House Settlement—Detailed Breakdown

Introduction

The settlement in *House v. NCAA* ("**House Settlement**") was formally approved by Judge Claudia Wilken on June 6, 2025. The House Settlement is poised to bring significant changes to the landscape of college athletics, with schools now permitted to make direct payments to student-athletes. This shift introduces a host of legal and operational challenges that increasingly mirror the compensation structures of professional sports. Issues related to contract enforceability, salary caps, and marketing rights will become central to how athletic programs operate and make strategic decisions. These concepts extend beyond compliance and will play an integral role in roster building, financial planning, and long-term program sustainability and success.

This article provides an analysis of the key legal principles underpinning the House Settlement and explores their implications for college athletics, including: (1) an overview of "NIL" and athlete compensation basics; (2) how professional leagues structure and manage player contracts and compensation; and (3) analysis of the House Settlement, including direct student-athlete payments, the Pool Cap, and the compliance framework surrounding marketing rights.

NIL and Athlete Compensation Basics

The legal principle known as the "right of publicity" prohibits the use of an individual's name, image, likeness, and/or other recognizable characteristics ("**NIL**") for commercial purposes (i.e., advertising, marketing, or promoting goods and services) *without consent from the individual*. Consent to use an athlete's NIL for commercial purposes ("**Marketing Rights**") is generally granted by athletes in two contexts: (1) to a third-party sponsor or company to endorse products or services ("**Third-Party Marketing Rights**"); and (2) to the athlete's team and league for the purpose of promoting the team, league, or sport itself ("**Team Marketing Rights**"), such as in official broadcasts, ticket sales campaigns, and team-branded digital content.

Marketing Rights are separate and distinct from athletic performance and duties related to the sport ("**Athletic Services**"), which generally include participation in games, practices, team-related appearances, performance bonuses (e.g., bonuses tied to statistical achievements), and other responsibilities directly tied to athletic performance and team membership. Athletic Services are typically conferred through a binding, written player contract, in exchange for the player's services as an athlete. For example, the NBA Uniform Player Contract states that the team employs the player as a "skilled basketball player" and requires the player to provide Athletic Services on behalf of the team and the NBA that include (i) playing in exhibition, regular season, and playoff games; and (ii) attending team practices, meetings, and workouts.

In addition, the NBA Uniform Player Contract, the NBA Collective Bargaining Agreement ("**NBA CBA**"), and NBA Group License Agreement provide a comprehensive framework for the NBA and the teams' use of the player's NIL: (1) the player grants Team Marketing Rights to the NBA and the team, including granting the NBA and team the right to use the player's NIL to broadcast and promote NBA games and promote the game of basketball in general; (2) players may, upon request, be required to make promotional appearances on behalf of commercial sponsors of the NBA or team; and (3) the player's NIL is permitted to be used in collective marketing and promotional efforts involving multiple players, including merchandise, video games, and other licensed products.

Third-Party Marketing Rights, Team Marketing Rights, and Athletic Services are distinct concepts that reflect different forms of value. The NBA salary cap, a collectively bargained limit on the aggregate compensation a team may allocate to player salaries, distinguishes among these forms of compensation. Generally, compensation set forth in a player's contract in exchange for Athletic Services and Team Marketing Rights is included in team salary and counts toward the salary cap. In contrast, bona fide compensation paid by third-party sponsors for Third-Party Marketing Rights is typically excluded from the salary cap, subject to the anti-circumvention provisions discussed below.

House Settlement

The House Settlement represents a significant shift in collegiate athletics, introducing several pivotal changes:

1. **Direct Payments; Pool Cap.** Schools are permitted to directly pay student-athletes, with the total compensation limited by a cap ("**Pool Cap**"). The Pool Cap is calculated as a percentage of designated athletics-related revenue from the Power 5 conferences, including media rights, ticket sales, and sponsorships. Initially, the Pool Cap is set at 22% of the specified revenue, increasing by 4% in the second and third years, and being recalculated every three years. The initial projected Pool Cap is roughly $20.5 million per school.
2. **Roster Limits.** NCAA Division I scholarship limits are eliminated and replaced with roster limits adopted by the NCAA.

3. **NIL/Marketing Rights.** Athletes will continue to be permitted to grant Third-Party Marketing Rights to third parties not affiliated with the school, and these payments will not count toward the Pool Cap, subject to certain restrictions described below including heighted scrutiny for boosters and "NIL collectives" affiliated with a school.

While the granular details are still being finalized, schools and athletic departments will need to quickly develop internal frameworks to operationalize models that are compliant, competitive, and sustainable. Among the most immediate considerations are: (1) the structure and classification of direct player agreements, including the enforceability of such contracts under state law; and (2) compliance with the new Pool Cap and the restrictions imposed on Third-Party Marketing Rights.

