

## **College Sports, Enter at Your Own Risk: An Overview of the NCAA Insurance Policies Available to its Student-Athletes**

Remington Slama<sup>1</sup>

---

<sup>1</sup> Remington S. Slama, J.D. Candidate, University of Nebraska College of Law, 2021. Remington thanks Professor Harvey Perlman for his knowledge and expertise. He also thanks his wife Alyssa for her continued support throughout law school while getting her law degree at the same time.

## I. INTRODUCTION

Imagine you are a junior Division I student-athlete who plays quarterback for the University of Nebraska. You are not a typical student-athlete, but instead you are an exceptional football player. You just won the Heisman Trophy<sup>1</sup> and the National Championship bringing glory back to the long depressed Nebraska football fanbase. Most experts and scouts have predicted that you will be the number one pick in the upcoming National Football League (“NFL”) draft. If drafted number one, you can expect to make \$35,035,000, including a guaranteed signing bonus of \$23,500,000.<sup>2</sup> Not only are you a fantastic athlete, but you also have a 4.0 grade point average and dream of becoming an orthopedic surgeon. You have a choice to make: do you enter the NFL draft because you have completed the three years as required by the NFL, or do you play one more year in college finishing your degree?<sup>3</sup> The choice may seem simple to many. However, you will receive pressure from multiple places trying to convince you to stay in college for one more year, including your coach and the entire Nebraska football fanbase.

You decide to play one more season. The following year, you suffer a catastrophic injury while playing in the first game of the season, a torn anterior cruciate ligament (“ACL”). In the upcoming draft, you are not drafted number one overall; instead, you are drafted fifth, losing out on a little over six million dollars.

This is not a unique story; there are many examples of student-athletes going through this awful experience. For instance, in 2008, Dante Love, a Ball State wide receiver, was projected to

---

<sup>1</sup> The Heisman Trophy is an award given to the most outstanding player in NCAA football annually. THE HEISMAN TROPHY, <https://www.heisman.com/> (last visited Apr. 11, 2020).

<sup>2</sup> Jeff Smith, *NFL Draft Pick Salaries: How Much Do Rookies Make on First Contact?*, HEAVY (Apr. 26, 2019, 11:20 PM), <https://heavy.com/sports/2019/04/nfl-draft-pick-salaries-contracts-signing-bonuses/>.

<sup>3</sup> *The Rules of the Draft*, NFL FOOTBALL OPERATIONS, <https://operations.nfl.com/the-players/the-nfl-draft/the-rules-of-the-draft/> (last visited Apr. 11, 2020).

be a high first-round pick.<sup>4</sup> Unfortunately, he suffered a severe spinal cord injury.<sup>5</sup> He was able to recover and now lives a normal life, but he never played football again.<sup>6</sup> Most recently, in 2019, Alabama quarterback Tua Tagovailoa, the projected number one pick for the NFL draft, suffered a dislocated hip and posterior wall fracture.<sup>7</sup> Tagovailoa recovered from his injury and was drafted fifth in the 2020 NFL draft resulting in a loss of approximately ten million dollars.<sup>8</sup> These are just a few stories of injuries harming student-athletes' professional careers.<sup>9</sup> To insulate themselves from this risk, exceptional student-athletes do as many other people do and get insurance to shift the risk away from them.

The NCAA requires that every student-athlete have health insurance if they want to take part in any activity related to the sport they participate in.<sup>10</sup> This is the only insurance that is required by the NCAA for student-athletes. Fortunately, the NCAA does supply every athlete with catastrophic injury coverage, but the policy does not come into effect until the cost of the injury exceeds \$90,000.<sup>11</sup> The NCAA also offers insurance to a select few athletes. This policy is known as the Exceptional Student-Athlete Disability Insurance ("ESDI") program.<sup>12</sup> Even with all these different insurances, elite student-athletes still fear that they are not protected enough and have

---

<sup>4</sup> See Jill W. Lens & Joshua Lens, *Insurance Coverage For Elite Student-Athletes*, 84 MISS. L.J. 127, 128 (2014) (discussing Dante Love and his story).

