

How First-Of-Its-Kind NIL Lawsuit Is Shaping College Athletics

By **Timothy Heafner, Max Rothman and Aly Bailey** (July 26, 2024)

A series of novel antitrust lawsuits over the past several years has dramatically altered the landscape of college athletics.

College athletes are now permitted to profit off of their name, image and likeness, or NIL. Collectives, or organizations founded by university alumni and donors to pool resources to sign recruits to NIL deals — have quickly emerged at nearly all major NCAA Division I schools.

And, as a result, once unpaid, amateur college athletes are now signing NIL deals worth millions of dollars.

On May 21, *Rashada v. Hathcock*, a first-of-its-kind lawsuit, rocked the evolving college-athletics scene.[1]

Jaden Rashada, once a top quarterback prospect, sued Billy Napier, the head football coach of the University of Florida, as well as long-time University of Florida booster, Hugh Hathcock, in the U.S. District Court for the Northern District of Florida alleging that they and other defendants fraudulently induced him to decommit from the University of Miami and instead commit to the University Florida in exchange for a \$13.9 million NIL deal.

The promised payments never materialized, however, and Rashada decommitted from the University of Florida before ever playing a down. Rashada is now a backup quarterback at the University of Georgia, one of the University of Florida's conference rivals, and the plaintiff in the first major NIL lawsuit since the NCAA changed its rules.

Rashada's lawsuit not only provides a fascinating glimpse into how universities and collectives are currently navigating these uncharted times in college athletics, but it also provides insights into potential future legal challenges that universities and collectives may face.

This article summarizes Rashada's claims, highlights several takeaways from the complaint, and identifies risks universities and collectives may face going forward, including the potential for collective-versus-collective litigation over recruits who decommit from one school for the promises of a greater NIL deal at another.

The Rashada Litigation

Rashada was a highly recruited high school quarterback, drawing attention from universities across the country. In June 2022, he publicly committed to play football at the University of Miami and agreed to a \$9.5 million NIL deal with a University of Miami-affiliated booster.

In his complaint, Rashada alleges that despite his commitment to Miami, boosters from the University of Florida persisted in their recruitment efforts, which culminated in a \$13.85



Timothy Heafner



Max Rothman



Aly Bailey

million NIL offer from a Florida-affiliated collective, the Gator Collective, led by Hathcock. Rashada agreed to the \$13.9 million deal on Nov. 10, 2022, and publicly flipped his commitment from the University of Miami to the University of Florida.

The first payment to Rashada under the University of Florida NIL deal was due on Dec. 5, 2022. Rashada alleges that despite various individuals reassuring him that he would be paid as promised, he was not paid, and the Florida-affiliated collective unilaterally terminated the deal the day after the first payment was due.

Despite the termination, the defendants allegedly reassured Rashada that the deal would still be honored and that it would be assigned to a different Florida-affiliated collective, so that Hathcock could personally guarantee payment.

Come national signing day when Rashada had still not received payments under the agreement, he alleges that Napier called him and assured him that he would receive \$1 million from Hathcock if he signed with the University of Florida. Rashada alleges that he relied on that representation when he signed his national letter of intent with the University of Florida that same day.

In the month or so that followed, the NIL deal remained unfulfilled. Rashada ultimately elected to withdraw from his national letter of intent with the University of Florida and signed with Arizona State University, where he played his freshman season with no NIL compensation, before transferring to the University of Georgia earlier this year.

Rashada's complaint alleges seven causes of action:

- Fraudulent misrepresentation and inducement;
- Aiding and abetting fraud;
- Civil conspiracy to commit fraud;
- Negligent misrepresentation;
- Tortious interference with a business relationship or contract;
- Aiding and abetting tortious interference; and
- Vicarious liability against Hathcock's company, velocity automotive.

Rashada seeks damages for the loss of his \$9.5 million Miami NIL deal, the lost opportunity to pursue other NIL deals, and punitive damages.

On July 23, each of the defendants filed separate motions to dismiss the complaint on various grounds, including that Rashada failed to allege his fraud claims with sufficient particularity and that certain of the claims fail as a matter of law.

Initial Takeaways from the Rashada Lawsuit

The Fact That This Lawsuit Is Playing Out In Federal Court

As an initial matter, it is a bit surprising that we are seeing this lawsuit in court at all. Many contracts in the sports and entertainment industries contain broad arbitration provisions requiring that any dispute arising out of or related to the contract be litigated in private, confidential arbitration, outside of public view.

Based on the documents filed with Velocity Automotive's motion to dismiss, it appears that Rashada's agreement with the Gator Collective did contain an arbitration provision requiring that the parties arbitrate any disputes arising out of or related to the NIL agreement.[2]

However, Rashada did not name the Gator Collective as a party to the lawsuit, and none of the defendants have moved to compel arbitration under the provision.

Given the high-profile nature of NIL deals these days and the potential negative impact a public dispute like this could have on an athletic program's recruitment efforts, we would not be surprised if similar future lawsuits were required to be brought in confidential arbitration under the terms of the NIL deal.

University Of Florida Not Named As A Defendant

Despite suing the school's head football coach, Napier, and its Director of Player Engagement & NIL, Marcus Castro-Walker, not to mention its long-time boosters, Rashada did not name the University of Florida as a defendant in the complaint. While the University of Florida has avoided direct involvement in the litigation thus far, universities are unlikely to remain on the sidelines in future suits.