House Settlement—Nature of Direct Athlete Payment

The House Settlement expressly permits (but does not require) schools to directly pay student-athletes, subject to the Pool Cap, however, it appears that these direct payments are intended to reflect compensation for Team Marketing Rights. The House Settlement describes these payments as "additional payments and/or benefits to student-athletes over and above annual existing scholarships and all other benefits currently permitted by NCAA rules as of the date of the filing of the motion for final approval…"

Compensation in exchange for Athletic Services is not directly addressed by the House Settlement. While compensation for Athletic Services is technically in addition to "all other benefits currently permitted by NCAA rules", the House Settlement also states that existing NCAA rules limiting compensation to student-athletes, except as modified by the House Settlement, may remain in effect. It is likely that NCAA rules will continue to prohibit compensation for Athletic Services (i.e., pay to play) in the post-House Settlement era.

Conversely, the House Settlement expressly permits Team Marketing Rights and the ability for a school and student-athlete to enter "exclusive or non-exclusive license and/or endorsement agreement for that student-athlete's NIL, institutional brand promotion, or other rights. . ." and agreements where the school or a designee/subcontractor of the school (e.g., a local rights holder) "may act as the marketing agent for the student-athlete with respect to third-party NIL contracts."

The distinction between an exclusive contract for Athletic Services and an exclusive contract solely for Marketing Rights is critical because the legal enforcement and contractual remedies available in the event of a breach may differ significantly, including the non-breaching school's ability to obtain injunctive relief. Injunctive relief is an equitable remedy ordered by a court requiring a party to either refrain from or perform a specific act; it is sought when a party breaches or threatens to breach a contract and generally requires the non-breaching party to show that money damages alone would be an inadequate remedy.

In the case of player contracts for Athletic Services, the unique and irreplaceable nature of the player's contribution to the team provides a compelling argument for the necessity of an injunction, and there is legal precedent that has supported the enforcement of such contracts through injunctions (i.e., a court order preventing the player from playing for the separate team). The potential damage to team performance and competitive balance is often considered irreparable, justifying the need for immediate court intervention.

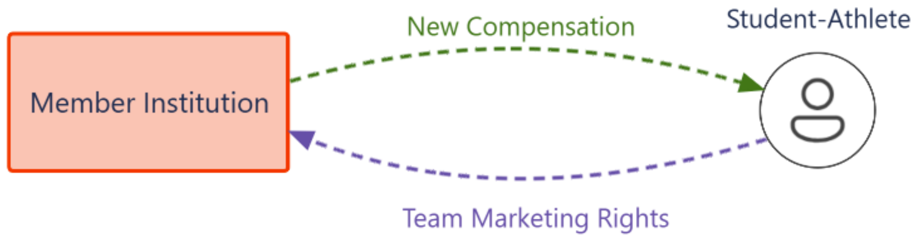
In contrast, attempting to obtain injunctive relief to enforce an exclusive marketing agreement may face the hurdle of proving that financial compensation is inadequate. The commercial nature of these agreements means that courts are more inclined to view monetary damages, including any liquidated damages included in the contract, as an appropriate remedy, reducing the likelihood of an injunction being granted. The ability to enforce contracts with student-athletes under state contract law will likely become a key consideration for schools in the post-House Settlement landscape.

House Settlement: Compliance with the Pool Cap and Restrictions on Third-Party Marketing Rights

The House Settlement imposes restrictions on Third-Party Marketing Rights that, if implemented with a viable enforcement mechanism, will significantly change the current "NIL" landscape. First, the House Settlement expressly protects a student-athlete's ability to monetize their Marketing Rights, including permitting compensation in exchange for Third-Party Marketing Rights and Team Marketing Rights. However, compensation for Marketing Rights now requires two additional considerations: (1) compliance with the Pool Cap; and (2) certain reporting requirements and fair market value analysis.

Pursuant to the House Settlement, compensation directly from a school (e.g., consideration for Team Marketing Rights) are subject to and count toward the Pool Cap. However, payments from third parties (i.e., entities not owned or operated by the school) for Third-Party Marketing Rights are not counted toward the Pool Cap. Interestingly, if a school enters into an agreement to act as the marketing agent for the student-athlete with respect to third-party NIL contracts, then any player compensation procured by the school but paid for by third party do not count toward the Pool Cap. Additionally, compensation received by the school in exchange for sublicensed student-athlete Marketing Rights do not count toward the Pool Cap.

