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Issue Report #7
NCAA, Power Five, and Antitrust Attorneys “Trying to Pull a Fast One”



The Drake Group (TDG) works with Congress on critical issues related to the conduct of collegiate athletics programs. Starting at the beginning of each academic year, we report on the top concerns we are addressing with members of Congress and executive agencies. This is report seven of ten.

Effort to Prohibit Division I Female Athletes from Bringing Title IX Lawsuits Objecting to the Distribution of Settlement Funds. As you know, The Drake Group has been keeping a close eye on the proposed settlement of the *House, Hubbard, and Carter cases v. NCAA and the Power Five Conferences* (ACC, Big Ten, Big 12, Pac12, and SEC). In [Report #1](#) we introduced you to the details of the proposed settlement. These include payments of \$2.75 billion in past damages to athletes due to the NCAA's amateurism rules, payments of up to \$20 billion in revenue sharing during the next 10 years between schools and athletes and the elimination of scholarship limits but with new roster limits. With respect to the first of these—the past damages—90 percent will go to Power Five basketball and football players.

Distribution of Settlement by Sex (per Rascher expert reports)

MEN = (\$2,296 Billion-87%)		WOMEN = \$147 million (5.3%)		UNDESIGNATED = \$219 million (7.9%)			
Source of Past Damages Calculation	Settlement Amount Preliminarily Approved	Percent of Total Settlement Amount	Amount to Power Five Men's Football and Basketball	Amount to Power Five Women's BB	Additional sports class Non-Power 5 Men	Additional sports class Non-Power 5 Women	Undesignated Sex: Additional sports class Non-Power 5* and All D-I AAA**
Video games ¹	\$71.5 million	2.6%	\$26.96 million	\$44.59 million			
Broadcast revenues ¹	\$1.8 billion	65.2%	\$1.75 billion	\$67.74 million			
Lost NIL opportunities ¹	\$89.5 billion	3.2%	\$53.02 million	\$3.36 million	\$15.02 million	\$1.23 million	
Athlete Services ²	\$600 million	21.7%	\$540 million	\$30 million	\$11.2 million	\$0.2 million	\$ 18.6 million*
NIL Total	2.561 billion	92.70%	\$2.370 billion	\$145.7 million	\$26.22 million	\$1.25 million	\$ 18.6 million
NIL Percent		Percent	92.50%	5.70%	1.02%	0.0005%	0.007%
Alston Academic Awards ³	\$200 million	7.2%					\$ 200 million**
Settlement Total	2.761 billion						

¹ July 26, 2024 Rascher Report, see p.16 of 68 NIL estimated damages and settlement amounts

² July 26, 2024 Rascher Report, pp. 21-22 of 68) re: 5% to the Additional Sports settlement damage class and 95% distributed in a ratio of 75/15/5% to athletes across the three sports (football, men's basketball, and women's basketball) see pp. 36 of 68 for non-Power 5 estimated damages for additional compensation for athlete services

³ September 26, 2024 -Declaration of Steve W. Berman in Support of Plaintiffs' Supplemental Brief in Support of Motion for Preliminary Settlement Approval, pp 300-320- *Hubbard v. NCAA* Alston Academic Awards (AAA) will be distributed by conference to all D-I conferences (Power 5 and non-Power 5) based on receipt of and eligibility for AAA awards (sex or sport related)

Few doubt that the NCAA, Power Five Conferences and Power Five institutions will try to convince the Office for Civil Rights that laundering the distribution of past damages payments through the NCAA or third parties instead of through member institutions means no obligation to provide equitable dollars to females under Title IX. Amazingly, despite there being males and females in the plaintiffs' classes of athletes harmed, the plaintiffs' economic expert failed to make the same quality effort to compute damages to female athletes as he did for male athletes, reaching a conclusion that over 90% should be allocated to men. The second issue in the settlement—the estimated \$20 billion more over the next ten years to Power Five male and female athletes—includes no proposed allocation by sex or sport, with some in the media suggesting that the same allocations as in the past damages should apply to the future revenue sharing.

But it will not be straightforward for female athletes to protect their rights to equity. In response to concerns about inequitable treatment of female athletes, at the Sept. 5 hearing before Judge Wilken, the attorneys for the plaintiffs' and the defendants NCAA and Power Five conferences represented that Title IX claims (future Title IX lawsuits) would not be barred regarding the settlement. Judge Wilken, who refused to consider the inequitable impact on female athletes in these cases, then instructed the parties (plaintiffs' and defendants' attorneys) to amend the proposed settlement agreement to specifically include this representation – that future Title IX lawsuits relating to the distributions permitted in this case would be allowed. Adding insult to injury, however, the amended proposed settlement was submitted by the attorneys to the court with an introductory brief assuring the judge that

“any Title IX claims” by athletes were among the protected releases. But this was not true. The written amended settlement agreement bars any Title IX claims related to the \$2.75 billion in past damages:

“3. Claims under Title IX of the Education Amendments of 1972, 20 U.S.C. § 1681 et seq., other than any claims arising out of or relating to the distribution of the Gross Settlement Fund.”

