

Highway to NIL Podcast: House Settlement Approval**Host: Cal Stein****Guests: Tim Bado and Pat Zancolli****Recorded: 11/5/24****Aired: 11/21/24****Cal Stein:**

Hello, and welcome back to *Highway to NIL*, the podcast series that discusses legal developments in the Name, Image, and Likeness, or NIL space. NIL, of course, affects colleges and universities all over the country, particularly those in Division I athletics. In this podcast, we delve deep into the current NIL rules impacting colleges and universities and their compliance departments. My name is Cal Stein, and I'm a litigation partner at Troutman Pepper. I come to you today with two *Highway to NIL* regulars, Tim Bado and Pat Zancolli.

Way back in June, we did our first podcast episode discussing the terms and the structure of the settlement in the *House* case, which is, of course, the major antitrust case that is shaping the future of college athletics. Then in September and October, we did two more episodes on the *House* case, providing updates on the settlement, including highlighting some criticisms that US District Court Judge Claudia Wilken had about the settlements, how she directed the parties to go, "Back to the drawing board to renegotiate and revise the settlement terms to address her concerns," and then how the parties did exactly that and resubmitted the settlement terms to Judge Wilken in the hopes of getting her approval.

In that last episode, we speculated a bit about whether Judge Wilken would approve the new terms, or whether she would come back with further criticism. Well, as it turns out, she did approve them, paving the way for this monumental settlement to progress to the next step. For that reason, we here at *Highway to NIL* are back for another time to discuss this case, the settlement, what happened, what it means, and what is likely to come next for the NCAA schools and athletes out there who are waiting to see what college sports are going to look like under these monumental changes. That is what we're going to talk about today. Before we get to that, let's do our introductions. Tim and Pat, why don't you start us off, Tim?

Tim Bado:

Yeah. Thanks, Cal. I'm the litigation associate in our Atlanta office, and deal with a number of white collar matters in my practice, including some NIL-related activities.

Cal Stein:

Pat?

Patrick Zancolli:

Thanks, Cal. My name is Pat Zancolli, and I'm a litigation associate in the firm's Philadelphia office.

Cal Stein:

All right. Welcome back, guys. Okay. As I mentioned, this is our fourth podcast on the *House* settlement. It is certainly a monumental enough settlement to warrant the attention that we've given it. What it also means is that we are now several months from the settlement first being announced, or the terms first being announced. Before we get to any of the new stuff, let's do a quick level set with a recap of *House*, where we are and how we got here. The case, of course, is *House*, the NCAA. The story begins way back in 2020 when former Arizona State swimmer, Grant House, among numerous other athletes sued the NCAA for barring NIL payments for athletes prior to 2021. Parties also challenged the rules that prohibit the NCAA and its member conferences from sharing the revenue they make from their broadcasting contracts with networks, marketing contracts with companies that make sports apparel, social media sponsorship, and other commercial activities that involve the use of student athlete NIL.

The *House* plaintiff's alleged a number of antitrust violations on behalf of three proposed classes and subclasses of student athletes. Okay, now we fast forward to 2024. The parties in the case agreed to the terms of a settlement and what a doozy of the settlement it was. The three main components of it were one, damages approximately 2.8 billion dollars' worth of back pay damages to former student athletes. Two, revenue sharing, which would allow schools to commit many, many millions of dollars to pay student athletes directly on a go forward basis, and three, additional financial benefits to student athletes, including moving away from the scholarship model and toward a roster limit model.

The parties submitted the proposed terms to the judge in charge of the case, Judge Wilken for approval, and there was a hearing in early September when Judge Wilken did not approve them. She had a bunch of criticisms and told the parties, "Go back to the drawing board and renegotiate that." We discussed this at some length during our podcast episode on September 17th. The parties go back, they renegotiate though, in my opinion, they hardly make the wholesale changes one might expect, given the direction to go back to the drawing board. Then later in September, they resubmit revised settlement documents to Judge Wilken. Again, we discussed this resubmission on our October 3rd podcast episode, which brings us to October 7th, when Judge Wilken preliminarily approved the settlement. This approval is a key moment in *House* the NCAA, because it paves the way for nearly 2.8 billion dollars in back payment to student athletes and results in a monumental shift in the college sports model going forward with student athletes being paid by the schools if it goes through.