<sup>5</sup> *Id.*

<sup>6</sup> *Id.*

<sup>7</sup> Ben Kercheval, *Tua Tagovailoa Injury: Prognosis 'Excellent' After Surgery as Alabama QB Out for Season with Dislocated Hip*, CBS (Nov. 19, 2019, 10:05 AM), <https://www.cbssports.com/college-football/news/tua-tagovailoa-injury-prognosis-excellent-after-surgery-as-alabama-qb-out-for-season-with-dislocated-hip/>.

<sup>8</sup> Marc Sessler, *Dophins Draft QB Tua Tagovailoa with No. 5 Pick*, NFL (Apr. 23, 2020, 1:56 PM), <https://www.nfl.com/news/dolphins-draft-qb-tua-tagovailoa-with-no-5-pick-0ap3000001110831>; *Tua Tagovailoa*, SPOTRAC, <https://www.spotrac.com/nfl/miami-dolphins/tua-tagovailoa-47598/#:~:text=Tua%20Tagovailoa%20signed%20a%204,average%20annual%20salary%20of%20%247%2C568%2C860> (last visited Mar. 14, 2020).

<sup>9</sup> Kercheval, *supra* note 7.

<sup>10</sup> *NCAA Student-Athlete Medical Insurance Legislation*, NCAA, <http://www.ncaa.org/about/resources/insurance/ncaa-student-athlete-medical-insurance-legislation> (last visited Apr. 11, 2020).

<sup>11</sup> *NCAA Catastrophic Injury Insurance Program*, NCAA, <http://www.ncaa.org/about/resources/insurance/ncaa-catastrophic-injury-insurance-program> (last visited Apr. 11, 2020).

<sup>12</sup> *Exceptional Student-Athlete Disability Insurance Program*, NCAA, <http://www.ncaa.org/about/resources/insurance/exceptional-student-athlete-disability-insurance-program> (last visited Apr. 12, 2020) [hereinafter NCAA ESDI].

started to acquire a unique form of insurance known as loss of value insurance.<sup>13</sup> Each of these insurances provides some form of protection for the student-athlete. However, none of them protect the student-athlete adequately.

Part II of this Article will examine the required health insurance. Part III will examine the disability insurance programs offered by the NCAA including its Catastrophic Injury Program and the ESDI program. Part IV will examine some of the key defects in the policies supplied by the NCAA. Lastly, Part V will examine some ways the NCAA can change to protect its student-athletes.

## **II. MANDATORY HEALTH INSURANCE**

The NCAA requires all its member institutions and their athletes have some form of accidental injury insurance coverage.<sup>14</sup> This requirement has the effect of shielding the NCAA from any liability for common student-athlete injuries.<sup>15</sup> The accidental injury insurance comes in the form of health insurance. Health insurance serves to provide the insured with coverage for financial loss from illnesses caused by specific diseases and sometimes to specify specified diseases that are not covered.<sup>16</sup>

Luckily for student-athletes, their access to health insurance is much greater now than it was in the past. Until 2005, student-athletes had limited options to cover the expense of an injury

---

<sup>13</sup> Daniel J. Kain et al., *Draft Protection Insurance: Elite Athlete Loss-of-Value Policies and the Emerging Wave of Coverage Litigation*, 24 JEFFREY S. MOORAD SPORTS L.J. 217 (2017).

<sup>14</sup> *Student-Athlete Medical Insurance Legislation*, *supra* note 10.

<sup>15</sup> Nicole Kline, *Bridging the NCAA's Accident Insurance Coverage Gaps? A Deep Dive into the Uncertainties of Injury Coverage in College Contact Sports, and the Impact that has on Athletes Future Physical and Financial Comfort*, 31 J. L. & HEALTH 55, 64 (2018) (citing *NCAA Catastrophic Injury Insurance Program Benefit Summary for the period 8/1/16 through 7/31/18*, NCAA, [https://ncaaorg.s3.amazonaws.com/ncaa/insurance/2017-20INS\\_NCAA\\_CatastrophicBenefitSummary.pdf](https://ncaaorg.s3.amazonaws.com/ncaa/insurance/2017-20INS_NCAA_CatastrophicBenefitSummary.pdf) (last visited on Nov. 11, 2016)).

