myriad of issues to consider. The following review of the literature will review pertinent literature on the topic. Interviews were conducted with athletic directors of three universities and with three tax partners in Atlanta tax firms in order to determine potential compliance and tax implications. These interviews outline possible issues and solutions that may rise from the formation of the trust.

Thesis Mentor:______________________

Dr. Britton McKay

Honors Director:_____________________

Dr. Steven Engel

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CHAPTER 1: Literature Review

I. Pay for Play

College sports are special: they are exciting and have the potential to create great enthusiasm for universities and their communities. They serve to connect or re-connect alumni to their universities, meanwhile hometowns and campuses are transformed on game days because of the excitement created by college sports (“Schooled”). From the Fab 5 of the University of Michigan’s men’s basketball team in 1991 to the current debate of the Northwestern football unionization, there has been a longstanding debate about whether student-athletes should be paid or not and the issue has risen to one of the most controversial topics in college sports (Dirlam; Strauss). College football and basketball teams help a school grow as a name brand and have the potential to bring in large revenues to a university. Some argue that the players should receive compensation for the money they help bring to the school; others insist that an education is their compensation (“Schooled”).

Even the notorious satirical cartoon “South Park” entered the debate in May of 2011 with an episode focused on student athletes. Character Eric Cartman, dressed as a plantation owner with a thick southern accent, ventured to Colorado University and calls student athletes “slaves”. The fictional president then responded by saying “there are very good reasons our student athletes can’t be paid”. Cartman found that calling the “slaves” student athletes was a brilliant idea (Brennan 1). This is not the only time the term “student athlete” has come under fire. In the documentary “Schooled: The Price of College Sports”, Arian Foster, a running back for the Houston Texans and former University of Tennessee college football player, referred to student athletes are “indentured servants”. The film defines indentured servant as one that is a “laborer under contract of an employer for some period of time in exchange for transportation, food, and drink” (“Schooled”).

Some argue that it is a misnomer to call the athletes “student athletes”. Others hold the opinion that the athletes are students first and athletes second, and therefore should be called student athletes. Walter Byers, the first executive director of the NCAA, originally coined the term student athlete in 1951. The term was created to protect universities from having to pay student athletes’ worker’s compensation (Nocera 1). However, once Byers realized that some college sports were no longer a student activity, but a commercial enterprise, he wrote a book titled *Unsportsmanlike Conduct: Exploiting College Athletes* in 1995. Byers wrote, "We crafted the term student-athlete and soon it was embedded in all NCAA rules and interpretations." He stated, "Student-athlete became the NCAA's signature term, repeated constantly in and out of courtrooms. Using the "student-athlete" defense, colleges have compiled a string of victories in liability cases." (Crego and Islam 1).

One of Byer’s last public appearances was at the Kansas City Sport’s Commission dinner where he was accepting an award. In his speech he said, "The management of intercollegiate athletics stays in place committed to an outmoded code of amateurism drawn, quite frankly, with many of the same words that they had drawn in 1956. I attribute that, quite frankly, to the neo-plantation mentality that exists on the campuses of our country and in the conference offices and in the NCAA that the rewards belong to the overseers and the supervisors. What trickles down after that can go to the athletes" (Echlin 1).

Today, the debate rages over whether student athletes should be paid or not with strong proponents both for paying students athletes and against paying student athletes. Those who argue against paying student athletes point to the cost of academic scholarships, medical expenses, travel expenses, gear, use of facilities and coaches, food, housing, and the invaluable education the athletes receive (Dirlam; Burton). Those who argue for paying student athletes debate for a full cost of attendance scholarship, that athletes have a much larger fair market value than they receive, schools and television makes million off of athletes, that athletes really are not students first.

With both viewpoints, to pay or not to pay, there are many opinions and reasons supporting the controversy (Dirlam; Sack; Huma). For those supporting payment, the biggest impediment is the NCAA and its amateurism policy. However, with the newly settled O'Bannon case the face of college athletics may change.

II. The NCAA

The National Collegiate Athletic Association (NCAA) serves as the legislative and administrative authority of intercollegiate athletics. President Theodore Roosevelt formed it in 1906 under the name Intercollegiate Athletic Association (IAA) in a combined effort of educators and the White House to reform intercollegiate football rules. Before the formation of the IAA collegiate sports were student led, under regulated, and becoming a reason of concern. The president of Massachusetts's Institute of Technology was adamant that intercollegiate sports were losing their academic berths and that the focus was becoming on athletics instead of academics. Along with him, the president of Harvard voiced concerns that college sports were being commercialized.

