2723 South State Street, Suite, 150
Ann Arbor MI 48104
(866) 534 6177
LawCompany.com

RESEARCH MEMORANDUM

To: [redacted]

From:

Date: [redacted]

Re: [redacted] *NCAA v. Alston*, 141 S. Ct. 2141 (2021).

QUESTIONS PRESENTED

I. What is the outcome of the case *NCAA v. Alston*, 141 S. Ct. 2141 (2021)?

II. Does the *Alston* court's decision require a trial to determine damages? How will the newly allowed benefits be taxed?

III. Was the case a class action? If so, was it an opt-in or an opt-out class action?

SHORT ANSWERS

I. The NCAA has restricted the compensation and education related benefits that student athletes may receive. The outcome of *Alston* enjoined such NCAA rules that limited the education-related benefits schools may make available to student-athletes as unlawful and permits colleges and universities to offer enhanced education-related benefits allowing student-athletes a measure of compensation more consistent with the value they bring to their schools.

II. The NCAA settled the suit for an amount of $208.7 million to be disbursed to eligible past and present student athletes after deducting the fees and expenses. The case law does not discuss the taxation of the newly allowed benefits provided by universities to student athletes. Taxation of student athletes would relate to the determination of whether such payments or related benefits meets the requirement for a qualified scholarship for tax exemption under the IRS.

III. Yes, this is an opt-out class action lawsuit.

RESEARCH FINDINGS

The National Collegiate Athletic Association (NCAA)

The NCAA is a voluntary unincorporated association[1] formulated to regulate student athletes from various institutions and conferences. It organizes college and university level athletic programs in the U.S and Canada helping numerous college student-athletes competing annually in college sports. Currently, NCAA adopts a three-division system of Division I, Division II, and Division III membership. The NCAA rules allow Division I and Division II schools to offer scholarships to athletes participating in a sport.

The primary purpose of the NCAA is to maintain intercollegiate athletics as an integral part of a member institution's overall educational program, and "the athlete as an integral part of the student body and, by so doing, retain a clear line of demarcation between intercollegiate athletics and professional sports.[2]

Colleges and universities have leveraged sports to bring in revenue, attract attention, boost enrollment, and raise money from alumni.[3] That profitable enterprise relies on "amateur" student-athletes who compete under horizontal restraints that restrict how the schools may compensate them for their play.[4] The NCAA issues and enforces these rules, which restrict compensation for student-athletes in various ways.[5] These rules depress compensation for at least some student-athletes below what a competitive market would yield.[6]

The Sherman Act

The Congress enacted the first antitrust law, the Sherman Act, as a "comprehensive charter of economic liberty aimed at preserving free and unfettered competition as the rule of trade."[7] The Act outlaws "every contract, combination, or conspiracy in restraint of trade," and any "monopolization, attempted monopolization, or conspiracy or combination to monopolize." The Supreme Court has decided that the Sherman Act does not prohibit every restraint of trade, but only those that are unreasonable. "In the Sherman Act, Congress tasked courts with enforcing a policy of competition on the belief that market forces "yield the best allocation" of the Nation's resources." *NCAA v. Alston*, 141 S. Ct. 2141, 2147 (2021) (citing *National Collegiate Athletic Assn. v. Board of Regents of Univ. of Okla.*, 468 U. S. 85, 104, n. 27, 104 S. Ct. 2948, 82 L. Ed. 2d 70 (1984)).

---

[1] https://scholarship.law marquette.edu/cgi/viewcontent.cgi?article=1443&context=sportslaw
[2] Id.
[3] *NCAA v. Alston*, 141 S. Ct. 2141 (2021) – Syllabus
[4] *Id*.
[5] *Id*.
[6] *Id*.
[7] https://www.ftc.gov/tips-advice/competition-guidance/guide-antitrust-laws/antitrust-laws

***NCAA v. Alston*, 141 S. Ct. 2141 (2021) – An overview**

The plaintiffs in *Alston* brought the lawsuit alleging that the NCAA and certain of its member institutions violated this policy by agreeing to restrict the compensation colleges and universities may offer the student-athletes who play for their teams. The case is a class-action by current and former Division I student-athletes alleging violation of 15 U. S. C. §1 (The Sherman Act), which prohibits contracts, combinations, or conspiracies in restraint of trade or commerce. 15 U. S. C. §1. The students allege that the violations restrict them from receiving a fair market rate for their labor.

