

Exhibit E

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
OAKLAND DIVISION

**In re NCAA Student-Athlete Name and Likeness
Licensing Antitrust Litigation**

Case No. 09-cv-1967-CW

**EXPERT REPORT OF DANIEL L. RUBINFELD
REGARDING MERITS**

September 25, 2013

HIGHLY CONFIDENTIAL –COUNSEL ONLY: SUBJECT TO PROTECTIVE ORDER

sports camps, facilities maintenance, and other support.²¹³ In addition to spending by institution athletic departments, the NCAA itself spends on direct benefits to student-athletes through association-wide programs, including for example, catastrophic insurance, health and safety programs, and research.²¹⁴ In the year that ended August 31, 2012, the NCAA spent about \$115 million on these programs.²¹⁵

113. The NCAA has also been active in providing opportunities for students to attend colleges or universities who might otherwise have been financially constrained from doing so. For example, the NCAA's Student Assistance Fund is aimed at assisting student-athletes with "special financial needs."²¹⁶
114. Many organizations, including the NCAA, have expressed a concern that collegiate athletics not become commercialized because it will undermine the fundamental tenants of academics and amateurism, the student-athlete, that the NCAA collaboration is designed to preserve.
115. One such organization outside the NCAA is The Knight Commission on Intercollegiate Athletics, founded in 1989 by an independent foundation²¹⁷ to "ensure that intercollegiate athletics programs operate within the educational mission of their colleges and universities."²¹⁸ Many Commission members are university presidents (or presidents emeritus), and several are former student-athletes.²¹⁹

²¹³ NCAA 2004-2011 Revenues & Expenses Report, Tables 3.15, 4.15 and 5.15.

²¹⁴ National Collegiate Athletic Association and Subsidiaries, Consolidated Financial Statements as of and for the Years Ended August 31, 2012 and 2011, Supplementary Information as of and for the Year Ended August 31, 2011, and Independent Auditors' Report, pp. 4 and 9; Interview with Jim Isch, Chief Operating Officer at the NCAA, September 20, 2013.

²¹⁵ National Collegiate Athletic Association and Subsidiaries, Consolidated Financial Statements as of and for the Years Ended August 31, 2012 and 2011, Supplementary Information as of and for the Year Ended August 31, 2012, and Independent Auditors' Report, p. 4. Available at <<http://www.ncaa.org/wps/wcm/connect/public/NCAA/Finances/NCAA+consolidated+financial+state+ments>>. Accessed September 24, 2013.

²¹⁶ Division I Revenue Distribution, 2011-2012, available at <<http://www.ncaa.org/wps/wcm/connect/public/NCAA/Finances/Finances+Distributions?p>>, accessed September 24, 2013.

²¹⁷ "About the Foundation—History," Knight Commission on Intercollegiate Athletics, available at <<http://www.knightfoundation.org/about/history/>>, accessed September 24, 2013; "About the Foundation - Background," Knight Commission on Intercollegiate Athletics, available at <<http://www.knightcommission.org/about/about-background>>, accessed September 24, 2013.

²¹⁸ "Welcome," Knight Commission on Intercollegiate Athletics, June 2010, available at <<http://www.knightcommission.org>>, accessed August 13, 2013.

²¹⁹ "Members and Bios," Knight Commission on Intercollegiate Athletics, available at <<http://www.knightcommission.org/about/members-bios>>, accessed August 13, 2013.

116. In a 2010 report, the Commission recognized the tensions that “often surface between the core mission of universities and commercial values.”²²⁰ This is consistent with a January 2006 Knight Commission survey that found that “3 in 5 (61%) Americans say that college sports have become too commercialized.”²²¹
117. The Commission’s “blueprint for restoring educational values and priorities” stressed the need to “[t]reat[] college athletes as students first and foremost – not as professionals” and “[e]nsur[e] that athletes are students first by limiting intrusions on academic responsibilities and limiting commercial activities.”²²² The Commission’s report called for strengthening accountability for intercollegiate athletics in three ways:
1. Requiring greater transparency, including better measures to compare athletics spending to academic spending.²²³
 2. Rewarding practices that make academic values a priority, such as strengthening eligibility standards for participation in championships and modifying revenue allocation practices to place a greater emphasis on academic achievement.²²⁴
 3. Treating college athletes as students first and foremost – not as professionals. Priorities in this area include limiting intrusions on academic responsibilities (such as games scheduled during class times) and limiting commercial activities.²²⁵
118. COIA, the alliance of faculty senates, is another organization pushing for less commercialization in collegiate athletics. A 2007 COIA white paper acknowledges

²²⁰ “Restoring the Balance,” Knight Commission on Intercollegiate Athletics, June 2010, available at <http://www.knightcommission.org/images/restoringbalance/KCIA_Report_F.pdf>, accessed August 13, 2013, p. 3.