Then, just within the year 1905, there were one hundred major injuries and eighteen deaths in intercollegiate football. Chancellor Henry MacCracken of New York University called a national meeting of the nation's major universities with intercollegiate football programs, drawing representative from sixty-two universities, to discuss the regulation of college football. A Rules Committee was formed that then met with the White house to form the IAA (Barr 2; Smith 11-13; Encyclopedia Britannica).

In 1910, the name was changed from the Intercollegiate Athletic Association to the National Collegiate Athletic Association. In its beginnings it did not play a crucial role in governing collegiate athletics, but it has evolved to be the main governing body of college sports: formulating and enforcing rules, creating eligibility requirements, supervising contests, hosting championships, and recognizing three levels of divisions and competition. In 1942 the association acquired substantial power to enforce rules, and in 1952 it began controlling television broadcasts of college football (Smith 13; Encyclopedia Britannica).

Today, the NCAA has 1,094 member universities within Division I, II, and III, a multitude of conferences, organizes 89 national championships in 23 sports, provides student athlete support, and administers rules, among other services.

The governance structure is comprised of legislative bodies- a group of committees responsible for association-wide policy and volunteers from member schools that govern each division. The highest governing body is the Executive Committee. In this committee issues important to the whole NCAA are discussed and it consists of the presidents and chancellors from each division. Each governing bodies charge is to advance and defend the NCAA's core values (NCAA).

The NCAA has seven core values: the collegiate model of athletics, the highest level or sportsmanship, the pursuit of excellence in both academics and athletics, the supporting role that intercollegiate athletics play, an inclusive culture, respect, and presidential leadership. Each member institution is charged with upholding these values and creating an equal opportunity for all student athletes (NCAA).

The first value, the collegiate model, means, "Students participate as an avocation, balancing their academic, social, and athletic experiences". This value is fundamental to college's claim that athletes are student first and athletes second, rather than employees. Intercollegiate athletics are supposed to play a supporting role in the higher education mission, as well as enriching the identity of member institutions and sense of community, that includes and inclusive culture for everyone involved and respect for authority and differences (NCAA).

One of the foundational principles of the collegiate model and one of the most debated is the concept of amateurism. In the NCAA bylaws the principle of amateurism is stated, "Student-athletes shall be amateurs in an intercollegiate sport, and their participation should be motivated primarily by education and by the physical, mental, and social benefits to be derived. Student participation in intercollegiate athletics is an avocation, and student-athletes should be protected from exploitation by professional and commercial enterprises". Amateur status must be certified by the eligibility center of the NCAA before an athlete's initial enrollment at an institution and athletes cannot engage in practice or competition unless certified as an amateur. According to the bylaws the following can cause athletes to lose amateur status:

> (a) Uses his or her athletics skill (directly or indirectly) for pay in any form in that sport;
>
> (b) Accepts a promise of pay even if such pay is to be received following completion of intercollegiate athletics participation;
>
> (c) Signs a contract or commitment of any kind to play professional athletics, regardless of its legal enforceability or any consideration received, except as permitted in Bylaw 12.2.5.1;
>
> (d) Receives, directly or indirectly, a salary, reimbursement of expenses or any other form of financial assistance from a professional sports organization based on athletics skill or participation, except as permitted by NCAA rules and regulations;
>
> (e) Competes on any professional athletics team per Bylaw 12.02.10, even if no pay or remuneration for expenses was received, except as permitted in Bylaw 12.2.3.2.1;
>
> (f) After initial full-time collegiate enrollment, enters into a professional draft (see Bylaw 12.2.4); or
>
> (g) Enters into an agreement with an agent.

(NCAA bylaws 58-59).

Within these rules are a series of convoluted exceptions and inclusions for each of the seven ways to compromise amateurism. The NCAA insists amateurism rules are in place to ensure that the student athlete focuses on obtaining an education and that competition is equitable, but others insist it is a concept designed to negate the possibility of paying student athletes (NCAA).