Key facts were undisputed:

The NCAA enforces its compensation limits for student-athletes on its member-schools. These compensation limits affect interstate commerce. On a bench trial, the district court refused to disturb NCAA rules limiting undergraduate athletic scholarships and other compensation related to athletic performance. The court, however, enjoined certain NCAA rules limiting the education-related benefits schools may make available to student-athletes as unlawful. Both sides appealed.

The Ninth Circuit affirmed in full. Unsatisfied with the result, the NCAA filed an appeal to the Supreme Court. The scope of the Supreme Court's review pertained only to those NCAA rules restricting education-related benefits enjoined by the district court. So, the NCAA's rules restricting student-athlete compensation remain in place. The Supreme Court does so based on "the uncontested premise that the NCAA enjoys monopsony control in the relevant market—such that it is capable of depressing wages below competitive levels for student-athletes and thereby restricting the quantity of student-athlete labor."[8]

The Supreme Court specifically noted that there was no dispute that NCAA and its members, which are undisputed horizontal competitors, "agreed to compensation limits on student-athletes." The Court affirmed the district court's finding enjoining certain NCAA rules holding that the NCAA violated antitrust laws by conspiring to suppress some "education-related" benefits — such as scholarships for graduate degrees, the cost of tutoring and free computers — that schools might distribute to students.

ISSUES ANSWERED

I. What is the outcome of the case *NCAA v. Alston*, 141 S. Ct. 2141 (2021)?

Over the decades, the NCAA has become a sprawling enterprise and its membership comprises about 1,100 colleges and universities, organized into three divisions. At the center of

[8] *Alston*, at 2147.

this thicket of associations and rules sits a massive business. The NCAA's broadcast contract, its television deals fetch millions annually. Beyond these sums, there is substantial revenue from regular-season games, with its total conference revenues exceeding several millions yearly. Likewise, those who run this enterprise profit in a different way than the student-athletes whose activities they oversee.

The Class Action:

Plaintiff Shawne Alston brought this class action against NCAA and five of its most powerful members, Division I power conferences. The plaintiffs are current and former student-athletes. The college football is a big business that generates billions of dollars a year in revenue and high profits. Players are working full-time football jobs and going to school. Players may only receive NCAA approved payments that the conferences/schools agree. The NCAA and conferences agreed to unlawfully cap the value of an athletic scholarship for a substantially low amount below from a Football Bowl Subdivision football player's payment for his services in a competitive market, and at an amount below what it costs to attend school. Plaintiffs content that this agreement violates the Sherman Act. They claim that they are deprived of the benefits of competition as to the amount, terms and conditions of athletic scholarship from NCAA member institutions that compete in the Football Bowl Subdivision Labor Market.

Primary Reliefs:

- The amount of damages suffered by plaintiffs has not yet been ascertained and plaintiff seeks to recover from the NCAA, pursuant to Section 4 of the Clayton Act, treble the amount of actual damages as well as an award of reasonable attorneys' fees and costs of suit.
- Plaintiff seeks declaratory judgment declaring the NCAA Bylaws that cap the value of grants-in-aid (athletic scholarship) as void and unenforceable.
- Plaintiff seeks a permanent injunction that enjoins Defendants from engaging in the ongoing violations described in the Complaint.

The District Court's decision:

A 10-day bench trial ended by the district court finding evidence on certain undisputed points. The NCAA did not "contest evidence showing" that it and its members have agreed to compensation limits on student-athletes; the NCAA and its conferences enforce these limits by punishing violations; and these limits "affect interstate commerce."[9]

The Court noted: "Determining whether a restraint is undue for purposes of the Sherman Act 'presumptively' calls for what we have described as a 'rule of reason analysis.'" *Alston,* at 2151 (quoting *Texaco Inc. v. Dagher*, 547 U. S. 1, 5, 126 S. Ct. 1276, 164 L. Ed. 2d 1 (2006)). "That manner of analysis generally requires a court to 'conduct a fact-specific assessment of market power and market structure' to assess a challenged restraint's 'actual effect on competition.'" *Id*. (quoting *Ohio v. Am. Express Co.,*138 S. Ct. 2274 (2018)). "Always, 'the goal is to distinguish between restraints with anticompetitive effect that are harmful to the consumer and restraints stimulating competition that are in the consumer's best interest.'" *Id*. (quoting *American Express,* 138 S. Ct. 2274). In applying the rule of reason, the district court observed:

- The NCAA enjoys "near complete dominance of, and exercise[s] monopsony power in, the relevant market."
- The NCAA and its member schools have the power to restrain student-athlete compensation as they wish without risk of reducing their market dominance.
- The NCAA's compensation limits "produce significant anticompetitive effects in the relevant market."
- A market without the challenged restraints would increase competition among schools in terms of the compensation they offer to recruits causing higher student-athlete compensation.
- Student-athletes would receive offers that would more closely match the value of their athletic services.
- The NCAA "did not meaningfully dispute" any of this evidence.

