



OPENING KICKOFF



Chris Conniff
Partner

As the new chair of Ropes & Gray's Sports Industry group, I welcome you to our Q2 Sports Law Today newsletter. The first order of business is to thank my predecessor, recently retired partner Dennis Coleman. As many of you know, Dennis founded this group two decades ago and worked tirelessly to build it into the strong practice that it is today. Our current team owes him a debt of gratitude. Thanks, Dennis!

It is a momentous time to be taking over the group. As the sports industry navigates the current global health and economic crises and confronts issues of racism in our society, organizations face complex and unprecedented legal challenges. From managing a student-athlete's ability to financially benefit from her name, image and likenesses while remaining compliant with NCAA rules to the legal hurdles associated with reopening sports venues, sports industry clients require its lawyers to advise on unique and difficult issues. Ropes & Gray's Sports Industry Initiative works with clients to make sure that they have access to lawyers at our firm that are best suited for their specific needs during these uncertain times.

We hope you will find this edition informative and useful. Please contact me or one of my colleagues if you have any questions or if we can be of service to you.

Sincerely,
Chris

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About Ropes & Gray's SPORTS LAW PRACTICE



THE SPORTS LAW INDUSTRY group at Ropes & Gray brings together the diverse practices, resources and experience of the entire firm to focus on sports-related issues. Businesses, leagues, teams, colleges and universities, non-profit organizations, and individuals involved in professional and amateur sports encounter increasingly complex and specialized legal issues. Our clients call on us to advise them on sophisticated domestic and international transactions of all shapes and sizes.

Our sports lawyers have critical industry and business knowledge and experience in virtually every area of law that touches sports, helping to ensure that our clients receive effective, sophisticated counsel on every issue, including:

- Complex commercial transactions
- Sports venue leasing
- Broadcast and media rights
- Sponsorship and licensing
- Contract negotiations
- Employment hiring, separation and transition
- Transactional matters, such as the purchase and sale of professional teams
- Investigations and compliance
- Dispute resolution
- Anti-corruption protection
- Tax issues
- Organization of charitable foundations and other tax-exempt entities
- Brand management and protection

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About Ropes & Gray's SPORTS LAW PRACTICE *(cont. from page 1)*

- Privacy regulations
- Estate planning and wealth management
- Sports-related real estate development

We represent a variety of organizations and individuals in areas covering many aspects of sports law. We serve as outside general counsel to the National Association of Basketball Coaches, whose members include approximately 5,000 college, junior college and high school basketball coaches. In addition, we represent various large public companies, colleges and universities in a variety of sports-related matters.

OUR CLIENTS INCLUDE

- The National Association of Basketball Coaches
- The National College Athletic Association
- The National Football League
- National sports associations and foundations
- Athletic footwear and licensed apparel manufacturers
- Professional sports franchises
- Collegiate and professional coaches
- Colleges and universities
- Sports marketing organizations
- Athletic administrators
- Broadcasters



What Have OUR SPORTS LAWYERS Been Up To?

- **The National Football League (NFL)** in a strategic partnership with Endeavor to operate On Location Experiences. On Location is the official hospitality partner of the NFL and a partner to more than 150 other rights holders, including the NCAA, the PGA of America and the United States Tennis Association, and provides official access for both corporate clients and fans looking for immersive experiences at marquee events.
- **The United States Olympic Committee** in a 10-month independent investigation into the abuse of elite and Olympic gymnasts by team doctor Larry Nassar.
- **The National Association of Basketball Coaches (NABC)** as outside counsel in connection with general corporate governance since its inception, and in advising the NABC its current executive director transition.
- **An investment bank** in connection with a loan financing for a European first-division football club.
- **A major sports network** in negotiating advertising rights for regional programming, and a Major League Baseball team in negotiating radio rights.
- **A major university health care system** in various endorsement agreements and licensing opportunities with professional leagues, teams, stadiums, concerts and events, and individuals.
- **The head coach of a men's basketball team** and a former student athlete at different NCAA Division I universities in connection with an investigation by the U.S. Attorney's Office for the Southern District of New York into alleged corruption and bribery.
- **A university's men's and women's Division I basketball programs** in connection with allegations of delivering improper benefits in violation of the rules and regulations of the NCAA. Assisted in the self-reporting of violations to the NCAA. No penalties were imposed.
- **Various Division I coaches** in connection with NCAA investigations into allegations of recruiting violations, delivery of improper benefits to student-athletes and improper internal controls within the university's athletic department.