Counted Toward the Pool Cap



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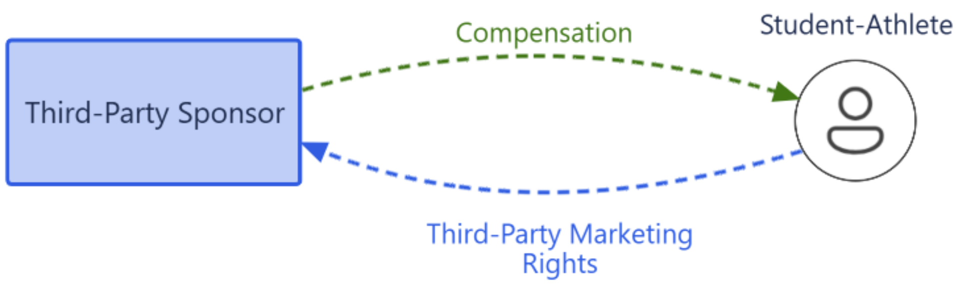

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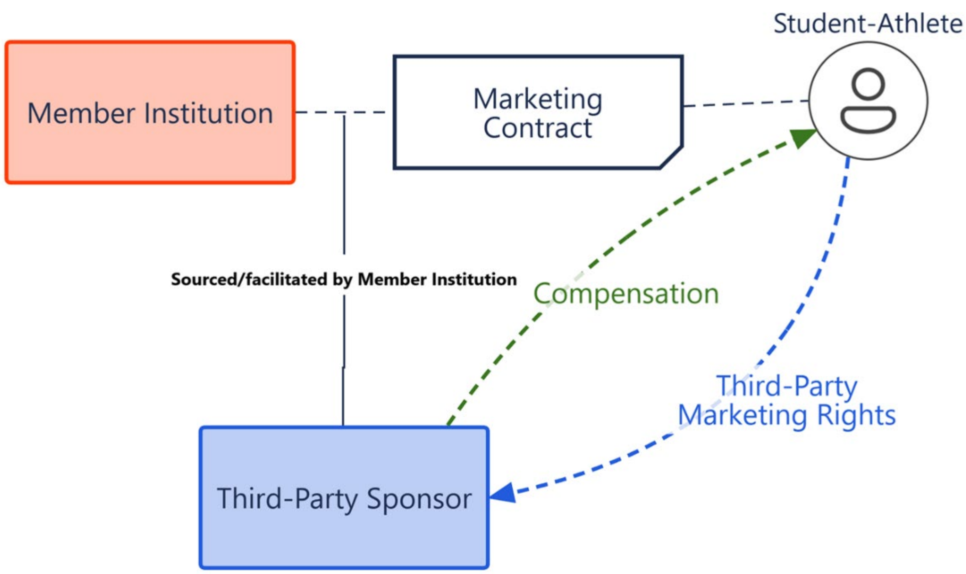
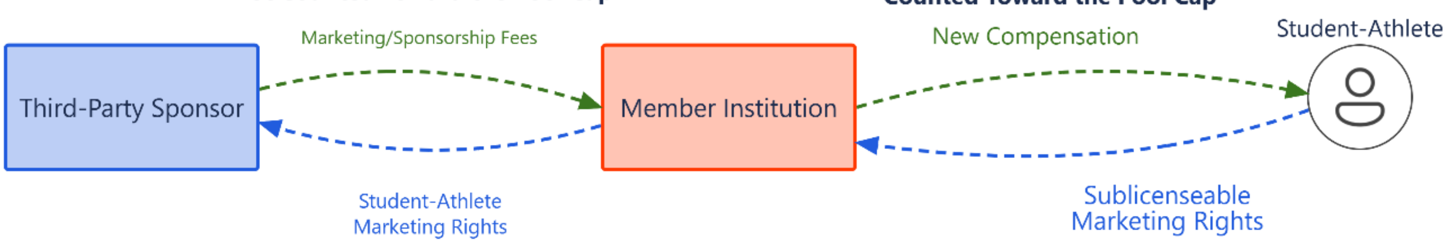


Not Counted Toward the Pool Cap **Counted Toward the Pool Cap**



Since payments from third parties for Third-Party Marketing Rights are not subject to the Pool Cap, the House Settlement introduces safeguards aimed at preventing circumvention. First, the House Settlement clarifies that entities or organizations that are owned, controlled, or operated by schools and/or conferences are <u>not</u> third parties, meaning, payments from these entities would count toward the Pool Cap. Additionally, all Division I student-athletes must report any third-party NIL contracts or payments with a total value of $600 or more to their school and/or the NCAA's designated reporting entity (discussed below).

Boosters and "NIL collectives" affiliated with a school (defined as "Associated Entities and Individuals" in the House Settlement) will be subject to heighted scrutiny. Currently, boosters and NIL collectives operate with minimal oversight, resulting in the widespread distribution of substantial financial compensation to student-athletes. These payments often exceed the fair market value of the student-athletes' Third-Party Marketing Rights, and many commentators argue that the current system effectively functions as a pay-for-play system where compensation for Athletic Services and attendance at a particular school are disguised as agreements for Third-Party Marketing Rights.