[9] *Alston,* at 2151.

Alston, at 2152.

The NCAA suggested that its restrictions help increase output in college sports and keep a competitive balance among teams. The district court rejected the justification and the NCAA did not pursue it further. The NCAA's only remaining defense was that its rules preserve amateurism, which widens consumer choice by providing a unique product—amateur college sports distinct from professional sports. Admittedly, this asserted benefit accrued to consumers in the NCAA's seller-side market rather than to student-athletes whose compensation the NCAA fixes in its buyer-side labor market. But the NCAA suggested to assess its restraints in the labor market in light of their procompetitive benefits in the consumer market.

The court observed that the NCAA's conception of amateurism has changed steadily over the years because the nature of the amateurism claimed is not defined anywhere. The court did not find much evidence to support their contention that its compensation restrictions play a role in consumer demand. Meanwhile, the student-athletes presented expert testimony and other evidence showing that consumer demand has increased markedly despite the new types of compensation the NCAA has allowed in recent decades. They also presented evidence suggesting that further increases in student-athlete compensation would "not negatively affect consumer demand." At the same time, the court found that the rules aimed at ensuring "student-athletes do not receive unlimited payments unrelated to education" may have some effect in preserving consumer demand. The court found the student-athletes had met their burden in some respects but not others.

The court reached a different conclusion for caps on education-related benefits—such as rules that limit scholarships for graduate or vocational school, payments for academic tutoring,

or paid posteligibility internships. The court found that noting in such education-related benefits should be "confused with a professional athlete's salary." If anything, they "emphasize that the recipients are students."

The district court entered an injunction without precluding the NCAA from continuing to fix compensation and benefits unrelated to education or limits on athletic scholarships. The court enjoined the NCAA only from limiting education-related compensation or benefits that conferences and schools may provide to student-athletes playing Division I football and basketball. The NCAA could continue to limit cash awards for academic achievement—but only so long as those limits are no lower than the cash awards allowed for athletic achievement (currently $5,980 annually). NCAA and its members were given the freedom to propose a definition of compensation or benefits "related to education" and to regulate how conferences and schools provide education-related compensation and benefits. The injunction applied only to the NCAA and multi-conference agreements allowing individual conferences to impose tighter restrictions if they wish.

The district court's opinion:

- NCAA could develop its own definition of benefits that relate to education and seek modification of the court's injunction to reflect that definition.
- NCAA and its members could agree on rules regulating how conferences and schools go about providing these education-related benefits.
- NCAA and its members could continue fixing education-related cash awards, too—so long as those "limits are never lower than the limit" on awards for athletic performance.
- The injunction applies only to the NCAA and multi-conference agreements; individual conferences remain free to reimpose every single enjoined restraint tomorrow—or more restrictive ones still.

Alston, 141 S. Ct. at 2164.

NCAA's Appeal:

Unsatisfied with the outcome, the NCAA appealed the Nineth Circuit that affirmed the district court's findings concluded that "the district court properly applied the Rule of Reason in determining that the enjoined rules are unlawful restraints of trade under section 1 of the Sherman Act, 15 U.S.C. § 1." The Court further concluded that "the record supports the factual findings underlying the injunction and that the district court's antitrust analysis is faithful to our decision in *O'Bannon v. NCAA* (*O'Bannon II*), 802 F.3d 1049 (9th Cir. 2015)." (Decision p. 10).

The NCAA appeals the Supreme Court to reverse the order to the extent the Nineth Circuit sided with the student-athletes. As the student-athletes do not renew their across-the-board challenge to the NCAA 's compensation restrictions, the Supreme Court did not pass on the rules that remain in place or the district court's judgment upholding them. The Supreme Court's review was confined to those restrictions now enjoined.