Reopening Sports Venues to Fans Poses Legal Hurdles

PROFESSIONAL AND COLLEGIATE SPORTS have been sidelined since March in an effort to stop the spread of COVID-19. Now, as federal, state and local officials reopen portions of the economy, sports leagues are considering a variety of proposals to bring back games.

While many of these proposals have contemplated resuming play without fans in attendance, it is hoped that fans will return at some point. When that day comes, leagues and teams will need to consider not only important health and safety issues, but also the accompanying business and legal risks. This article explores some of the issues sports leagues and teams should consider as they develop plans to resume play.

STATUS OF SPORTS LEAGUES

At present, all professional and collegiate sports in the United States are suspended. However, leagues are currently discussing plans to resume play without fans.

On May 23, the [National Basketball Association](#) announced that it was engaged in talks to resume play in Florida at The [Walt Disney Co.](#)'s Wide World of Sports complex, where players and team and league officials would be quarantined and tested frequently.

On May 26, the [National Hockey League](#) announced that 24 teams will participate in a playoff tournament to be held in two hub cities, but did not identify a date to resume games.

[Major League Baseball](#)'s current proposal appears to have teams opening the season at their home stadiums where feasible and permitted by local officials, with the remaining teams slated to play at spring training sites in Arizona and Florida.

On May 7, the [National Football League](#) released its 2020-2021 schedule, with the first game set for Sept. 10. It remains unclear when and where fan-attended sporting events will again be possible.

Considerations as Leagues Resume Play and Eventually Welcome Back Fans

As leagues and teams explore plans to resume play and eventually welcome back fans, they need to consider a number of issues to ensure the safety of players, team personnel, stadium staff and fans, as well as the economic viability of staging games with minimal or nonexistent ticket and stadium revenue.

Two legal issues that must be considered are the potential liability leagues, teams and facilities face if anyone contracts COVID-19 at a sports facility, and how contractual obligations to players, ticketholders and stadium concessionaires are implicated if stadiums remain empty (or largely empty) and revenues drastically decline. In many respects, steps that will be taken to maintain safety may potentially be inconsistent with the teams' and leagues' contractual obligations to their partners and fans.

MITIGATING LIABILITY FROM COVID-19 INFECTIONS

The foremost concern for teams and leagues must be ensuring the health and safety of all participants when games return—including players, team staff, stadium personnel and eventually fans. From a liability standpoint, both stadium employees and fans could pursue claims against a league or team should they contract COVID-19 by asserting that they acquired it while at a team facility. The financial harm from such claims could be especially severe because many general liability insurance policies contain exclusions related to infectious diseases.

Although all successful actions by employees or others would require proof that they were infected at the facility and that the team and facility were negligent in preventing infection, even weak claims create some litigation risk and are costly to defend. The public attention from these lawsuits—even meritless ones—will likely have other damaging consequences, including heightening fans' fear of returning and unwanted, negative publicity.

To reduce potential liability and allay the public's concerns, teams and stadiums must implement new protocols to reduce the risk of infection. As a preliminary matter, any reopening of sports venues—first to teams and then to the public—must

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comply with federal, state and local health directives. Until the governing health authorities permit such gatherings, teams and leagues will be taking enormous and unwarranted risks.

Once localities meet regulatory guidelines, leagues and teams should continue to work with state and local health officials to implement social distancing and other health and safety directives. While the blessing of health officials will not immunize a team or stadium from liability, it likely will factor heavily in any defense to personal injury claims.

The [Miami Dolphins](#) provided some insight into what teams are thinking regarding their reopening plans when the team recently announced possible fan restrictions. In particular, the Dolphins plan to require that spectators (1) enter at designated times through specific gates, (2) order concessions from their seats and pick them up at a designated concession stand, and (3) wear a mask during the game. The Dolphins are also considering limiting attendance to 15,000 fans in its 65,000 seat stadium.

While the most prudent steps may change over time, we list below some protocols that teams should consider as they contemplate reopening their venues.

MAINTAIN SOCIAL DISTANCING REQUIREMENTS

Facilities will need to create policies that provide for necessary social distancing between fans, venue workers and others.



Protocols to enact include the following:

- Greatly reducing the number of tickets sold;
- Spacing out seat locations;
- Limiting the number of fans, vendors and others on concourses at any given time; and
- Managing entry/exit from the stadium, restrooms and concessions.

