

# Fans Would Flee If NCAA Paid Athletes, Ex-CBS Exec Says

By [Beth Winegarner](#)

Law360, San Francisco (June 12, 2014, 7:08 PM EDT) -- Former [CBS Sports President Neal Pilson](#) testified for the [National Collegiate Athletic Association](#) on Thursday that college sports fans would be “turned off” if the NCAA paid student athletes to license their personas, challenging the athletes’ class action trial claims that the NCAA’s compensation ban violates antitrust laws.

Pilson, who said he has negotiated more than \$15 billion in sports broadcasting contracts in his career, testified that fans of collegiate athletics enjoy the idea that players volunteered to compete on behalf of their school, and are playing “for the joy of the game.” If the NCAA’s regulations barring athletes from receiving pay were abolished — which is what the plaintiffs seek in the bench trial — there would be a “land rush” of agents and recruiters going after high school athletes, Pilson said.

“There’s a large number of casual fans who would be turned off by the land rush of recruiting,” he testified. “I have a substantial concern that [pay] would change the fabric of the sport.”

Pilson, who now works as an independent sports consultant and has continued to help negotiate contracts between sports outfits and telecasters, said he has never seen anyone negotiate for the rights of college athletes’ names, images and likenesses — the intellectual property at the heart of the plaintiffs’ case. They say they should get a cut of what the NCAA makes for licensing those things for broadcasts, video games and merchandise.

“If the NCAA were to move to a pay format, the athletes would no longer be amateur,” Pilson said. That, in turn, would have a negative impact on the public’s perception of college sports, he testified.

But plaintiffs’ expert Edwin Desser, former president of the [NBA](#)’s television and new media division, testified that telecasters are undoubtedly negotiating to use athletes’ names, images and likenesses when they enter a contract to air sporting events.

“These are very valuable agreements [involving] huge sums of money. We’re talking about the right to show the competitors on television, using their names, using their images and likely using their likenesses,” Desser said. “No television company wants to show a game where they have to blur out the players.”

In most cases, such contracts state that the athletic conference is responsible for obtaining clearances to athletes’ name and likeness rights, Desser testified. In one such contract, in which NCAA granted CBS Sports the exclusive right to air March Madness basketball games, the association affirmed that it had obtained all of the necessary rights, he said.

Desser also disagreed with Pilson’s contention that college and professional sports are fundamentally different. The contract provisions are the same, the games are aired on the same networks and are produced by the same people, and both sectors are competing for the same fans, advertisers and networks, Desser testified.

The litigation stretches back to 2009, when former student-athletes Ed O’Bannon and Sam Keller filed separate suits against the NCAA, [Electronic Arts Inc.](#) and The [Collegiate Licensing Co.](#) over the use of their likenesses. Electronic Arts and Collegiate Licensing **settled with both plaintiff groups** in September for \$40 million.

On Monday, the NCAA announced [a \\$20 million deal](#) to end the Keller class action.

The O’Bannon plaintiffs are represented by Michael D. Hausfeld, Michael P. Lehmann, Hilary K. Scherrer, Sathya S. Gosselin, Swathi Bojedla and Bruce J. Wecker of [Hausfeld LLP](#), by William Isaacson and Martha Goodman of [Boies, Schiller & Flexner LLP](#) and by Seth A. Rosenthal of [Venable LLP](#).

The NCAA is represented by Glenn D. Pomerantz, Kelly M. Klaus, Rohit K. Singla and Carolyn Hoecker

Luedtke of [Munger Tolles & Olson LLP](#), Gregory K. Curtner, Robert J. Wierenga and Kimberly K. Kefalas of [Schiff Hardin LLP and Seth P. Waxman](#), Daniel S. Volchok and Ari Holtzblatt of [WilmerHale](#).

The case is O'Bannon Jr. et al. v. National Collegiate Athletic Association et al., case number [4:09-cv-03329](#), in the U.S. District Court for the Northern District of California.

--Editing by Stephen Berg.