Now, Judge Wilken's approval was limited to signing, dating, and updating the settlement's timeline. She did not issue an accompanying opinion. All right, so that's where we've been. Let's get to the new stuff. Where does that leave us now? I want to start with process. In my view, there are two process focused areas. First, I want to talk about the legal process related to the settlement. Second, I want to talk about the operational process of implementing the settlement. Tim, let's start with you and the legal process. The settlement has been approved by the court. We know there are people and institutions out there who do not agree with it. What's happening with them? Are they just out of luck at this point?

Tim Bado:

No, Cal. They're not out of luck. Any settlement member can object to any aspect of the settlement. I mean, there's a rather just procedural way for them to do that. They can either mail

a letter to the class action clerk at the US District Court, the Northern District of California, or they can file a letter electronically. The letter just has to include the objector's full name and address, the case number, and most importantly, the reason for the objection, and then whether the objector, or their lawyer wishes to speak at the third hearing. The objections must, there's the important part, the objections must be postmarked, or filed electronically no later than January 31st, 2025.

Importantly, we've already seen a number of objections filed to this, including rowers at Yale, Oregon State, George Washington, and Texas. I no doubt expect that we'll see additional objections filed, given that we have another two and a half months until the deadline. The primary objections that we've seen so far are really based on three arguments, or on being the settlement discriminates against female student athletes to the settlement replaces, one, illegal price-pitching regime for another. Then three, the settlement is improper avenue for cutting off student athletes' employment claims.

Cal Stein:

Okay, Tim, thanks. That's a really helpful overview. I agree that we are likely to see a lot more objections being filed in the interceding months here. Really, this objection process in many ways, raises more questions than it does answers. I mean, sure, these objections need to be filed by the end of January, but what happens then? Who's going to decide these objections? Will all of them be heard?

Tim Bado:

Yeah. Thanks, Cal. Judge Wilken will hear each of these objections. As I noted, just a minute ago, the objectors can have an opportunity to be heard by Judge Wilken at the hearing, or they can just file electronically, or send in a letter. She will hear each of those objections, and we'll take them into consideration at the fairness here.

Cal Stein:

Yeah. I mean, that makes sense to me. Although, I do wonder if we're going to get a situation where maybe not all objections will be created equally. We'll have some of these objections that probably follow the process you outlined and are heard by Judge Wilken at the hearing. I wonder if we'll see other objectors, or groups of objectors take another route and file their objections in the form of a lawsuit, seeking an injunction, or maybe an appeal. We'll have to see how that plays out.

Okay, so let's shift gears from the legal process now to the operational process surrounding the settlement. I'm going to turn to you, Pat. We have an approved settlement that upends pretty much everything we thought we knew about how college sports operated. How in the world are schools and student athletes going to operationalize this settlement, assuming it ultimately does get finalized? What is the process for that?

Patrick Zancolli:

Thanks, Cal. The process for that looks like a notice campaign and a claims period, which, as we've discussed already, is underway. Current and former athletes that are entitled to receive a

settlement will receive the terms and claimant procedure for the settlement. Notice will come to those who are eligible by email, postcard, and digitally. Either they have multiple different avenues to provide notice throughout this campaign. Student athletes who are eligible can review the terms of the settlement and decide whether or not they'd like to remain in the damages class, or opt out. Again, that deadline for claim period will close on January 31st, 2025.

On the school side, the settlement has selected Verita Global as the settlement administrator, and schools are going to need to provide certain information to the settlement administrator. That information includes names of current and former student athletes who may be eligible, last known contact information, and then other additional information that they may need, such as academic gears on a given roster, periods of eligibility, different pieces that will allow this process to move forward. To the extent that schools have not already done this, they're going to need to collect the information and, again, provide it to the settlement administrator and cooperate for any further requests for additional information.

Cal Stein:

Well, so thanks, Pat. When you lay it out that way, it really all sounds pretty simple. My guess is that it's really going to be anything but simple. There are going to be bumps along the way, mostly because no school, nor any student athletes have ever had to do anything like this before. Looking at the process that you outlined, do you have any suggestions for schools in particular on how they really ought to be handling this, even as simple as whether this is something that their athletic department can handle, or whether it should be routed through legal?