This provision is contained on page 6 of the official [Class Action Notice](#) that became available to all athletes on October 17 who are members of the plaintiff classes: male and female athletes who competed on a Division I athletic team any time between June 15, 2016 and September 15, 2024 for past damages, and, for future injunctive relief, college athletes who will compete on a Division I athletic team any time between the fall of 2025 and ten years thereafter. Thus, in order for female athletes to bring a Title IX lawsuit objecting to the distribution of the past damages settlement, **they would have to “opt out” by a January 31, 2025 deadline—refuse any monetary payout of settlement funds—and bring a separate case.**

What The Drake Group is Doing About This. We have been contacted by athletes’ representatives who have an interest in ensuring that female athletes get fair treatment in the settlement. Specifically, they believe that the settlement agreement should not require that female athletes affirmatively opt out of any benefits from the settlement to protect their right to bring a Title IX case. They believe that, for example, if male athletes at an institution receive “back pay” settlement dollars based on their 2017 participation year damages due to the application of NCAA rules, female athletes participating during that year should receive additional “back pay” financial assistance from their institution in amounts proportional to their participation. If the school does not recalculate and distribute to females what they should have received under Title IX regulations, the athletes should be able to bring a Title IX complaint or lawsuit even if they have not affirmatively opted out of the settlement. Or, if there is an attempt to use payments through third parties to evade Title IX, female athletes should have the right to go to court, whether they have received settlement funds or not.

Further, there appear to be non-Title IX issues with the settlement. Athletes believe the plaintiffs’ economic expert has not made a fair effort to determine damages to female athletes. The plaintiffs’ economic expert based his estimates of damages to male athletes by comparing college athletes to NFL/NBA revenue sharing/roster value economic models. He did not consider or create a female athlete economic model specific to the reality faced by female plaintiffs. Thus, female athletes believe that the 5.3 percent allocation of \$2.75 billion in past damages to females in the plaintiff classes appears to be neither fair, reasonable, nor adequate.

TDG has been communicating with the Department of Education Office for Civil Rights about these developments, asking OCR to issue guidance to Division I institutions, specifically addressing these efforts to evade Title IX payments to female athletes. Similarly, TDG has

been meeting with members of Congress who are seeking legislative solutions that are fair to both male and female athletes, would remedy the absence of sensible governance and financial guardrails that control excessive expenditures in college sport, and would address the economic and educational exploitation of Division I football and basketball players who are receiving neither the medical protection nor the education they were promised. No one piece of legislation is going to resolve all these issues, especially if Congress remains as dysfunctional and unproductive as it has been over the past eight years. We continue to believe that a Presidential Commission on Intercollegiate Athletics is required to engage in a comprehensive examination of a myriad of issues that need to be addressed.

Asking for Your Support. We'd really appreciate your help in advancing these efforts. Share this report with your friends and ask them to help educate recently graduated or current female college athletes, making them aware of settlement unfairness issues. Most female athletes are not yet aware that they are members of the plaintiff classes. Also, please consider helping fund TDG to continue this important work with Congress. If you aren't a member already, please consider becoming one. Membership is nominal (\$10/students, \$35/faculty, \$50/general) and gifts in any amount are appreciated. [We welcome you to do so here](#). If you are already a member, thank you for your support. These funds are used to pay for student research, operate our communications platforms, and fund limited volunteer trips to meet with members of Congress (90 percent of our work educating Congressional staff members is via Zoom communication).

We do what we do because we believe in the extraordinary developmental impact of intercollegiate athletics on participants — confidence, discipline, work ethic, and more. We believe in Title IX and the equitable treatment of male and female athletes. We also believe athletics programs contribute to a vibrant campus community and are part of the 'glue' that keeps alumni involved in higher education. We must keep these values and benefits while we solve the challenges created by the commercialization of college sport.

Thanks for your interest in our work and considering this request.

Gratefully,

Donna



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P.S. If you missed our first six reports, you may access them here:

[Issue Report #1 — Proposed Antitrust Settlement – Huge Financial Implications for College Sport](#)

[Issue Report #2 — Failure of the U.S. Office for Civil Rights to Enforce Title IX](#)

[Issue Report #3 — Confronting the Failure of the NCAA Enforcement Process](#)

[Issue Report #4 — Gambling: The Biggest Danger to College Sport](#)

[Issue Report #5 — Athletics Injuries, Heat Related Illness, and Death](#)

[Issue Report #6 — Confronting Misinformation About Title IX](#)