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NCAA Calls Foul On Courts 'Micromanaging' Its Athlete Rules

By **Mike Curley**

Law360 (March 25, 2019, 5:28 PM EDT) -- The National Collegiate Athletic Association is appealing a California federal judge's decision that opened the door for student athletes to earn more than what NCAA rules now allow, saying the courts should stop trying to "micromanage" its policies.

The NCAA on Friday filed a notice that it would appeal to the Ninth Circuit **the decision** by U.S. District Judge Claudia Wilken earlier this month in In re: National Collegiate Athletic Association Athletic Grant-in-Aid Cap Antitrust Litigation, a multidistrict litigation that sought to remove the limits on how much student-athletes can receive in compensation.

In that ruling, Judge Wilken found that NCAA rules prohibiting college athletes from being paid more than the cost of attending school **were reasonable** so long as they did not limit compensation or benefits tied to athletes' education.

While this didn't represent the full benefits the players were hoping for, Donald Remy, chief legal officer for the NCAA, said in a statement Friday that the court went too far in "giving itself authority to micromanage decisions about education-related support."

"The NCAA's long-standing commitment, supported by its schools and conferences, is to provide student-athletes with the educational benefits they need to succeed in school and beyond," Remy said in the statement. "We believe, and the [U.S.] Supreme Court has recognized, that NCAA member schools and conferences are best positioned to strengthen and revise their rules to better support student-athletes, rather than forcing these issues into continuous litigation."

Wilken's ruling did not, however, include all the cases in the MDL. Jenkins v. National Collegiate Athletic Association, which began in New Jersey before being rolled into the MDL, has been consistently separated from the other cases and is still pending. Judge Wilken last Tuesday urged the parties to come to an agreement on how to proceed in that case in April.

Jeffrey L. Kessler of Winston & Strawn LLP, representing the plaintiffs, said Monday the appeal was expected after the NCAA's "major defeat" in court. Bruce L. Simon of Pearson Simon & Warshaw LLP, also representing the plaintiffs, added they plan to address whether the NCAA's appeal has merit in their reply brief.

"The NCAA has been telling the press they won the trial. Why appeal if you won?" Steve W. Berman of Hagens Berman Sobol Shapiro LLP, also representing the plaintiffs**,** said in an email Monday. "We weren't planning on an appeal but this may open the door to asking the Ninth to review on a new and compelling record the issue of whether the evidence justifies any cap on athletes compensation"

The NCAA declined further comment Monday.

Judge Wilken also ruled last week that the NCAA could not strike portions of the players' **closing statements**. The NCAA had objected to assertions drawn from the players' experts' testimony about how some schools' financial aid offices have increased cash stipends beyond the normal cost of admission for certain students without impacting demand for the sport; that student-athletes have been segregated from the general student body instead of integrated; and that schools have pulled in

lucrative deals with sponsors, such as one between UCLA and Under Armour worth $280 million.

And in another potential blow to the NCAA's rules on athlete compensation, the U.S. House of Representatives two weeks ago **introduced a bill** designed to give college athletes the rights to the use of their names and likenesses by amending the Internal Revenue Code to remove restrictions on player compensation. If it passes, the bill would force the NCAA to change its current model.

The plaintiffs are represented by Steve W. Berman, Craig R. Spiegel and Emilee Sisco of Hagens Berman Sobol Shapiro LLP, Bruce L. Simon and Benjamin E. Shiftan of Pearson Simon & Warshaw LLP, and Jeffrey L. Kessler, David G. Feher, David L. Greenspan, Joseph A. Litman, Sean D. Meenan and Jeanifer E. Parsigian of Winston & Strawn LLP.

The NCAA is represented by Sean Eskovitz, Beth A. Wilkinson, Brant W. Bishop and James Rosenthal of Wilkinson Walsh Eskovitz LLP, and Patrick Hammon, Jeffrey A. Mishkin and Karen Hoffman Lent of Skadden Arps Slate Meagher & Flom LLP.

The Western Athletic Conference is also represented by Patrick Hammon, Jeffrey A. Mishkin and Karen Hoffman Lent of Skadden Arps Slate Meagher & Flom LLP.

The Pac-12 Conference is represented by Bart Harper Williams, Scott P. Cooper, Kyle A. Casazza, Jennifer L. Jones and Shawn S. Ledingham Jr. of Proskauer Rose LLP.

The Big Ten Conference Inc. is represented by Andrew S. Rosenman, Britt M. Miller and Richard J. Favretto of Mayer Brown LLP.

The Big 12 Conference and Conference USA Inc. are represented by Leane K. Capps, Caitlin J. Morgan, Amy D. Fitts and Wesley D. Hurst of Polsinelli PC.

The Southeastern Conference is represented by Robert W. Fuller III, Nathan C. Chase Jr., Lawrence C. Moore III, Pearlynn G. Houck and Amanda R. Pickens of Robinson Bradshaw & Hinson, and Mark J. Seifert of Seifert Law Firm.

The Atlantic Coast Conference is represented by D. Erik Albright, Gregory G. Holland and Jonathan P. Heyl of Fox Rothschild LLP, and Charles LaGrange Coleman III of Holland & Knight LLP.

The American Athletic Conference is represented by Benjamin C. Block and Rebecca A. Jacobs of Covington & Burling LLP.

The Mid-American Conference is represented by R. Todd Hunt and Benjamin G. Chojnacki of Walter Haverfield LLP.

The Sun Belt Conference is represented by Mark A. Cunningham of Jones Walker LLP.

The Mountain West Conference is represented by Meryl Macklin, Richard Young and Brent Rychener of Bryan Cave LLP.

The case is In re: National Collegiate Athletic Association Athletic Grant-In-Aid Cap Antitrust Litigation, case number 4:14-md-02541, in the U.S. District Court for the Northern District of California.

--Additional reporting by Zachary Zagger. Editing by Janice Carter Brown.