TICKETING

The following steps related to ticketing can be taken to promote health and possibly reduce liability:

- Assigning designated times on tickets for fans to enter the venue: This will ensure an orderly and manageable procession of fans into the venue without causing a crowd to form immediately before the game.
- Requiring advance sales only: This will allow venues to fix attendance in advance and allow for proper spacing and staff.
- Providing notice to all incoming fans of the risks of entering the facility, including the potential to become infected by COVID-19: Likewise, signs should be posted outside the venue warning fans of the possible risk of becoming infected and emphasizing the need to maintain social distancing and practice necessary health protocols (e.g., wearing a mask, frequently washing hands).
- Prohibiting fans from entering a facility if they have recently tested positive for COVID-19, are sick or are in quarantine due to possible exposure: To promote responsible decisions by fans, venues should offer to exchange tickets to a future game for fans who are sick.

HEALTH PRECAUTIONS

Venues should promote required health precautions, including:

- Requiring that everyone wear a mask: To increase compliance, venues could offer them to fans upon entry to the venue.



- Taking the temperature of everyone entering the facility and precluding entry of anyone with a fever: This will require trained medical personnel to conduct these tests. Fans and employees showing signs of illness may also be prevented from entering. Of course, all decisions in this regard should be made consistently and by medical professionals.
- Cleaning and disinfection must be increased, including for seats, railings, bathrooms and concession areas.

CONCESSIONS/FOOD

Concessions and food and drink stands will be particularly problematic areas at mass gatherings, as fans and venue staff will be in close contact with each other. The following protocols should be considered:

- Keeping concession areas closed or limiting them to prepackaged items;
- Placing barriers between concession workers and fans;
- Limiting concession lines on concourses: One option to limit concession lines is to increase in-seat food ordering through an app;
- Limiting communal self-serve food stations that fans typically have access to, such as condiment and napkin dispensers; and
- Increasing/promoting fans paying for concessions through their phones to limit the handling of cash and credit cards.

VENUE STAFF

Precautions are especially important for venue staff and vendors. Not only must venues provide safe work environments for staff, but they must also work to ensure that fans or others who enter the facility do not become infected from venue workers. The following protocols should be considered:

- Temperature checks should be administered to all venue workers to ensure they do not have a fever. In future months, as testing become more readily available, it may become possible to test venue workers. At this time, however, it seems premature to indicate how venues could

or should deploy testing, and venues are best situated to await more definitive guidance from governing authorities.

- Keep at home any workers who recently test positive for COVID-19, are sick or are in quarantine due to possible exposure. Venues can encourage self-reporting by offering paid sick time.
- Require mask-wearing, glove-wearing and frequent handwashing, especially for those who handle food items.
- There is no way to completely eliminate the potential risk of liability should someone contract COVID-19 while at a sports facility. However, teams and facilities can reduce their liability risks by taking the above steps—and new ones as they are developed—to attempt to keep all who enter the facility safe and healthy.

CONTRACTUAL IMPLICATIONS OF TAKING SAFETY PRECAUTIONS

While player, employee and fan health concerns should be paramount in developing plans to bring back sports, precautions to promote safety will almost certainly impact every team's existing commercial relationships. Among other things, contracts may need to be renegotiated to handle this new landscape to provide for a safe environment while also making the return of sports with fewer or no fans economically viable.

PLAYER COMPENSATION AND WORKING CONDITIONS

As discussed above, some of the proposals the leagues are considering to resume play would require playing games in neutral locations without fans in attendance. This could affect players most acutely in two ways.

First, players may be required to stay quarantined—possibly without family members—at hotels near venues of neutral-site games for a number of months.

Second, players may be forced to accept a diminution in pay in the absence of ticket and concession revenue.

For games to take place in this changed landscape, it appears that the major sports leagues will need to enter into new

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agreements with their players, as the collective bargaining agreements of the sports currently implicated by COVID-19—baseball, basketball and hockey—hockey not contemplate the current scenario in which gate revenues are nonexistent and players must be quarantined and play at neutral facilities.

For example, the MLB reached an agreement with the MLB Players Association in March that guarantees the players \$170 million if no games are played this year and that pays them only a prorated portion of their salaries based on the number of games played this season.