To date, universities have largely taken a back seat in the NIL process. Universities were initially prohibited from compensating athletes directly via NIL deals or otherwise, facilitating NIL opportunities and contracts, and using NIL transactions as an improper inducement for student-athletes to commit to the school.[3] But some of those rules and the universities' role in the NIL process are quickly changing.

In April of this year, the NCAA's Division I Council voted to allow schools to provide more direct assistance in supporting NIL activities, including by identifying potential NIL opportunities for students and facilitating deals between student-athletes and third parties.[4]

The recent proposed settlement of the House v. NCAA litigation[5] by the NCAA and the athletic conferences of the so-called Power Five would also create "a future revenue-sharing model in which schools could each distribute around \$20 million per year directly to athletes," according to an NPR article by Becky Sullivan.[6]

And, outside of the NCAA, some states, including Virginia, have passed laws permitting state colleges and universities to pay student-athletes directly through NIL deals.[7]

As universities assume larger and more direct roles in the NIL process, the risk that they will be targets of future NIL-related lawsuits increases.

Lack Of Any Contract Claims

While Rashada's entire complaint centers around the the University of Florida NIL agreement and the fact that the agreement was not honored, the complaint does not contain a breach-of-contract claim. Instead, Rashada's lawsuit sounds in fraud and related torts.

The Gator Collective contract submitted with Velocity Automotive's motion to dismiss appears to give the collective a unilateral right to terminate the agreement if the agreement violates any NIL law or university rule, or if Rashada failed to perform any service, ceased participation in a university athletic program, or did not reside in Gainesville, Florida.

Rashada's tactical decision to base his claims in fraud rather than contract — something the defendants note in their motions to dismiss — may have been driven by a desire to avoid

having to argue the collective's actions exceeded its broad rights under the termination clause.

Florida's damages laws may have factored into that decision as well. A major aspect of Rashada's lawsuit is his claim for punitive damages, and it is "a well-settled rule in Florida that punitive damages are not recoverable in a breach of contract action." [8]

The Potential For Collective vs. Collective Litigation

Rashada's fifth cause of action is for tortious interference with a business relationship or contract. Rashada alleges that the defendants were aware of Rashada's existing NIL agreement and relationship with the Miami-affiliated booster and intentionally and unjustifiably interfered with that relationship to Rashada's detriment.

While it will be left to the court to decide whether Rashada's cause of action has merit, typically claims for tortious interference are not brought by the party that leaves one contract or relationship for another.

Rather, interference claims are typically brought by the party to the original contract-relationship that loses out on the benefits of that relationship as a result of the interference of a third party. In that classic case, the party that entered the original contract-relationship sues the stranger that interfered and induced the other party to the relationship to breach or stop performing.

With this in mind, it will be interesting to see whether collectives themselves resort to legal action to protect their interests in NIL deals they enter. After all, at least one purpose of an NIL deal is for a collective to benefit from an athlete's name, image and likeness.

If a collective can establish that it was damaged as a result of another collective, or university or others, interfering with its NIL deal or inducing an athlete to breach an NIL agreement, it could add more animosity and fuel — in the form of a lawsuit and threatened damages — to some already heated college rivalries and recruiting battles.

Timothy B. Heafner is a partner, Max Rothman is counsel and Aly Bailey is an associate at O'Melveny & Myers LLP.

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[1] Complaint, Rashada v. Hathcock, No. 3:24-cv-219 (N.D. Fla. May 21, 2024).

[2] Defendant Velocity Automotive Solutions LLC's Motion to Dismiss Plaintiff's Original Complaint with Prejudice, Ex. A, Rashada v. Hathcock, No. 3:24-cv-219 (N.D. Fla. July 23, 2024).

[3] NCAA Adopts Interim Name, Image and Likeness Interim Policy, (June 30, 2021), <https://www.ncaa.org/news/2021/6/30/ncaa-adopts-interim-name-image-and-likeness-policy.aspx>; NIL Update Memo – June 27, 2023, NCAA, (Jun. 27, 2023), <https://mc97gsxn49y6wmpf4p2n764zq7z1.pub.sfmc-content.com/2ezhy1105pc>.

[4] Michelle Brutlag Hosick, Division I Board of Directors Ratifies Transfers, NIL Rule Changes, NCAA (Apr. 22, 2024), <https://www.ncaa.org/news/2024/4/22/media-center-division-i-board-of-directors-ratifies-transfer-nil-rule-changes.aspx>.

[5] The proposed settlement covers three of the major class action antitrust lawsuits brought against the NCAA: House v. NCAA, Hubbard v. NCAA, and Carter v. NCAA. A U.S. District Court judge ruled on May 23, 2024 that a separate antitrust class action, Fontenot v. NCAA, would remain in Colorado and is not a part of the House settlement. Katie Arcieri, Colorado Antitrust Suit Against NCAA Keeps Athlete Claims Alive, Bloomberg Law (May 28, 2024), <https://news.bloomberglaw.com/antitrust/colorado-antitrust-suit-against-ncaa-keeps-athlete-claims-alive>.

[6] Becky Sullivan, What We Know And What We Don't About A Historic Settlement To Pay College Athletes, NPR (May 24, 2024), <https://www.npr.org/2024/05/24/nx-s1-4978680/house-ncaa-settlement-pay-college-athletes>.

[7] Associated Press, Virginia Law Allows The State's Colleges And Universities To Directly Pay Athletes Through NIL Deals, AP News (April 18, 2024), <https://apnews.com/article/virginia-name-image-likeness-law-99e886900603ebba1345ddb2fff7bb91>.

[8] Lewis v. Guthartz, 428 So. 2d 222, 223 (Fla. 1982).