Head of the Class: An Analysis of NCAA Class Action Litigation Involving Student-Athletes

Jim Evans, The Ohio State University
Brian Turner (Advisor), The Ohio State University

Law - Law (College Sport)
20-minute oral presentation (including questions)  
Abstract 2017-153

Friday, June 2, 2017  
10:55 AM  
Room: Columbia

Class action litigation has received a great deal of scrutiny in recent years from the judicial bench, legal scholars, and the public at large (Tidmarsh, 1998). After peaking in the late 1990s, class action litigation has slowly become less favored in attacking alleged corporate malfeasance (Barrett, 2013). However, it seems current and former intercollegiate student-athletes are increasingly turning to class action to bring claims against their schools and the National Collegiate Athletic Association (NCAA) itself (e.g., In re NCAA Student-Athlete Concussion Litigation, 2016; McCants v. NCAA, 2016; O’Bannon v. NCAA, 2014).

Often, a key determinant in the ultimate outcome of class action litigation is whether the court will certify the class of plaintiffs (Ulen, 2011). Under Rule 23(a) of the Federal Rules of Civil Procedure (2016), the court may only certify a class if: (1) the class is so numerous that joinder of all members is impracticable (numerosity); (2) there are questions of law or fact common to the class (commonality); (3) the claims or defenses of the representative parties are typical of the claims or defenses of the class (typicality); and (4) the representative parties will fairly and adequately protect the interests of the class (adequate representation). Further, the plaintiff must also demonstrate: (1) inconsistent results may adversely affect the defendant if the cases were tried separately, (2) individual adjudications would adversely affect the interests of other potential class members, (3) the defendant has acted toward the class as a whole such that injunctive relief is the appropriate remedy, or (4) common questions are so predominant in the case that class action is a patently superior method of litigation (Fed. R. Civ. P. 23(b), 2016).

The purpose of the current study was to analyze recent court decisions on class certification of student-athletes who filed suit directly against the NCAA. Sixteen written judicial opinions between the years 2000 and 2015 were identified that ostensibly decided whether to certify a class of student-athletes in litigation with the NCAA. In 14 cases, the class was explicitly or implicitly approved. In one case, Rock v. NCAA (2016), the court denied class certification altogether for various reasons. In another, In re NCAA Student-Athlete Name & Likeness Licensing Litigation (2013), the court approved a class for one purpose but denied it for another. This study was primarily guided by the following research question: Why have some student-athletes been successful in achieving class certification in their claims against the NCAA, while others have not?

In Rock v. NCAA (2016), the plaintiff, a former NCAA football student-athlete who lost his one-year athletic scholarship, sought to represent a class comprised of all recruited student-athletes who were ever classified as “initial counters” for scholarship purposes under NCAA rules and subsequently did not retain their scholarships for the duration of their academic careers. The court held (a) the class could not be ascertained (because determining who was “recruited” was too vague and subjective), (b) the plaintiff’s claims were not typical of other class members, and (b) the plaintiff could not satisfy the predominance and superiority requirements of Rule 23(b)(3). In In re NCAA Student-Athlete Name & Likeness Licensing Litigation (2013), the court certified one class of current and former student-athletes for purposes of injunctive relief, but denied class certification for the class seeking monetary damages. Recognizing that the superiority requirement of Rule 23(b)(3) requires a plaintiff to demonstrate that the case is manageable as a class action, court stated it could not “identify a feasible way to determine which members of the Damages Subclass were actually harmed by the NCAA’s allegedly anticompetitive conduct” (In re NCAA Student-Athlete Name & Likeness Litigation, 2013, p. 33). This presentation will further examine the reasons why these cases are distinguishable from the 14 in which classes of current or former student-athletes were certified against the NCAA, and implications for potential future litigants will be discussed in detail.