That deal did not address whether the MLB can demand further player salary reductions if games are played in empty stadiums—and league revenue is significantly reduced—or new health policies or restrictions that may be imposed on players to maintain a safe work environment (e.g., quarantine hotel rules, restrictions on dining at restaurants, ability to bring family to team hotel).

The landscape is slightly different for the NBA and the NHL, as both completed the overwhelming majority of their regular seasons when games were suspended, and players in both leagues are guaranteed a certain percentage of league revenues. The NHL collective bargaining agreement requires the owners and players to renegotiate salaries in the event of a reduction in operations, and the league and players have not yet reached an agreement on compensation as part of the league's resumption plan.

Meanwhile, the NBA CBA includes a force majeure clause that specifically covers epidemics and allows the league to reduce salaries based on the number of games missed. The clause also grants the NBA the ability to terminate the CBA after 60 days and mandate that the league and players negotiate a new agreement, though the two sides recently agreed to extend this deadline to September. Similar to the MLB, both the NHL and the NBA will need to reach agreements on player compensation and working conditions for the remainder of their seasons.

TICKETHOLDER RIGHTS

A number of the recommendations to promote social distancing at sporting events involve reducing the number of



fans admitted, spacing them out and refusing admittance to fans who are sick. This could require ticketholders, including those with season ticket licenses, to have their seats either revoked or moved.

As stated on the back of all tickets, teams have the ability to revoke the rights of ticketholders to their seats. Although all teams should be able to use this language to withdraw tickets or move fans as needed, the agreements for some teams specifically contemplate a situation where health or safety dictates that tickets must be revoked or seats reassigned.

The license for the [New York Yankees](#), for example, states that the team is not liable to fulfill its obligations as a result of a force majeure event, including an epidemic, while the license for the [Los Angeles Dodgers](#) allows the team to revoke the license to ensure the public's safety. In all cases, teams must abide by applicable consumer protection laws and offer affected fans the ability to exchange their tickets to a different game or seat location, or allow for a refund.

STADIUM AGREEMENTS AND FORCE MAJEURE PROVISIONS

If stadiums are closed to fans, a number of stadium agreements could also be impacted, including those with companies that provide concessions, parking or other services. Disputes could arise if games are played but vendors cannot generate



revenue—either because they are prohibited from working due to social distancing rules or because their services are unnecessary. For these types of disputes, the negotiated terms of each contract will be critical to determining liability.

For instance, a party seeking to void a services contract will be far better off if the applicable contract contains a force majeure clause that expressly contemplates an epidemic as a triggering event or includes a catch-all phrase intended to capture events beyond the control of the parties. If the contract does not contain such protections, the parties likely will be engaged in far more protracted litigation over how certain provisions affect these unprecedented events.

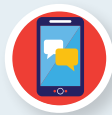
Courts have not yet addressed how contractual rights and obligations might be affected by COVID-19, so it remains to be seen whether parties will be able to extinguish their responsibilities under contracts that did not address anything close to the current situation. Given the uncertainty posed by COVID-19 and the outstanding legal questions regarding potential contract relief, it may make sense for teams and

stadiums to reopen contracts with their vendors now to address the changing circumstances and avoid future litigation.

CONCLUSION

As sports leagues and teams begin to explore plans to resume play and eventually welcome back fans, they will need to consider a number of safety and business issues to ensure the health of players, team personnel, stadium staff and fans, as well as the economic viability of staging games with minimal or nonexistent ticket and stadium revenue.

By adopting new health protocols, teams can work to keep all who enter their facilities safe while reducing the risk of liability of potential infections. And in light of new protocols to keep everyone safe—including eliminating or reducing the number of fans—leagues and teams may need to work with their business partners to make the return of games economically viable. Only by taking both steps will the day come when sports are able to return—including eventually with fans cheering in the stands.



NCAA Moves Closer to “NIL” Policy for Student-Athletes

ON APRIL 29, 2020, the NCAA Board of Governors (the “Board”) announced its support for a proposal (the “Proposal”) that would allow student-athletes to financially benefit from the use of their names, images and likenesses—sometimes known as the “right of publicity”—through engagements with sponsors otherwise unaffiliated with the student-athlete’s college or university.¹

The Proposal, which still needs approval from member institutions, would allow student-athletes to enter paid sponsorship and endorsement deals as soon as 2021.² The Proposal would not, however, allow a student-athlete’s use of their school’s trademarks or logos in connection with such sponsorships and endorsements. While the Board’s most recent announcement is a significant departure from past NCAA positions and public statements, it is less comprehensive than recently enacted legislation and a far cry from a revenue-sharing model that might imperil the status quo of collegiate athletics.