Throughout its history, the NCAA has been involved in numerous lawsuits. Many have had the focus of antitrust violations, paying athletes, and amateur status. In 1998, *Law v. NCAA* was a case regarding the restricted earnings cap for part-time coaches to be a violation of antitrust law in which the courts ruled in favor for the coaches. *Worldwide Basketball and Sports Tours Inc. v. NCAA* in 2004 was another case in which the NCAA was accused of violating the Sherman Anti-Trust Act. In this case the NCAA lost in the district courts, but later, in the Court of Appeals, won their appeal. During 2008, there was *White v. NCAA* with the basis that the restriction on the value of athletic scholarships was also a violation of the Sherman Anti-Trust Act, and was eventually settled ("Important NCAA Lawsuits"). *Oliver v. NCAA* appeared in 2009 debating the lawyer-agent aspect of amateurism and the courts ruled in favor of Oliver (Fitzgerald; Koba). In 2014 *Jenkins v. NCAA* was filed arguing that the athletic scholarship model is price fixing and a violation of antitrust law (Dennie). Also in 2014, a major case was resolved in favor of the plaintiffs in *O'Bannon v. NCAA*. The case suit claimed the NCAA was violating antitrust law in regards to student athlete licensing, and may change the face of college sports (Madison 1).

III. *O'Bannon v. NCAA*- Case Overview

O'Bannon v. NCAA was a case heard in California under Judge Claudia Wilken. The case originated in 2009, and on August 8th, 2014, the 99-page court ruling was published. Principally, the case was an antitrust class action lawsuit against the NCAA. It challenged the rules the association had set forth that restricted compensation for elite men's football and basketball players; stating that the rules governing competition in the marketplace induced anti-competitive activity and therefore were a violation of anti-trust laws (Lizzarrage; O'Bannon Ruling). The rules challenged disallow student athletes from receiving a portion of the revenues from the sales of licenses of the use of their names, images, and likenesses (NILs) in live game telecasts, videogames, and other types of footages. However, the NCAA contended that the "restrictions on student athlete's compensations were necessary to hold up its educational mission and to protect to popularity of collegiate sports" (O'Bannon Ruling).

After years of litigation the court found that "the challenged NCAA rules unreasonably restrain trade in the market for certain education and athletic opportunities offered by the NCAA Division I schools. The precompetitive justification that the NCAA offers does not justify this restraint and could be achieved through less restrictive means." Therefore the NCAA violated the Sherman Anti-Trust Act (O'Bannon Ruling). Wilken ruled that the NCAA couldn't stop student athletes from receiving a share of the money they bring in by the licensing of their names, images, and likenesses. Stipends that amount to the full cost of attendance and a trust fund accessible upon graduation or exhaustion of eligibility were recommended remedies by the court available to athletes after July 1, 2016 (Feldman; O'Bannon Ruling).

The man whose name is synonymous with the case is Ed O'Bannon. Ed O'Bannon was a former UCLA college basketball player who led his team to a national championship in 1995, and then went on to play a short stint in the NBA, and then the European League. He currently sells cars in a Las Vegas suburb where he lives with his wife and three children. In 2009 he was at a friend's house and saw himself in an EA Sports videogame. His name was not there, but the power forward carried an uncanny resemblance to him, listing the same weight, height, skin tone, and even his left-handed form. He was featured in this videogame, yet he had never given permission nor received any compensation (Dahlberg; Ferrey). Shortly after this incident, O'Bannon teamed up with Sonny Vaccaro, a former Nike executive, and lawyer Michael Hausfield in the suit against the NCAA (Feldmen). O'Bannon said, "From the outset when I saw my image being used as a character in a videogame, I just wanted to right a wrong. It is only fair that your own name, image, and likeness belong to you, regardless of your definition of amateurism" (Berkowitz). Along with O'Bannon are nineteen other student athletes all of whom played for a Division I men's basketball team or FBS football team between 1956 and the present. The plaintiffs are not receiving any damages; they are only recovering their costs from the NCAA (O'Bannon Ruling).

At the heart of the case is the concept of amateurism and the Sherman Anti-Trust Act. Congress passed the Sherman Act in 1890 and it was the first antitrust law. The Sherman Act outlaws "every contract, combination, or conspiracy in restraint of trade" and also any "monopolization, attempted monopolization, or conspiracy or combination to monopolize" (FTC). In order to file under the Sherman Act, the plaintiffs had to show that there was a bona fide market for their names, images, and likeness, and that the NCAA restrained trade in these markets (Berkowitz). The first market the plaintiffs identified was the "college education market". In this market schools compete to sell unique bundles of goods and services to elite football and basketball recruits. Included in these bundles are scholarships, coaching, medical treatment, athletic facilities, opportunities to compete at the highest level in front of large crowds and on television, and an education. Evidence was shown that FBS football and Division I basketball schools were the only suppliers of the unique bundle of goods and services and therefore the market was accepted by the court (O'Bannon Ruling).