To address these issues, the House Settlement expressly permits the NCAA and conferences to adopt or affirm rules prohibiting NIL payments by boosters and NIL collectives unless the payments are: (1) for a valid business purpose related to the promotion or endorsement of goods or services offered to the general public for profit; and (2) made at fair market value, consistent with rates and terms paid to similarly situated individuals with comparable NIL value who are not student-athletes at the same institution. These restrictions represent a large shift from the current system, where boosters and NIL collectives operate with significant discretion in defining the value of a student-athlete's marketing rights.

The NCAA has partnered with Deloitte to launch "NIL Go", a centralized platform for reviewing marketing deals valued at $600 or more. The system uses a three-stage review process:

1. *Payor Association Verification*: Determination of whether the entity funding the marketing deal involves a booster or NIL collective affiliated with the school that would trigger heightened scrutiny.
2. *Valid Business Purpose Verification*: Determination of whether the marketing deal serves a legitimate commercial purpose, such as endorsing a product, appearing in advertisements, or creating promotional content.
3. *Fair Market Value Analysis*: A 12-point analysis assessing if compensation aligns with similarly situated individuals in comparable deals.

If a marketing deal is not cleared by the NIL Go process, the student-athlete may (1) revise the deal and resubmit; (2) cancel the deal; (3) appeal through a neutral arbitration process; or (4) proceed with the deal at risk of eligibility consequences. It is expected that no penalties can be imposed on a student-athlete while arbitration is pending, absent the arbitrator's finding of good cause.

Note, most professional athletes generally earn more compensation from Athletic Services and Team Marketing Rights than Third-Party Marketing Rights. *Sportico's* 2024 list of the 100 Highest-Paid Athletes in the World included 33 NBA players, 92% of whom earn more from Athletic Services and Team Marketing Rights than Third-Party Marketing Rights, with the three exceptions being LeBron James, Steph Curry, and Giannis Antetokounmpo.

<u>Enforcement; Additional Considerations</u>

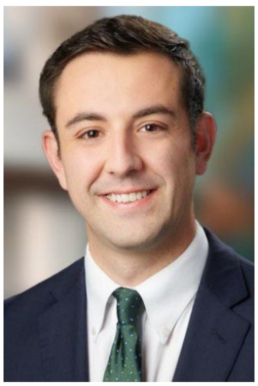
If the Pool Cap and additional restrictions set forth in the House Settlement are implemented with a viable enforcement mechanism, the current landscape of student-athlete compensation will change significantly, and student-athletes will have the ability to earn: (1) compensation directly from the school (and school affiliated entities), subject to the Pool Cap; (2) compensation for Third-Party Marketing Rights from true third-party entities that are unrelated to the school; and (3) compensation from school-affiliated boosters and NIL collectives so long as such compensation is for Third-Party Marketing Rights at a fair market value (and not disguised compensation for attendance at a particular institution).

In connection with the House Settlement, the NCAA Division I Board of Directors have begun to approve new rules and enforcement mechanisms intended to "bring clarity and stability to the NIL environment for all Division I schools", including an enforcement entity that will be created and operated by the conferences to "provide oversight for rules relating to the terms of the settlement, including third-party NIL and the annual benefits cap", according to the NCAA.

How these rules will be interpreted and enforced in practice remains to be seen. The legal and regulatory framework is still evolving, and much of the operational detail will likely be clarified and tested over time. However, the core legal concepts at play, including, salary cap compliance, player contracts, and player Marketing Rights, are foundational to the compensation models used across professional sports. For example, in professional leagues like the NBA, salary caps and anti-circumvention provisions are tightly defined and contractually enforceable. Pursuant to the NBA CBA, teams are expressly prohibited from (i) entering agreements or taking actions designed to defeat or circumvent the intention of the salary cap provisions, including undisclosed promises for future contracts or compensation, arrangements where sponsors or business partners pay players compensation that is *substantially in excess of the fair market value for services rendered* (especially if the player's team salary is below market value); and (ii) providing players with investment or business opportunities not permitted by the NBA CBA. The NBA league office and Commissioner have investigative and enforcement authority, and violations can result in significant fines, voided contracts, and the loss of draft picks.

Conclusion

While college athletics operate under a fundamentally different governance structure, the similarities between college athletics and professional sports are increasingly overlapping, and the core concepts approved by the House Settlement, including Marketing Rights, player contracts, and salary cap compliance are foundational concepts that underpin compensation models across professional sports. Given the short runway before the new academic year and seismic shifts (and uncertainty) to the rules and legal considerations governing college athletics, legal advisors, athletic departments, compliance departments, coaches, agents, athletes, and fans can look to existing professional league models to understand the structural components and core principles that underpin player contracts and salary caps that may apply in the post-House Settlement collegiate athletic landscape. This is sports law at its most complex, making legal and financial advisors with professional sports experience important and valuable.



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