BACKGROUND

Historically, the NCAA has prohibited student-athletes from profiting from their names, images and likenesses as part of its effort to preserve the amateurism of collegiate athletics. Particularly, the NCAA bylaws, in Article 12 (Amateurism) Section 12.5 (Promotional Activities) Subsection 12.5.2 (Nonpermissible) Paragraph 12.5.2.1 (Advertisements and Promotions After Becoming a Student-Athlete) state that:

After becoming a student-athlete, an individual shall not be eligible for participation in intercollegiate athletics if the individual:

- Accepts any remuneration for or permits the use of his or her name or picture to advertise, recommend or promote directly the sale or use of a commercial product or service of any kind; or
- Receives remuneration for endorsing a commercial product or service through the individual’s use of such product or service.³

The NCAA has long fought to maintain this “no pay” position. For instance, in *O’Bannon v. National Collegiate Athletic Association*,⁴ the NCAA argued that amateurism is a fundamental aspect of collegiate athletics and that compensation of student-athletes would fundamentally undermine that amateurism.⁵ Similarly, NCAA President Mark Emmert initially responded to California’s 2019 passage of the “Fair Pay to Play Act” (the “Act”), which would permit California student-athletes to earn money from endorsements, sponsorship deals and related activities,⁶ by suggesting that the Act would lead to California schools being excluded from NCAA championships.⁷

As such, the Board’s announced support of this Proposal is a drastic departure from its previous position, but is also a reasonable response to the growing chorus of support for some compensation for student-athletes. It is also a pretty clear effort to preempt (i) further litigation, (ii) California’s “Fair Pay to Play Act” and related legislation, and (iii) the existential threat posed to men’s college basketball as high school prospects choose the less restrictive and more lucrative G league over a season in college.⁸ Whatever the impetus, the consequences of this shift in approach will have a substantial impact on collegiate athletics and the compliance requirements of member institutions.

THE PROPOSAL

Generally speaking, the Proposal would (i) allow “compensation for third-party endorsements related to athletics, without school or conference involvement; [and] compensation for other student-athlete opportunities, such as social media, new businesses, and personal appearances, without institutional involvement or the use of trademarks/logos,” while (ii) prohibiting schools, conferences, or boosters (as a recruiting tool) from paying student-athletes for the use of their names, images and likenesses.⁹

More particularly, the Board has instructed each NCAA division to provide initial legislative proposals concerning student-athletes’ right to benefit from their names, images and likenesses by the end of August 2020, and to draft final legislation on the subject by October 2020. While the Board has not provided detailed guidance on the specifics of such legislation, they’ve relayed to the divisions that these changes must follow the following principles and guidelines:



- “Ensuring student-athletes are treated similarly to nonathlete students unless a compelling reason exists to differentiate.
- Maintaining the priorities of education and the collegiate experience to provide opportunities for student-athlete success.
- Ensuring rules are transparent, focused and enforceable, and facilitating fair and balanced competition.
- Making clear the distinction between collegiate and professional opportunities.
- Making clear that compensation for athletics performance or participation is impermissible.
- Reaffirming that student-athletes are students first and not employees of the university.
- Enhancing principles of diversity, inclusion and gender equity.
- Protecting the recruiting environment and prohibiting inducements to select, remain at or transfer to a specific institution.”¹⁰

CONSIDERATIONS

The Proposal appears to be more of a reaction to the inevitable than a true paradigm shift in the NCAA’s thinking. Even while expressing support for the Proposal, the Board noted that the NCAA will continue to lobby Congress for national legislation that would preempt state laws (i.e., Colorado¹¹ and 32 other states¹² that intend to follow California’s example and have introduced or passed similar right of publicity bills).¹³

Moreover, the Board has insisted that (i) colleges and universities are not able to compensate student-athletes directly for the use of their rights of publicity, and (ii) student-athletes cannot use their school’s trademarks or logos in connection with that use.

As the details are being considered—and in the absence of national legislation, a Supreme Court ruling or final rules from the NCAA—colleges and universities should prepare for increased compliance requirements, develop reasonable policies and procedures for monitoring their student-athletes’ adherence to these prohibitions, and be prepared for all possible scenarios.