²²¹ “Knight Commission on Intercollegiate Athletics: Public Opinion Poll,” January 2006, available at <<http://www.knightcommission.org/images/pdfs/pollresults1-20-06.pdf>>, accessed August 29, 2013, p. 1.

²²² “Restoring the Balance,” Knight Commission on Intercollegiate Athletics, June 2010, available at <http://www.knightcommission.org/images/restoringbalance/KCIA_Report_F.pdf>, accessed August 13, 2013, pp. 1, 16.

²²³ “Restoring the Balance,” Knight Commission on Intercollegiate Athletics, June 2010, available at <http://www.knightcommission.org/images/restoringbalance/KCIA_Report_F.pdf>, accessed August 13, 2013, pp. 1, 11-13.

²²⁴ “Restoring the Balance,” Knight Commission on Intercollegiate Athletics, June 2010, available at <http://www.knightcommission.org/images/restoringbalance/KCIA_Report_F.pdf>, accessed August 13, 2013, pp. 1, 14-15.

²²⁵ “Restoring the Balance,” Knight Commission on Intercollegiate Athletics, June 2010, available at <http://www.knightcommission.org/images/restoringbalance/KCIA_Report_F.pdf>, accessed August 13, 2013, pp. 1, 16-18.

that intercollegiate athletics sometimes clash with schools' educational goals and proposes a series of reforms "to ensure that athletics remains fully integrated into the academic mission of our universities."²²⁶ The COIA report rests on two "Fundamental Principles": that "[i]ntercollegiate athletics must be in alignment with the educational mission of the institution" and that "[c]ollege sports must adhere to the collegiate athletics model," including the principle that "the primary reason for student-athletes to attend a college or university is to receive an education."²²⁷

119. The NCAA itself agrees that the unique model of college athletics is threatened by increasing commercialism. The NCAA Presidential Task Force, for instance, explains that:

The reconnecting of intercollegiate athletics with higher education has been an ongoing concern for the NCAA for nearly two decades; yet at many institutions, athletics often still appears oriented more toward entertainment, and the educational value of athletics participation and competition plays a secondary role to the win-loss column. Some critics even perceive university presidents as protectors of the athletics process as opposed to champions of the institution's academic ideals. The drift of the collegiate model toward the professional approach — in both fact and fiction — has given credence to the concern. That perception cannot be allowed to perpetuate if intercollegiate athletics is to remain a powerful American higher-education tradition. The greater the divide between intercollegiate athletics and the academic community, the greater the risk for corruption and over-commercialization, both of which work to destroy the integrity of the collegiate model — and indeed the university itself — and denigrate the principles upon which it was built. Intercollegiate athletics must be fully integrated into the academic mission of universities and colleges. Academics must come first, and the success of student-athletes, both on and off the field, must be the defining characteristic of college sports.²²⁸

²²⁶ "Framing the Future: Reforming Intercollegiate Athletics," The Coalition on Intercollegiate Athletics, Adopted 15 June, 2007, available at <<http://blogs.comm.psu.edu/thecoa/wp-content/uploads/FTF-White-Paper2.pdf>>, accessed August 13, 2013, p. 5.

²²⁷ "Framing the Future: Reforming Intercollegiate Athletics," The Coalition on Intercollegiate Athletics, Adopted 15 June, 2007, available at <<http://blogs.comm.psu.edu/thecoa/wp-content/uploads/FTF-White-Paper2.pdf>>, accessed August 13, 2013, p. 6.

²²⁸ "The Second-Century Imperatives: Presidential Leadership — Institutional Accountability," A Report From The Presidential Task Force On The Future Of Division I Intercollegiate Athletics, available at <<http://www.ncaapublications.com/productdownloads/PTF092.pdf>>, pp. 32-33.