On appeal, the Supreme Court found the following undisputed facts:

- The district court's definition of the relevant market is undisputed.
- NCAA enjoys monopoly control in that labor market.
- NCAA is capable of depressing wages below competitive levels and restricting the quantity of student-athlete labor.
- NCAA member schools compete fiercely for student-athletes but remain subject to NCAA limits on what compensation they can offer.
- The suit involves admitted horizontal price fixing in a market where the defendants exercise monopoly control.
- NCAA's restrictions decrease the compensation that student-athletes receive compared to what a competitive market would yield.
- Decreases in compensation also depress participation by student-athletes in the relevant labor market—so that price and quantity are both suppressed.
- Nor does the NCAA suggest that, to prevail, the plaintiff student-athletes must show that its restraints harm competition in the seller-side (or consumer facing) market as well as in its buyer-side (or labor) market.

NCAA's challenge:

NCAA contended that the lower courts erred by subjecting its compensation restrictions to a rule of reason analysis. In its NCAA's view, the courts should have given its restrictions at most an "abbreviated deferential review," or a "'quick look,'" before approving them for the following reasons:

- it is a joint venture and that collaboration among its members is necessary if they are to offer consumers the benefit of intercollegiate athletic competition.
  - Per the Court, even if the NCAA is a joint venture, then, it hardly would warrant quick-look approval for all its myriad rules and restrictions. The NCAA's rules fixing wages for student-athletes fall on the far side of this line. Nor does its status as a particular type of venture categorically exempt its restraints from ordinary rule of reason review.
- NCAA relies on *Nat'l Collegiate Athletic Ass'n v. Bd. of Regents*, 468 U.S. 85, 104 S. Ct. 2948 (1984) where the considered the league's rules restricting the ability of its member schools to televise football games. Per NCAA, that decision expressly approved its limits on student-athlete compensation—and so this forecloses any meaningful review of those limits by the court.
  - The court disagreed. It observed that as per *Board of Regents* the league's television rules amounted to "[h]orizontal price fixing and output limitation[s]" of the sort that are "ordinarily condemned" as "'illegal per se.'" The Court did not declare the NCAA's restraints per se unlawful because it happened in "an industry" in which some "horizontal restraints on competition are essential if the product is to be available at all." Per the court, the analysis is fully consistent with this. "While Board of Regents did not condemn the NCAA's broadcasting restraints as per se unlawful, it invoked abbreviated antitrust review as a path to condemnation, not salvation." *Board of Regents* may suggest courts to take care, when assessing the NCAA's restraints on student-athlete compensation, sensitive to their procompetitive possibilities. "But these remarks do not suggest that courts must reflexively reject all challenges to the NCAA's compensation restrictions." Existence of an antitrust violation "necessarily depends on a careful analysis of market realities." With college sports, the market realities have changed significantly since 1984. Since then, the NCAA has significantly increased the amounts and benefits schools may provide to student-athletes.
- The rule of reasoning is inappropriate as NCAA and its member schools are not "commercial enterprises" and instead oversee intercollegiate athletics "as an integral part of the undergraduate experience." The NCAA seeks to "maintain amateurism in college sports as part of serving [the] societally important non-commercial objective" of "higher education.
  - Per the court, the NCAA did not contest that its restraints affect interstate trade

and commerce and are subject to the Sherman Act. They acknowledged the Court's analysis (and struck down) some of its restraints as anticompetitive in *Board of Regents*. And admits the Court's observation that the Sherman Act had already been applied to other nonprofit organizations—and that "the economic significance of the NCAA's nonprofit character is questionable at best" given that "the NCAA and its member institutions are in fact organized to maximize revenues." No one contests the status of the NCAA's members as schools and the student-athletes as students to be relevant in assessing consumer demand as part of a rule of reason review.

- Antitrust law does not require businesses to use anything like the least restrictive means of achieving legitimate business purposes.
  - The court agreed with the legal premise but disagreed for its factual one. The district court held that the student-athletes met their burden of showing the NCAA's restraints collectively bear an anticompetitive effect. Thus, NCAA had to show that those rules collectively yield a procompetitive benefit. The district court found unpersuasive NCAA's proffered evidence to establish that the challenged rules have any direct connection to consumer demand.
- The district court "impermissibly redefined" its "product" by rejecting its views about what amateurism requires and replacing them with its preferred conception.
  - The court found this argument to misapprehend the way a defendant's procompetitive business justification relates to the antitrust laws. A party cannot relabel a restraint as a product feature and declare it "immune from §1 scrutiny." The district court determined whether the defendants' agreements harmed competition and whether any procompetitive benefits associated with their restraints could be achieved by "substantially less restrictive alternative" means. The court was not inclined to overturn the district court's factual findings by deferring to its conception of amateurism when the NCAA had not adopted any consistent definition.
- NCAA attacks the lower courts' holding that substantially less restrictive alternatives exist capable of delivering the same procompetitive benefits as its current rules claiming that the district court's injunction threatens to "micromanage" its business.
  - Agreeing with the legal principles, the court noted that "antitrust courts must give wide berth to business judgments before finding liability" and "[s]imilar considerations apply when it comes to the remedy." The court enjoined only restraints on education-related benefits after a finding that relaxing these restrictions would not blur the distinction between college and professional sports to impair demand. That too, only after finding that this course represented a significantly less restrictive means of achieving the same procompetitive benefits as the NCAA's current rules.