The second market the plaintiffs identified was the "group licensing market". It was argued that without the NCAA's challenged rules, student athletes of FBS football and Division I men's basketball would be able to sell group licensees for the use of their names, images, and likenesses, as professional athletes often do. Group licenses could be sold to respective schools, third party licensing companies, or media companies. Within the group licensing market were three submarkets: game telecasts, videogames, and re-broadcasts, advertisements, and other archival footage. Through evidence presented, especially television licensing agreements, the market was accepted (O'Bannon Ruling).

Stanford professor and well-known economist, Dr. Roger Noll, and the NCAA's own economic expert, Dr. Daniel Rubinfeld, both testified that the NCAA operates as a “joint venture which imposes restraints” on trade (Barren; O’Bannon Ruling). In his own economic textbook Rubinfeld described the NCAA as a “cartel”, which he later defined in court as “a group of firms that imposed restraint”. However he said that the NCAA does so for a pro-competitive purpose (O’Bannon Ruling).

The plaintiffs argued that the NCAA created a buyer’s cartel, rather than a sellers’ cartel. This is because the schools offer a certain amount for a recruit’s athletic service, but will not, and cannot, offer more than a set limit. A buyer’s cartel results in a monopsony rather than a monopoly and violates section one of the Sherman Act, just as a price-fixing agreement among sellers would. Judge Wilken sited from Vogel v. Am. Soc. of Appraisers 744 F.2d 598 601 (7th Cir. 1984) that, “Just as a sellers’ cartel enables the charging of monopoly prices, a buyer’s cartel enables the charging of monopsony prices; and monopoly and monopsony are symmetrical distortions of competition from a economic standpoint”. In the past, the Supreme Court has ruled that monopolization and monopsonization should receive similar legal standards (O’Bannon Ruling).

The NCAA said that the challenged rules serve a “pro-competitive purpose and promote consumer demand for its product by preserving the tradition of amateurism in college sports”. However, the rules of amateurism in collegiate sports have changed numerous times since they were first enacted into the NCAA’s bylaws. In his article in the Miami Herald, Jacob Feldman wrote, “Wilken exposed the NCAA for changing the definition of amateur several times to fit its needs in the past. Preserving a contrived idea is not a viable reason to break antitrust laws, she concluded" (Feldman), she also did not accept the NCAA's precompetitive defense. In the end, the NCAA was found to have violated antitrust law.

One alternative presented by the plaintiffs and approved by the Judge, which is substantially less restrictive than the current practice, is the formation of a trust fund. Under that proposal, schools and conferences would deposit money into the trust for football and men's basketball players that is payable upon exhaustion of eligibility or when they leave school. The money held in trust would be from the revenue generated from the use of the student athletes' names, images, and likenesses. Distributions would be spread equally among team members, not based on athletic ability or performance, and capped at no less than $5,000 (O'Bannon Ruling; Lizzarrage; Berkowitz).

IV. The Trust Fund

The NCAA had presented arguments about paying student athletes a share of the licensing money, one of which is that their current rules help promote the integration of academics and athletics. They contended that paying student athletes a large sum of money could potentially "create a wedge" between others on campus and the athletes. Depending on the size of the payment, some athletes could receive more compensation than their professors. However, the NCAA's own witness, Mr. Pilson, stated in court that if schools were allowed to make five thousand dollar payments to their students he would not be troubled and that his general concerns would be moderately eased if the payments were to be held in a trust. Also, Stanford's athletic director, Bernard

Muir, agreed that his concerns varied on the size of the payment that the athletes would receive. Therefore, the court found that certain restrictions on the compensation to student athletes would help “integrate student athletes into the academic communities of their school” (O’Bannon Ruling).

