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# UNC 'Sham' Classes Claims To Have A Tough Time In Court

By **Zachary Zagger**

Law360, New York (May 2, 2017, 9:45 PM EDT) -- Former University of North Carolina athletes have gone after the school alleging they did not get the quality of education they were promised because they were pushed into "sham" or "bogus" courses, and their lawsuits highlight not only an issue that goes to the heart of the NCAA's amateur athlete system but also the difficulty of raising the issue in the courts.

In the debate over whether NCAA athletes should be paid beyond the scholarship packages to play a sport, some point to the debt-free college education that the athletes receive as evidence that they already do receive something of value. That is nothing to shake one's head at given the rising costs of attending college, even at state universities.

But even if that is a valid reason for prohibiting players from being compensated beyond their scholarship and aid packages, referred to as grants-in-aid, what happens when the education athletes receive is not at the same quality as what students who are non-athletes receive?

The University of North Carolina-Chapel Hill has so far dodged two proposed class actions by former athletes who allege they were deprived of the quality education promised when they committed to play for UNC because they were forced into "sham" or "bogus" courses so that they could continue to meet the academic eligibility and time commitments that come with playing a collegiate sport.

"I think [the claims] go to the heart of amateurism and how student-athletes are compensated," said sports attorney Aaron B. Swerdlow of Gerard Fox Law PC. "As the time demands on revenue-generating college athletes have increased, the emphasis on academics and schoolwork decreased. There are only so many hours in the day."

Specifically, the claims stem from **an academic scandal** uncovered in a 2014 report by Kenneth Wainstein of Cadwalader Wickersham & Taft LLP that found UNC's African and Afro-American Studies Department offered "paper classes" with "academically flawed instruction" to more than 3,100 students, nearly half of whom were athletes.

The scandal has led to the ousting of several employees and the NCAA has further brought a sanctions case against the school's athletic programs. In December, the NCAA **unveiled new charges** targeting the school's marquee men's basketball and football programs.

However, in recent weeks, both of the proposed class actions were **kicked out of federal court** under theories protecting the university, as a state entity, from being hauled into federal court.

**One of the suits**, brought by former women's basketball player Rashanda McCants and former football player Devon Ramsay, was **sent back to state court** last week where contractual claims that UNC failed to live up to its promises to athletes can ostensibly continue. It was not clear whether the plaintiffs in the other suit would refile in state court.

But even if both do proceed in state court, some experts were not convinced that such claims against one of the biggest public universities with one of the most popular basketball teams in the state will fare well in a North Carolina court.

"This is potentially a huge loss for the plaintiffs because of the influence that North Carolina basketball has in the state," said Brian Markovitz, a civil litigator at Joseph Greenwald & Laake PA. "As much as the judge may be impartial ... the idea is that a federal judge is more insulated from the politics and finances than a state court judge would be."

But that comes on top of the question as to whether McCants and Ramsay can prove their contractual theories. On the surface, the claims seem like a tough sell, in that it is not clear whether athletes' commitments to play for a school create an enforceable agreement for a certain quality of education, experts said. Even if it does, they said, the players had to have been somewhat complicit in that they agreed to take classes they presumably knew were academically less rigorous.

"These cases are hard to win. A lot is going to depend on the facts when we get to the merits in state court," said sports law professor Paul H. Haagen of Duke University Law School. "The issues that are going to be looked at are the degrees of steering. There is steering and then there is steering."

While the African-American studies classes were offered and taken by students in the general body, the lawsuits alleged that the athletes were steered into these courses disproportionately in order to keep them academically eligible and to free up time for their travel and practice commitments.

Haagen said it could come down to whether athletes were just advised to take easier courses to balance their sports commitments, as opposed to being truly forced into taking them by coaches or advisers or by the fact that they could lose their scholarship and had no real choice but to go along.

But he said it would not be surprising if more facts come out in discovery that could help the plaintiffs, such as oral promises made by coaches in the recruiting process or evidence that athlete academic advisers or coaches pressured them into taking the easier classes.

The McCants and Ramsay suit was brought by lawyers from Hausfeld LLP, the same firm that represented athletes in the O'Bannon antitrust case alleging the NCAA rules unlawfully cap what schools can provide athletes in terms of compensation. The NCAA was also targeted in the McCants and Ramsay suit, but **the judge dismissed it**, finding the organization is not responsible for the quality of the education provided with an athletic scholarship.

In O'Bannon, the Ninth Circuit ruled that while the rules were anti-competitive, they are in part justified by the idea that they integrate academics with athletics, thereby tying what players can receive to their education.

"When you need the connection to education in order to meet your antitrust defense and then when you undermine the connection to education by advising, steering, whatever, you may find

that you have gone from a relatively limited set of tort and contract claims to a potentially huge antitrust suit," Haagen said.

Furthermore, being kept out of federal court highlights the juxtaposition between the laws applying to public and private universities that sponsor college sports programs on such student-athlete issues. Already, football players at Northwestern University unsuccessfully tried to unionize, an effort that was only possible because they were at a private university, covered by the National Labor Relations Act.

But McCants and Ramsey still have a long way to go in state court, and the case will proceed for now without the NCAA as a defendant.

"I am not convinced that lawsuits, especially in local courts, are the most efficient means for reform," Swerdlow said. "I think institutional reform is probably going to be much more effective than trying to open this legal Pandora's box."

The cases are McCants v. National Collegiate Athletic Association and McAdoo v. The University of North Carolina at Chapel Hill, case numbers 1:15-cv-00176 and 1:14-cv-00935, in the U.S. District Court for the Middle District of North Carolina.

--Editing by Pamela Wilkinson and Brian Baresch.

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