The Supreme Court's finding:

Under the current decree, 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. And, again, the district court invited the NCAA to specify and later enforce rules delineating which benefits it considers legitimately related to education. To the extent the NCAA believes meaningful ambiguity really exists about the scope of its authority—regarding internships, academic awards, in-kind benefits, or anything else—it has been free to seek clarification from the district court since the court issued its injunction three years ago. The NCAA remains free to do so today. To date, the NCAA has sought clarification only once—about the precise amount at which it can cap academic awards—and the question was quickly resolved. Before conjuring hypothetical concerns in this Court, we believe it best for the NCAA to present any practically important question it has in district court first.

Alston, 141 S. Ct. at 2165-66.

The Supreme Court agreed with the Ninth Circuit:

"'The national debate about amateurism in college sports is important. But our task as appellate judges is not to resolve it. Nor could we. Our task is simply to review the district court judgment through the appropriate lens of antitrust law.'" *Alston*, 141 S. Ct. at 2166 (quoting, Alston, 958 F. 3d, at 1265).

Final Outcome:

Colleges and universities are permitted to offer enhanced education-related benefits to encourage scholastic achievement and allow student-athletes a measure of compensation more consistent with the value they bring to their schools.

A. What are the plaintiffs entitled to under the decision?

The NCAA has been restricting the compensation and benefits of student athletes for all several years. With its profound success, they were able to shield the compensation rules from having any regular antitrust scrutiny. The outcome of *Alston*, however, has broken this shield. The Supreme Court's finding that the NCAA has violated the antitrust laws mark an important era in NCAA's monopoly even though it only challenges a few subsets of rules that restrict student athletes' education-related benefits. The courts granted plaintiffs a permanent injunction

enjoining NCAA from engaging in the ongoing violations related to the compensation rules described in the Complaint.

II. Does the *Alston* court's decision require a trial to determine damages? And how the proceeds received are likely to be taxed?

Plaintiffs' requests amount of damages which is not yet ascertained and they seeks to recover it from the NCAA. Pursuant to Section 4 of the Clayton Act, they also request treble the amount of actual damages and an award of reasonable attorneys' fees and costs of suit. Plaintiffs' counsel recovered for fees and costs incurred related to the damages portion of this case as part of a settlement agreement.

Settlement:

The plaintiffs requested past damages to compensate the class members as to the difference between the scholarship's value and the cost of attending school, and also an injunction to enjoin NCAA from enforcing the challenged anticompetitive rules. The NCAA's settlement amount of $208.7 million went to the class of around 40,000 past and present student athletes in Division 1 football, men's and women's basketball since March 2010. The $208,664,445.00, after deducting the fees and expenses, were to disbursed to student-athletes who attended Division I schools that plaintiffs' evidence shows would have awarded the full cost of attendance at those schools (COA), but-for the NCAA by law in effect until January 1, 2015 capping the maximum grant-in-aid ("GIA") at less than COA.[10] The average recovery for a class member who played the sport for four years would be approximately $6,763. By approval of the settlement, each eligible class member will be directly notified and a check mailed to him or her,

[10] Notice of motion and plaintiffs' unopposed motion for preliminary approval of class action settlement.

with no claim form required and no right of any reversion of funds to defendants.

Attorney fees:

Plaintiffs filed motions for attorneys' fees and costs in the class action for their success in gaining injunctive relief against NCAA. "Plaintiffs seek $31,955,620.05 in attorneys' fees, multiplied by 1.5, for a total fee request of $47,933,430.75. They also seek $1,393,519.00 in costs (including $305,476.77 **in costs already taxed by the Clerk** at Dkt. No. 1190). Defendants object to the fees, arguing that Plaintiffs' counsel seeks compensation for tasks for which they are not entitled recovery." *In re Ncaa Ath. Grant-In-Aid Cap Antitrust Litig.*, No. 14-md-02541-CW (NC), 2019 U.S. Dist. LEXIS 237969, at *22 (N.D. Cal. Dec. 6, 2019).