Taking these concerns into consideration the court ruled that a trust could be established in which the payments would be derived from the revenue generated from the licensing of the use of the athletes’ names, images, and likenesses. The athletes cannot be paid differently based on performance or athletic ability, but would share in a limited and equal share of the revenues. A cap of no less than 5,000 dollars for every year that the athletes remained academically eligible was set, prohibiting the NCAA to set a cap at a lower value. Student athletes would receive payments upon leaving school or the exhaustion of their edibility (O’Bannon Ruling; Lizzarrage; Baran; Berkowitiz; Feldman; Ferrey).

Schools do not have to meet the cap set by the court, but they cannot conspire with each other unlawfully to offer lower amounts or in setting a new standard amount. Universities also can vary from year to year exactly how much compensation they place in the trust. The NCAA can continue enforcing its existing rules and enact new rules to prevent student athletes from using the money held in trust while they are still in school. Financial benefits such as taking a loan out again the trust could easily be prohibited. The money could also be held in an account such as a spendthrift trust to preclude such borrowings. Rules could also be enacted that guarantee that a school cannot offer a recruit a larger portion or revenue than it offers other recruits on the same team and in the same class (O'Bannon Ruling).

With the formation of the trust fund come two main questions in which this paper focuses. How should the trust be structured and what are the tax implications of the trust? The second question is how would the formation of such a trust impact universities?

CHAPTER 2: Research

In order to answer these questions I conducted interviews with athletic directors from three universities and with three partners of CPA firms in Atlanta. Before presenting these results, it is prudent to lay the foundation of what a trust is.

I. What is a Trust?

A trust is actually a legal entity; it can potentially be entirely separate from the grantors and the beneficiaries. The creator of the trust is known as the grantor, the donor, or the settlor. Beneficiaries are those who eventually receive the benefits from the trust. A grantor then appoints a trustee. This could be a person, or an entity such as a bank or a law firm, and is usually independent. Every trust has a trustee; it is their job to manage and distribute the funds of the trust according to the trust document. The trust document is the legal document that tells the trust how to operate. Essentially a trust can be designed or set up any way you want ("Understanding Trusts").

There are many reasons a trust may be set up. Trusts can be used to provide for family members who are unable to handle financial matters, to transfer benefits to beneficiaries after death and to avoid probate, or to reduce estate taxes while providing assets to help pay for them, and many other reasons. A revocable living trust is a trust made in your lifetime that is used to determine who your property will be given to when you die, and it can be changed as your circumstances change. This is the most common type of trust. Other types of trusts are spendthrift trusts (which the Judge mentioned), charitable trusts, bypass trusts, and many others ("Understanding Trusts"). With the establishment of a trust for student-athletes, the revenue from licensing agreements would be set-aside for the student-athletes until they were eligible to receive payment.

Once formed, a trust cannot easily be changed; but in its inception it is very flexible and can initially be set up however the grantor wishes. When designing the trust the grantor can tailor it to meet the projected needs of the beneficiary as long as the set up complies with the state laws in which the trust is established. For example, one of the issues with the student athlete trust is making sure that the athlete cannot take out loans against the trust. Rectifying this issue would be as simple as writing into the trust document that loans cannot be taken out against the trust ("Understanding Trusts").

As stated above, the trust has to be structured so that it is within state law. The trust has standing in the legal system, it is created based on state law and then the Internal Revenue Service (IRS) has rules to tax it. Therefore, each state has its own laws regarding trusts. For example, the provision that beneficiaries may be required to maintain confidential information regarding trust assets is not in trust law in Florida or Delaware, but is in New Hampshire, South Dakota, and

Tennessee. Provisions may be explicitly outlined in some state law and in others implicit, or some state laws may have strong guidance on certain matter where others offer little (Fletcher 20). This raises the issue of whether or not where the trust is set up will have a material impact on how the trust will be structured.

States have laws regarding the structure of trusts, and the IRS has laws to tax trusts. Form 1041 is the form that should be used to report income from estates and trusts on tax returns. The IRS provides forty-two pages worth of instructions on how to fill out the form and different nuisances that may affect reporting (IRS). When deciding how to structure the trust, and when the payments can be made as well as how much each will be worth, the tax implications of the athletes receiving the money should be taken into consideration.

II. Accountants' Views

As I stated above, I interviewed three tax partners from different CPA firms in Atlanta. Phil Moore from Porter Keadle Moore, Dick Ingwersen from Warren Averett, and Alex Knight from Habif Arogeti & Wynne all offered their opinions about how they would recommend setting up the trust fund and how to deal with other issues that occur from its formation. Each partner offered different views and opinions on what would be the best approach.