Patrick Zancolli:

Thanks, Cal. Ultimately, I do think it should be routed through legal, but I do think as well that athletic departments will play a role in this process. Athletic departments are probably the best situated to having access to a lot of this information, but in-house legal departments at schools will have the skills and expertise to coordinate receiving that information and communicating it to the settlement administrator.

I think, ultimately, this is a pretty hefty process. I think there's going to be bumps on both sides of the road on the student claimant side, as well as coming from the settlement administrator. I think in-house legal departments at schools will be best situated, given their legal expertise, given their understanding of this type of process to handle this process.

Cal Stein:

Okay. Let's stay with the operational side of the process here. As I noted, the *House* settlement comes with major, major, major changes to how athletic rosters are going to be constructed and maintained. Specifically, one of the elements is moving away from the scholarship model and to a model focused on roster limits, which looks to me a lot more like a professional sports league model than a collegiate sports model. Despite how significant these changes are, we've not really seen much, or really anything from the NCAA by way of rules or guidance on how this is going to work. Pat, talk us through the roster limit changes based on what we know so far.

Patrick Zancolli:

Absolutely. I think the roster limit changes are pretty monumental here. There are different proposed roster limits for each sport. At this point, we're looking at football being 105, men's and women's basketball being 15, baseball 34, men's and women's soccer 28, softball 25, and volleyball 18. As is in the name, a roster limit is going to result in decreased roster spots on each of these teams, which we're already seeing is mostly affecting walk-on athletes and those on partial scholarships. To that end, we're seeing that perspective athletes and their families who were under the impression that they would have a spot on a given athletic roster have expressed outrage over spots that either have been, or will soon be eliminated.

I think this concern is particularly true for Olympic sport athletes, rowing, fencing, gymnastics that will be most affected given the new revenue sharing model that we've been discussing and the sport's failure to turn a profit.

Cal Stein:

Yeah, Pat, you mentioned some challenges, shall we say, with these roster limits and the impact they are likely to have, particularly to the bottom of the rosters, including walk-on athletes. You also made the point correctly in my view that this impact is going to be felt most acutely in the non-revenue sports of the Olympic sports, whatever you want to call them. In fact, I think we've already started to see stories about this in the news. There have been reports of student athletes being notified by their schools that they're no longer part of a team. There have also been reports of more than 20,000 parents and student athletes joining a Facebook group dedicated to this issue, and there has actually been talk of this group authoring a significant objection to the settlement on these grounds, which goes to what we talked about a few moments ago.

With all of that said, let's look at it from the school perspective. The schools are in a very difficult spot here, having to adhere to this new model, little time to do so, and almost no guidance from the NCAA. What are schools to do? What should they be doing now? What should they not be doing? What should they be thinking about?

Patrick Zancolli:

Yeah. I think, ultimately, they have these roster limitations in place. They know what the numbers are looking like. I think schools should be looking at those numbers and schools should be working within their individual teams to be coming out with plans on how they will comply with those limitations, assuming they are to go forward. I think, schools are also going to want to keep an eye. As you said, there are significant pressure coming from students and families regarding this aspect of the settlement. I think they're going to want to continue to monitor that and see how, if there are any changes that are made, they're able to respond to those.

I think, also, given the Olympic sports piece of the issue, I think schools are going to need to think creatively about how they're going to be able to properly maintain and fund these teams, given the new model, different ways to raise funds, whether that be for athletic departments, or for schools, teams individually, that will allow them to continue to operate at a high level, despite the new revenue sharing model that they will be operating within.

Cal Stein:

Okay. Thanks, Pat. Let's talk about the flip side to that coin, which is how schools are going to deal with the scholarship athletes that remain part of their teams. Tim, can you walk us through what scholarships are going to look like going forward if the *House* settlement gets implemented as we expect it will?

Tim Bado:

Yeah. Despite there actually being a decrease in the roster limit, scholarships will be expanded as part of the *House* settlement. Scholarship caps will be removed. What that looks like, particularly for football and baseball is football will go from 85 scholarships to 105 scholarships. Baseball, I think, will see actually the biggest increase is from 11.7 scholarships to 34 scholarships. The change in the *House* settlement will allow, but importantly, will not require schools to offer additional scholarships. This means scholarship caps, plus less student athletes on a roster equals a greater scholarship availability.