1. *Board of Governors Moves Toward Allowing Student-Athlete Compensation for Endorsements and Promotions*, NCAA (Apr. 29, 2020, 8:30 AM), <http://www.ncaa.org/about/resources/media-center/news/board-governors-moves-toward-allowing-student-athlete-compensation-endorsements-and-promotions>.
2. *Id.*
3. NCAA 2019-2020 Division I Manual, Operating Bylaws art. 12.05.2.1 (Aug. 2019), <https://www.ncaapublications.com/p-4577-2019-2020-ncaa-division-i-manual-august-version-available-for-presele-now.aspx>.
4. *O’Bannon v. Nat’l Collegiate Athletic Ass’n*, 802 F.3d 1049 (9th Cir. 2015).
5. Joe Nocera, *O’Bannon Ruling Stands, but N.C.A.A.’s Status Quo May Yet Collapse*, *The New York Times* (Oct. 3, 2016), <https://www.nytimes.com/2016/10/04/sports/ncaa-obannon-case-ruling-supreme-court.html>.
6. *Gov. Newsom Signs SB 206, the ‘Fair Pay to Play Act’*, Senator Nancy Skinner (Sept. 30, 2019), <https://sd09.senate.ca.gov/news/20190930-gov-newsom-signs-sb-206-%E2%80%98fair-pay-play-act%E2%80%99>.
7. Jeremy Bauer-Wolf, *One Step Closer to Pay for California College Athletes*, *Inside Higher Ed* (Sept. 11, 2019), <https://www.insidehighered.com/news/2019/09/11/california-passes-bill-allowing-athletes-be-paid-name-image-and-likeness>.
8. Jeff Borzello, *Five-star PG Daishen Nix decommits from UCLA to join G League*, *ESPN* (Apr. 28, 2020), https://www.espn.com/nba/story/_/id/29108600/five-star-pg-daishen-nix-decommits-ucla-join-g-league.

9. *Questions and Answers on Name, Image and Likeness*, NCAA (last updated Apr. 28, 2020), <http://www.ncaa.org/questions-and-answers-name-image-and-likeness>.
10. *Board of Governors Moves Toward Allowing Student-Athlete Compensation for Endorsements and Promotions*, NCAA (April 29, 2020, 8:30 AM), <http://www.ncaa.org/about/resources/media-center/news/board-governors-moves-toward-allowing-student-athlete-compensation-endorsements-and-promotions>.
11. Steve Berkowitz, *Colorado Governor Signs College Athlete Name, Image and Likeness Bill*, *USA Today* (Mar. 20, 2020, 4:29 PM), <https://www.usatoday.com/story/sports/college/2020/03/20/colorado-governor-signs-college-athlete-name-image-likeness-bill/2887481001/>.
12. Kendall Baker, *Colorado Joins California in Allowing College Athletes to Profit Off Name and Likeness*, *AXIOS* (Mar. 23 2020), <https://www.axios.com/colorado-college-athletes-name-image-likeness-profit-bd8e51ee-672e-4683-89de-610d2dd072c6.html>.
13. *Board of Governors Moves Toward Allowing Student-Athlete Compensation for Endorsements and Promotions*, NCAA (April 29, 2020, 8:30 AM), <http://www.ncaa.org/about/resources/media-center/news/board-governors-moves-toward-allowing-student-athlete-compensation-endorsements-and-promotions>.



New NBA G League Program Begins to Challenge NCAA Men's Basketball Hold on Top Prospects

SINCE THE INCEPTION of the NBA G League, there has been concern that the creation of this “minor league” would diminish the enormously popular (and profitable) NCAA Division I men’s basketball program by luring top high school basketball prospects away from college. Those fears are now heightened with the NBA’s recent addition of a one-year “developmental” program for top players, which offers high school seniors a lucrative alternative to playing for a Division I program until they become eligible for the NBA Draft. As described in more detail below, this new G League program will pay top prospects up to \$500,000, provide them with special professional coaching and training outside of the league’s traditional team structure, and allow them to avoid the challenges of the NCAA’s complicated eligibility requirements. Not surprisingly, this G League program has already caused a shift in the recruiting landscape, as a number of top prospects have foregone college and committed to the program. These prospects have included Jalen Green, a potential number-one pick in the 2021 NBA draft; Isaiah Todd, a five-star forward who decommitted from the University of Michigan; and Daishen Nix, a five-star point guard who decommitted from UCLA.