Mr. Ingwersen suggested that when viewing the trust, it could be seen as a type of deferred compensation. Consistent with this view, he outlined the differences between a Rabbi trust and a Secular trust as two alternatives to how the trust could be structured. With a Rabbi trust the beneficiary is not taxed immediately because the money or assets are still subject to the claims of creditors. This type of trust is in opposition to a Secular trust, in which the money or assets are not subject to creditors. However, with the Secular trust the money is taxed immediately even though the beneficiary has yet to receive it.

When determining between a secular trust, or a Rabbi trust the NCAA and the schools would have to take into consideration the possibility of the trust being subject to creditors if the Rabbi trust was chosen. Yet, even if there were claims from creditors, most schools and the NCAA would have other funds to satisfy the claims other than the trust fund. The main benefit of the Rabbi trust is that the beneficiary is not subject to tax until the money is distributed. If this occurs as soon as eligibility is exhausted, the athlete may have little or no tax liability because they may not have any other income.

There is also the issue of how the income is classified. If it is income for services then it is earned income, but if it were a royalty, which is being paid for the names, images, and likeness (NIL) then, it would be unearned income. If it were possible to treat the income as earned income then it would be eligible for a traditional or Roth IRA and could take those forms instead of a trust. This would provide the benefit of a tax deferral for a substantial amount of time, but would also be subject to the possibility of the athlete drawing the money out immediately and it then being subject to tax.

If the payment was considered earned and had to first go into a trust, a Rabbi trust could be established, and then when it was distributed a traditional or Roth IRA could be established. If the income was considered unearned and a secular trust was used, then the student athlete would have to have other earned income to be sufficient for eligibility for an IRA. Ultimately, using the Rabbi trust until eligibility is exhausted and then the possibility of an IRA would be a good result. This is because the money would not be subject to tax until it was distributed, and if the money was distributed as soon as eligibility was exhausted and the athlete had little or no other income, then the tax liability would be minimized.

Mr. Knight discussed the flexibility of establishing a trust and how trusts are extremely versatile in their formation and can be created to take many different forms. To determine how to establish the trust additional questions need to be addressed such as; will the funds in the trust be invested? Is the $5,000 limit before or after taxes? Is the trust going to be a big pool of money, or will it be separated for each player and they can choose to withdraw it?

The trust document can be written in with an option from the student about when they would like to receive the money, and the document needs to specify how many payments are to be made and the timing of payments. Payments all at once would create the largest tax liability, while smaller payments over time would allow for smaller tax liabilities. All of these issues could be addressed and written into the trust document at formation.

However, with these options and the idea of rolling the money into an IRA comes the idea of constructive receipt. Constructive receipt is the concept that a taxpayer could have received money without substantial limitations or restrictions and therefore owes tax on it. When eligibility is exhausted athletes are entitled to receive the funds from the trust, but if they chose to defer it or receive smaller payments at periodic intervals, it bring into light the issue of if the money should be taxed once eligibility is exhausted because of constructive receipt.

Mr. Moore brought forth the idea that whole new rules should be written about how these instruments should be treated instead of attempting to classify them into a current category. A student athlete trust fund is a game changing development to athletics. Attempting to modify the trust to current established rules may have unintended consequences. Instead a more prudent approach might be to write completely new rules to address the matter.

With the formation of new rules and the generation of new documents, the tax treatment of the trust could be legislated, penalties for withdrawal could be established, and the possibility of the rollover into a 401K could be addressed, as well as many other issues that follow from the trusts' formations.

III. Athletic Directors

No matter how the trust is eventually taxed, the universities involved will invariably be affected. In order to try to achieve a well-rounded view of how this new ruling may affect different universities, I interviewed three different athletic directors from three distinctly different universities. I received insight from Athletic Director Tom Kleinlein of Georgia Southern University, Athletic Director Jeremy Foley of the University of Florida, and Senior Associate Athletic Director Tom Gabbard of Virginia Tech. Their responses offered about the possible situations and alternatives are theoretical. Without affirmative legislation there is no true way to determine how each situation would affect each university.