The court found the hourly rates range from $85 per hour for review attorneys to $1,515 for certain partners as reasonable. *Id*. at *24.

Damages:

Plaintiffs' billing records had some entries reflecting time spent on the damages portion of the case, rather than the injunctive relief portion appropriate for the present motion. The court found that the plaintiffs were not entitled to those fees here because they have already received **more than $40 million from a settlement for that purpose**. **Defendants argued that $31,130.29 worth of billing entries went toward the damages phase.** However, plaintiffs stated that many damages-related tasks were actually performed for this consolidated injuctive-relief class, such as this class's counsel (not the damages class's counsel) reviewing filings from the damages case to determine any impact on this case. The Court was persuaded that much of this work was done in furtherance of this litigation and found to be properly compensable here. Thus, the Court approved plaintiffs' voluntary removal of certain damages-only tasks reflected

there. The Court reduced the fee award by the amount reflected by plaintiffs' withdrawn entries for damages-only tasks. *Id*. at *26.

Clerical tasks:

The court noted that tasks which are purely secretarial should not be billed at a lawyer's rate. The court found many of the tasks Defendants' challenge as not "purely clerical." The Court found these tasks to be properly compensable at the rates requested because they were "unquestionably for substantive work." The Court therefore declined to reduce the fee request for these tasks.

Depositions and preparation for witnesses who did not testify:

Plaintiffs request $49,055.54 in fees for time spent preparing for four depositions that did not occur and preparing one witness for trial who they did not call. The Court declined to reduce the fee award for depositions and preparation for witnesses who did not testify reasoning that "strategizing which witnesses to depose or to call to testify (and which not to) over the course of a five-year case is not only reasonable but is necessary and important."

Reductions:

As some identified entries were vague and difficult to understand, the court reduced the fees sought for these vague entries by 10%, or $3,487.93.

The Court reduced the $36,316.46 of the fee award challenged by Defendants related to media activities by half, or $18,158.23.

Plaintiffs voluntarily withdrew a $3,500 entry and another $975 attributed to clerical errors as they were not supported by the billing records.

Multiplier:

Defendants argued for a negative multiplier and Plaintiffs request a 1.5x multiplier. The Court found that these factors balance such that neither a positive nor negative multiplier is appropriate in this case. As plaintiffs' counsel has already recovered for fees and costs incurred related to the damages portion of this case as part of a settlement agreement and separately for work on *O'Bannon*, the Court declined both the defendants' request for a negative multiplier and plaintiffs' request for a 1.5x multiplier.

Costs:

"Federal Rule of Civil Procedure 54(d)(1) directs the Clerk of Court to tax costs to the prevailing party. The losing party bears the burden of showing why costs should not be awarded. If a party seeks judicial review of the Clerk's taxation of costs, the Court reviews the Clerk's determination de novo." *Id*. at *32-33 (citing *Lopez v. San Francisco Unified Sch. Dist*., 385 F. Supp. 2d 981, 1000 (N.D. Cal. Aug. 16, 2005).

Clerk's Taxed Costs

Plaintiffs filed a Bill of Costs seeking $363,783.03 in costs and the Clerk taxed Defendants $305,476.77 of those costs. The administrative motion to vacate the taxed costs order was denied as moot because the parties have briefed the taxed costs issues and had further opportunity to brief these issues in their supplemental filings. *Id*. at *33-34.

Realtime and Expedited Deposition Transcripts

The Clerk of Court excluded $26,902.28 of plaintiffs' requested $77,845.86 in deposition transcript and video recording costs, taxing a total of $50,943.58 in this category. The court granted plaintiffs' motion for review of the Clerk's taxed costs as to the Realtime, expedited

deposition transcripts, and video recording costs for a total of $26,902.28 in additional costs. Id. at *34-35.

The court also grants the plaintiffs' motion for review of the Clerk's taxed costs as to the daily trial transcripts, O'Bannon transcripts, and transcripts of other proceedings for a total of $18,786.77 in additional costs. *Id*. at *36.