NEW INCENTIVES FOR TOP PROSPECTS TO JOIN THE G LEAGUE

The G League, formerly known as the National Basketball Development League, or the NBA D-League, is the NBA’s official minor league. Having started in the 2001/02 season with eight teams, the league now has 28 teams, all of which are affiliated with an NBA team. Unlike minor league baseball or hockey, the G League was not thought of as a place to develop young players. Players selected in the NBA Draft went directly to their NBA teams, and the G League consisted largely of journeymen and unsigned players looking to showcase their talent. As a result, few players opted to play in the G League during their first year after high school while they waited to be eligible for the NBA Draft. Instead, top prospects traditionally chose to play in college and, more recently, headed overseas

to play professionally. In this regard, LaMelo Ball and RJ Hampton, both top 2020 NBA Draft prospects, shunned the G League route in order to play in Australia, where players can make a mid-six-figure salary, a significant bump over the G League’s traditional \$35,000 salary.

Recognizing this trend, the NBA and G League recently announced the creation of a new program for these prospects—The G League Professional Path. Under this new one-year program, elite prospects who are at least 18 years old but are not yet eligible for the NBA Draft receive a salary of at least \$125,000 for participating in a five-month season. In addition, players will be eligible for bonuses for meeting certain benchmarks, such as participating in community events and attending life-skills programs overseen by the G League. As an added incentive, the NBA is providing a scholarship program for those who wish to continue their education after retiring from basketball. Aside from the monetary benefits, the participants will receive professional coaching and train with veterans who will provide mentoring about life in the NBA. To facilitate player training and development, participants will not play a typical G League schedule of 50 games. Instead, this team of elite prospects and veterans will play only 10 to 12 games against G League teams, plus games against foreign teams and NBA academy teams.¹ Through these games, it is expected that the top prospects will receive ample scouting from NBA teams.

One of the biggest draws, however, may be that players joining the G League can avoid the complicated and arduous NCAA eligibility requirements facing a Division I player. Unlike in college, G League players are free to hire agents, pursue endorsement deals and profit off their name, image and likeness (“NIL”). For example, Green is expected to sign a seven-figure sneaker deal during his time in the G League. This program may be of particular interest for high school prospects this year, as it is unclear how the COVID-19 pandemic may affect the college calendar in 2020/21.

THE G LEAGUE’S EFFECT ON COLLEGE BASKETBALL

Although still in its infancy, the G League’s Professional Path program may drastically alter the landscape of NCAA Division I men’s basketball, particularly among members of the “Power 5” conferences. First, coaches will now find themselves not only



competing against each other for the most talented prospects each year, but also competing with the financial lure of the G League. Unfortunately, this could exacerbate the risks of corruption and the provision of improper benefits to these recruits. Athletic department compliance teams will need to be laser focused on this increased risk and step up monitoring and enforcement efforts while recruiting top prospects. With the G League able to offer lucrative deals to top high school prospects both before and after they commit to a college program, compliance teams must ensure that those associated with the athletic program—including coaches, boosters and sponsors—do not attempt to counter with financial offers to these players, including after they have committed. Second, schools will need to ensure that they are offering similar career counseling and other important skills programs for their student-athletes. Finally, coaches may also be faced with players who have committed to their school but then bolt for the G League’s new program. Although it is unclear whether the G League will require prospects to accept an offer to join the program by a certain date, it is possible that elite freshmen could change their minds and join the G League even after they have arrived on campus. This dynamic could require college coaches to continue to placate top recruits who may suddenly have another viable option—even after they have officially enrolled in school.

The new G League program also may prove to be a further catalyst for reform initiatives already underway to loosen the NCAA’s restrictions on athletes receiving benefits based on their NIL. In fact, the NCAA recently announced proposals to allow athletes to profit from their NIL, including the ability to sign deals with third parties for promotional activities and to be compensated for outside business deals. If these NIL reforms are enacted and college athletes are able to profit from their NIL, the value proposition of playing in college for one year would certainly increase.

The effects on college basketball of the G League’s new program remain to be seen and will be dictated largely by the number of top prospects who pursue this path. Depending on the extent to which the G League pulls players from the collegiate ranks, the new program may dramatically alter the college basketball landscape by changing who is being recruited and potentially elevating the play of top teams filled with athletes who develop together over multiple years.

1. https://www.espn.com/nba/story/_/id/29043828/sources-top-high-school-player-jalen-green-enter-nba-g-league-pathway