Georgia Southern is a university of approximately 20,000 students and is located in Statesboro, Georgia. This was the University's first year competing at the FBS level in the Sunbelt Conference. Before entering FBS, Georgia Southern had a successful career in FCS football, including six national championships ("Our History"). The University of Florida is a major SEC school with over 49,000 students ("Stats and Facts"). They have won three national championships and eight SEC championships and football as well as two national championships in basketball ("History"). Virginia Tech is a university of 31,000 students ("About Us") that competes in the ACC. Each university faces different and unique issues regarding the formation of the trust fund.

One of the first questions I asked was how transfers would be affected and what happens to a player who quits in the offseason. Tom Kleinlein speculated that the transfers would probably assume payments from the time they entered the new program. For players transferring out, the licensing payments would cease once their release was signed. Tom Gabbard addressed the issue of whether or not the transfer was assuming a scholarship or a walk-on position and if it would affect treatment. Jeremy Foley agreed that the transfer player would receive income in proportion to time played at the school. He also brought up an interesting scenario. Transfer athletes would now have financial implications. If a school budgets for a certain amount of athletes and therefore trust funds in a recruiting class, a school may be reluctant to take a transfer because they would not have the money to supply them with a trust.

For players who quit in the offseason there could be different ramifications based on legislation. How much revenue the player receives would depend on what the licensing agreement was based on. If it were on games played, then the player that quits in the offseason would receive a full year's worth of trust payments. If the agreement were based on the full year, then the revenue would stop when the player quits.

Another issue was ensuring that the funds were equally distributed to the players. All of the athletic directors agreed that this would be a business office and institutional compliance issue. There would be someone appointed to monitor the trust and distributions, the coaches would not be involved in distributing any money. A paper trail would be created through documentation, and audits would occur annually.

Designated beneficiaries of the trust are a topic that remains very unclear without legislation. In contact sports there is always the unfortunate possibility of serious injury. If something were to happen to the athlete, whom would the trust be distributed to? Families? There is the possibility that this issue could be treated similarly to workmen's compensation. Then athletes would start to be viewed even more like employees and even more disputes would arise. However, there have been disastrous situations in which athletes' parents take loans out against their child's salary or receive the money that is the athlete's. Therefore, the trust would have to be structured so that it was strict about under which circumstances another beneficiary could gain access to the trust.

Another issue is financial guidance. Athletes who receive the trust would receive a large sum of money upon disbursement. Would the universities offer them financial guidance? They all said yes. Florida and Virginia Tech already offer some form of guidance to their players and would expand on that for the trust. Tom Kleinlein said that the university would implement such a program. He compared it to strength and conditioning coaches and academic tutors; they would provide a support system for the athletes.

The biggest issue, however, is how the establishment of this trust would affect the universities and athletics. Most universities athletic departments do not make enough revenue to afford the trust; most Division 1 programs are in the red. Assume the school decides to place $5,000 in the trust fund for every athlete. In the case of Virginia Teach that would amount to $490,000 for Men's Football and Basketball every year. That is $1,960,000 based on 4-year eligibility for each player. Then, if 25 new football players and 4 to 5 new basketball players are recruited every year, (a likely scenario) all using 4-year eligibility, another $500,000 per recruiting class would be added on to the total. The numbers may vary based on the size of the teams, but will be in that estimated range. For some big time schools maybe raising ticket prices and finding some other funding could cover these costs. For other smaller schools however, this would be financially devastating.

A commonality between the responses, no matter the size of the school or the esteem of the program, was the fact that other sports will be affected. Jeremy Foley spoke of golfers and athletes from sports other than basketball and football from the University of Florida that go big time. They have had female athletes like Abby Wombach who now plays soccer professionally and represented the United States in the Olympics. Someone will deem the system unfair and sue, and they probably would win. Other sports at large schools have TV contracts and providing the trust only to male sports would violate Title XI. Other sports that sued under these premises would have a solid case. Then the trust would cost the university millions if it had to be supplied to every athlete.

For some schools it may take the expansion of the trust, for others it may just take the establishment of the trust, either way nonrevenue-generating sports will be affected. If a large sum of money has to be diverted into trust fund, then comes the potential to have to cut nonrevenue-generating sports. For example, at Georgia Southern the money that football brings in is reinvested into all of the other sports and athletics; without that money then there is an issue of what to do with the other sports that are not self-sufficient. Is the trust really worth having to cut other sports and take opportunities away from potential collegiate athletes? Most athletic directors agree not.