Again, as Pat mentioned, however, student athletes on a partial scholarship or walk-ons, maybe eliminated from rosters entirely given that schools now can offer scholarships to nearly everybody on their roster.

Cal Stein:

Yeah. Tim, I can't help but hear that and think it really starts to sound a lot like a professional sports league and really nothing like we have traditionally had at the college sports level. It sounds to me that how schools use scholarships going forward may ultimately be more strategic, for lack of a better word, than ever before. That is really not a word that I have to date associated with college athletics. Again, it's more akin to a professional sports model, where teams should be focused on strategically maximizing the value of their resources. Do you agree? If so, how do you think that's going to impact schools?

Tim Bado:

I completely agree. I think strategy is the perfect word to use here with describing this new system. Schools are going to want to consider a couple of different things on how best to utilize to increase scholarships. Not surprisingly, we'll see the highest revenue generating sport, such as football and basketball. We'll likely see the most benefit, given the new revenue sharing model. I think more scholarship availability could also mean more competition for top-tier student athletes. Schools could potentially use the transfer portal more strategically as well. That can almost be akin to free agency, or a trade deadline, like we see professional sports to pick up very specific, or individual student athletes they needed to put the best product on the field. How schools utilize that is going to be extremely strategic, as you pointed out.

Then, schools also will need to consider how to best maintain their rosters. We've said a couple of times now, there will be decreased roles for partial scholarships and walk-ons to be able to play. Then, also, we'll have to consider how smaller schools who can't provide the same level, or number of scholarships, not because they're not allowed to, of course, but because the funding might not be there. They'll have to be even more creative as to how they can fill their rosters with the most talented student athletes that they can. It's just going to be different for

each institution and they're going to have to really look at where they stand individually to decide their best steps forward.

Cal Stein:

Great, great points, Tim. I think that's terrific analysis. All right, so before we end, let's take a quick look ahead at what's coming next with this *House* settlement. There will be a motion for final approval of the settlement that's coming in March of 2025. That is, of course, after the deadline that we've already discussed for objections and opt-ins at the end of January. There is a hearing for final approval that is scheduled for April 7th, 2025. That's the hearing most likely, where Judge Wilken is going to listen and perhaps, rule on some, or all of the objections.

Really, that gives us about four, five months from now, until then, during which, I expect the majority of the focus to be on objections to the settlement and how those objections work their way through the system, the court system, and maybe even through the appellate court system, we will have to see. At the end of the day, this is the settlement that we currently have. It may get upended by these objections and/or by an appeal, but it may not. What we do know is that a lot of people and a lot of schools have agreed to this. Now, the federal district court that's overseeing the case has preliminarily agreed to it. In short, this settlement has support, not only of the power brokers in college sports, but now from the judge overseeing the case.

Well, that is not to say that it is a guarantee that this settlement will ultimately be finalized and implemented, but right now that sure does seem, at least to me, to be the most likely outcome. Yes, the possibility remains for there to be some dramatic change, thanks to an objection or to an appeal, but I would really caution everyone. Schools, student athletes, collectives, conferences, everyone, really help think you should count on that happening. Schools in particular should be preparing, should be preparing now for the seismic shift that will come if this settlement is finalized and its new payment structure becomes the law of the land in college sports, perhaps as soon as the 2025-2026 academic year. There is much to be done. Schools should be working with internal stakeholders and external legal counsel right now to make preparations.

Even if things end up changing, that work will likely still be valuable, because we have crossed a Rubicon of sorts and whatever the ultimate new structure of college sports look like, I'm comfortable saying, it's going to look a lot more, like what we have in *House* than what we had before. More importantly, the cost to a school of not being prepared for the implementation of this settlement, if it does happen, will be very high.

With that, we are now out of time here today. I do want to bring this discussion to a close. I really want to thank you, Tim, and you, Pat, for joining me on this podcast. I also want to thank everyone for listening. Do you have any thoughts, or any comments about this series, or about this episode, I invite you to contact me at callan.stein@troutman.com. You can subscribe and listen to other Troutman Pepper podcasts wherever you listen to podcasts, including on Apple, Google, and Spotify. Thank you for listening and stay safe.

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