Color Copy Costs

Defendants challenged the Clerk's taxing of $210,101.60 in unspecified color copy printing costs. They argued that a 50% reduction in these costs is warranted because the total fee is unnecessary and excessive. But they failed to provide any rationale for why the copy costs were unwarranted in the context of this litigation. Plaintiffs properly documented these costs in their Bill of Costs submitted to the Clerk, while Defendants have not met their burden in showing why these costs are excessive beyond simply calling them so. The Court declined the Defendants' request to reduce the requested and taxed color copy costs. *Id*. at *36.

Other Costs

In other costs separate from those taxed by the Clerk, plaintiffs requested $979,745.41. This amount takes into account multiple cost requests withdrawn by Plaintiffs due to duplication or other errors. Defendants objected generally to the lack of invoices or receipts. The Court was less than sympathetic to defendants' critique of plaintiffs' lack of supporting documentation due to defendants' multiple opportunities to acquire that information throughout this dispute. Plaintiffs filed a declaration stating that they offered additional information to enable Defendants to oppose their cost request but that no further information was timely requested.

“Costs that "would normally be charged to a fee paying client" are compensable.” *Id*.

(citing *Trustees of Const. Indus. & Laborers Health & Welfare Tr. v. Redland Ins. Co.*, 460 F.3d 1253, 1257 (9th Cir. 2006). The costs challenged by defendants are costs that plaintiffs' counsel would ordinarily charge to a fee-paying client. Defendants did not meet their burden in showing otherwise. As such, the Court awards the Plaintiffs $979,745.41 in costs. *Id*. at *36-39.

Awards to Named Plaintiffs

Service awards are awarded to "class representatives to incentivize those who incur the risks and responsibilities of serving in that role." *Id*. (citing *Rodriguez v. West Publ'g Corp*., 563 F.3d 948, 958-59 (9th Cir. 2009)). Plaintiffs requested service awards of $15,000 each for plaintiffs Alston, Hartman, and Jenkins, who were deposed and testified at trial, and $10,000 each for plaintiffs Hayes and James, who sat for depositions and participated generally in the case. Defendants did not oppose this request. Accordingly, the court granted this request. *Id*. at *39.

The court also granted plaintiffs the costs and fees incurred through October 30, 2019, as additional fees.

The Court awarded the Plaintiffs $1,393,351.00 in costs. The Court also awarded service fees of $15,000 each for plaintiffs Alston, Hartman, and Jenkins, and $10,000 each for plaintiffs Hayes and James.[11]

III. How will the newly allowed benefits be taxed when provided by universities to student athletes?

NCAA member schools provide scholarships to student-athletes to cover expenses related to tuition, fees, books, and meal plans.[12] Under Revenue Ruling 77–263, Athletic scholarships

[11] The court order mentions that this is not the Court's final order on the motions for fees and costs.
[12] file:///C:/Users/user/AppData/Local/Temp/22301-Article%20Text-33438-1-10-20180125.pdf

are classified as qualified scholarships.[13] However, financial benefits such as the cost of attendance (COA) scholarship transforms the scholarship to "a quid pro quo contractual agreement."[14] Such disqualified scholarships or benefits may impose payment of income taxes on student athletes.[15] The judgement in *Alston* does not discuss anything related to taxing the benefits of the student athletes.

Internal Revenue Code (IRC), Section (§) 61(a) (2006a), levies tax on any income derived by an individual irrespective of its source.[16] Still, the gross income under IRC §117 (2006b) excludes amounts received as a qualified scholarship. Equally important is the fact that §117(c) also limits such exclusion if the amount received from a scholarship is from activities like teaching, research, or such other services a student performs as a condition precedent to receive scholarship.[17] So the question of student athletes being taxed for their newly available benefits relates to the determination of whether the COA scholarship or any other such education related benefits meets the requirement for a qualified scholarship for tax exemption. Each school calculates the COA scholarship "as the difference between traditional educational expenses (i.e., room, board, books, tuition, etc.) and essential living expenses (i.e., clothing, laundry, insurance, etc.)."[18] However, though this increased funding benefits student-athletes, the calculation of the amount by each school differs. This is because, a school's COA calculation factors the living cost of the location.