Recruiting also becomes an issue as a result of this ruling. Currently a school like Georgia Southern can get a recruit who may go to a bigger school but may not be an impact player, because he could be an impact player and see more time at Southern. However, if the other school is offering a much larger trust, the university would lose recruits to the big school that can offer more money. Tom Kleinlein said, “If a revenue-sharing model existed then the rules would be easier to apply, but revenue sharing doesn't exist." Maybe instituting a revenue-sharing program would have to be a step in the establishment of the trust.

CHAPTER 3: Conclusion

I. Additional Questions

One of the main takeaways from my research and interviews is that this legislation has generated an enormous number of questions for both compliance and athletics as well as for the accounting and formation of the trust. So far, there has been no guidance issued to address the questions that have risen from the ruling and important questions remain unanswered. Currently, all that athletic departments and accounting firms can do is speculate about the possible implications that the formation of the trust would have.

From a compliance viewpoint this ruling could completely change the face of college athletics. There needs to be guidance on how to treat redshirts and players that do not travel. Transfers, financial guidance for players, and administrative details are all important facets that need to be addressed. One of the biggest questions and implications is how sports other than men's football and basketball will be affected.

For the accounting side, legislation needs to determine whether the trust will fall into preexisting structures and laws or if a new set of guidelines will be written specifically for the trust. There needs to be direction about the specific amounts and timing of payments, who will be the trustee, who will be the beneficiaries, if and how the funds will be invested, and how to structure the trust to minimize taxes. All restrictions that need to be written into the trust document also need to be clarified.

There is also the question of whether the trust will lead to the possibility of viewing athletes more like employees. This assumption would bring forth the possibility of unionization among teams. These questions and issues are only some of the many that have been raised by this ruling. As time continues more questions will be raised and there will have to be authoritative guidance to ensure the fair and equitable establishment of the trust.

II. A Possible Recommendation- Revenue Sharing

Tom Kleinlein, Athletic Director at Georgia Southern University, mentioned that a revenue sharing model could be a possible way to ease the financial burden of the trust. I have looked further into the National Football Leagues (NFL) revenue sharing model as a means to provide a possible framework.

The 32 teams in the NFL split the revenue that is generated from a portion of ticket, jersey, and sponsorship sales as well as television contracts: an amount that equaled roughly $6 billion all together or &187.7 million per team this year. A for-profit entity, NFL Ventures, which is owned by all of the teams, receives and is taxed on the revenue that is to be divided among the teams (Ejiochi).

A collective bargaining agreement (CBA) dictates that the revenue is to be divided between the players and the clubs. The revenue received from these sources is greater than the “player cost amount”. This amount includes the NFL salary cap as well as additional player benefits such as worker’s compensations, pension funding, and insurance (Ejiochi).

A model similar to this could be instituted for the NCAA. The NCAA, like the NFL, operates as a not-for-profit organization. It could form an organization that is similar to NFL Ventures that receives the revenue from the licensing of the athletes' names, images, and likenesses. This revenue then could be distributed evenly to the schools. Universities could use the money to establish the trusts, and use the extra to continue financing non-revenue generating sports. A model such as this would decrease the disparities that exist between schools and programs of different sizes. This could allow for more even recruiting as well as less of a negative impact on other sports.

III. Current Status

The NCAA is appealing the decision made by Judge Wilken. On March 17th in San Francisco the 9th U.S. Circuit Court of Appeals will hear the NCAA's oral argument (Berkowitz). The NCAA has based its appeal on three main errors, it claims, that were made by Judge Wilken.

The first is the Judge's decision to not follow 1984 Oklahoma v. Board of Regents decision. That case ended the NCAA's monopoly on television broadcasts and has been upheld by other courts. It is also arguing the antitrust laws do not pertain to the rules that are being challenged. Thirdly, the NCAA states that the plaintiffs lack antitrust injury. "No state recognizes such a right in telecast of games and other claimed non-commercial uses, and the First Amendment and the Copyright Act would bar enforcement of any such right regardless" argues the NCAA in response the issue of payments for the use of names', images', and likenesses' in live television broadcasts, archived footage, and videogames (Solomon).

With an early date for appeal, the NCAA is hopeful that the appellate court will rule before August 1st of 2015. This is the date the injunction is set to start being implemented. All future prospects of the trust and its impact are dependent on the decision made by the Court of Appeals.

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