Further, under the IRC §117 (2006b), to qualify for tax deduction, a scholarship recipient

[13] Id.
[14] Id.
[15] Id.
[16] Id.
[17] Id.
[18] Id.

should be a candidate at an educational organization. Payments made to students to help them in their studies or to do research are deemed as qualified scholarships if the main purpose of such activities are to enhance the recipient's education.[19]

Even though qualified scholarships are excluded from tax under §117 and the Treasury Regulations, Treasury Regulation 1.117–4(c)(1) (2003) provides for disqualification of the exclusion if the scholarship payments are determined as compensation for any past, present, or future services or a payment for the services as per the grantor's instruction or supervision. In addition, a scholarship may be disqualified if the payments enable the student to do research or gain a degree for the grantor's benefit.[20]

The IRS does not tax athletic scholarships on the basis of Revenue Ruling 77–263 (RR 77–263) (1977) that says athletic scholarship is excluded from income when specified conditions are met. RR 77–263 (1977)'s discussion on scholarship awards to student-athletes is in line with the NCAA rules and other sport governing bodies in colleges. [21]The current tax law says that persons getting income from an arrangement using their name, image or likeness must disclose the payments as income on their personal federal tax returns. Such payments should be inclusive of cash and the fair market value of services or items received.[22] So, like any other taxpayer, an athlete must file a return if he or she makes at least $400 per tax year as earnings from self-employment. The $12,200 standard deduction in 2019 is also applicable and so an athlete who earns less than that is not obliged to federal income tax. However, there is self-employment tax of an additional 15.3% above the income tax. This self employment tax is applicable even if the

[19] Id.
[20] Id.
[21] Id.
[22] https://www.jmco.com/student-athlete-tax-issues/

athlete does not owe federal income tax.[23] Student athletes may also be subject to state income tax and may be exposed to double taxation if an endorsement or similar income-generating acts take place in another state.[24]

It seems the courts have not directly addressed the financial impacts and taxation on student athletes. Experts says that though the law is laid for the benefit of student athletes, it is going to result in large tax consequences if the students are not sufficiently equipped to handle the consequences.

IV. Was the case a class action? If so, was it an opt-in or an opt-out class action?

The case is an opt-out class action. Plaintiff, Shawne Alston filed the case *Alston v. National Collegiate Athletic Association, et al*., Civil No. 4:14-cv-01011-CW (N.D. Cal.).[25] Per the settlement proposal, the release of claims is as follows: The named plaintiffs and settlement class members **who have not opted out** can release all federal and state law claims for damages against defendants relating in any act or omission of the defendants or their member institutions as alleged or could have alleged in the litigation.[26] The released claims did not include claims the injunctive class claims in this litigation which were still pending and so was not part of the Settlement Agreement.[27]

As per the settlement, a school athlete who has played NCAA Division I Men's or

[23] Id.
[24] Id.
[25] There were related other actions file by Plaintiff Nick Kindler in the case *Kindler v. National Collegiate Athletic Association, et al.,* Civil No. 14-cv-2390-DMR (N.D. Cal.), *Keller v. National Collegiate Athletic Association, et al.,* Case No. C 09-1967 CW, *O'Bannon v. National Collegiate Athletic Association, et al*., Case No. C 09-3329 CW, *Gregory-McGhee v. National Collegiate Athletic Association, et al.,* Case No. C 14-01777 CW. These cases asserted identical claims and involved nearly identical issues of fact and law.
[26] Notice of motion and plaintiffs' unopposed motion for preliminary approval of class action settlement.
[27] Id.

Women's Basketball or FBS Football between March 5, 2010, and March 21, 2017, may be a class member entitled to compensation.[28]

CONCLUSION

The U.S. Supreme Court's affirmation of the district court's ruling in the class action that challenged the NCAA rules that restrict education-related benefits to Division I basketball and subdivision football student-athletes may have larger implications on student athletes. The outcome of *Alston* now enjoins such NCAA rules that limited the education-related benefits schools may make available to student-athletes as unlawful. The decision permits colleges and universities to offer enhanced education-related benefits to student-athletes more consistent with the value of their performance. The proceeds received as per the settlement are taxable and the costs are taxed by the Clerk. However, the case does not discuss the taxation of the newly allowed benefits to student athletes. Taxation of student athletes usually relate to the determination of whether such payments meets the requirement for a qualified scholarship for tax exemption under the IRS.

Other sources:

https://www.scotusblog.com/case-files/cases/national-collegiate-athletic-association-v-alston/
https://www.hbsslaw.com/cases/ncaa-scholarships-class-action
https://bgsfirm.com/alston-v-ncaa-the-parties-settle-for-in-excess-of-208-million/
https://www.jmco.com/student-athlete-tax-issues/

[28] http://www.grantinaidsettlement.com/