<sup>16</sup> JOHN ALAN APPLEMAN, APPLEMAN ON INSURANCE § 31-186.01(A) (2d ed. 2007); Lens & Lens, *supra* note 4, at 130.

incurred from playing a sport.<sup>17</sup> Mainly, student-athletes might have had their own health insurance, or their parents health insurance policies could have covered them.<sup>18</sup> This all changed in 2005 when the NCAA required that every student-athlete have personal health insurance: “[a]n active member institution [of the NCAA] must certify insurance coverage for medical expenses resulting from athletically related injuries sustained . . . while participating in a covered event.”<sup>19</sup> The NCAA does not specify where this mandatory insurance must come from.<sup>20</sup> Many universities self-report that they are the ones supplying the student-athletes with primary health insurance.<sup>21</sup> However, this choice is ultimately left up to the school and is normally only done at the Division I level.<sup>22</sup> Irrespective of the source, it must cover “athletically related injuries . . . that are a direct result of participation in a covered event.”<sup>23</sup> A Covered Event is “[a]ny intercollegiate sports activity, including team travel, competition, practices and conditioning sessions,”<sup>24</sup> “[a]n NCAA-sanctioned competition in which the insured person is an official competitor,”<sup>25</sup> and “[p]ractice and conditioning sessions that are authorized, organized or directly supervised by athletics department personnel at the member institution other than during the playing season.”<sup>26</sup>

---

<sup>17</sup> Lens & Lens, *supra* note 4, at 130.

<sup>18</sup> *Id.*

<sup>19</sup> 2020-21 NCAA DIVISION I MANUAL § 3.2.4.9 (2020) <http://www.ncaapublications.com/productdownloads/D121.pdf> [hereinafter NCAA MANUAL]; *see also* Cory McCune, *NCAA Policies for Student-Athlete Medical Insurance Breakdown*, BLEACH REPORT (Apr. 8, 2013), <https://bleacherreport.com/articles/1595326-ncaa-policies-for-student-athlete-medical-insurance-breakdown> (discussing the NCAA rules for insurance coverage and the gaps in coverage for certain student-athletes); Lens & Lens, *supra* note 4, at 130.

<sup>20</sup> *See* NCAA MANUAL, *supra* note 19, § 3.2.4.9.1. (“Such insurance coverage must be equal or greater value than the deductible of the NCAA Catastrophic Injury Insurance Program and may be provided through the following sources: (a) Parents’ or guardians’ insurance coverage; (b) Participant’s personal insurance coverage; or (c) Institution’s insurance program.”); *see also* Kline, *supra* note 15, at 64 (explaining coverage gaps in NCAA insurance rules and mandatory insurance requirements).

<sup>21</sup> Jon Solomon, *College Athletes’ Rights: NCAA Requires Health Insurance, but Schools Decide What to Pay*, AL.COM (Feb. 19, 2012), [https://www.al.com/sports/2012/02/college\\_athletes\\_rights\\_ncaa\\_r.html](https://www.al.com/sports/2012/02/college_athletes_rights_ncaa_r.html) .

<sup>22</sup> *Id.*

<sup>23</sup> NCAA MANUAL, *supra* note 19, § 3.2.4.9.2.

<sup>24</sup> *Id.* § 3.2.4.9.3(a).

<sup>25</sup> *Id.* § 3.2.4.9.3(b).

<sup>26</sup> *Id.* § 3.2.4.9.3(c).

The NCAA allows for the required insurance to come from one of three different sources: the student-athlete's "[p]arents' or guardians' insurance coverage," the student-athlete's "personal insurance coverage," or the "[i]nstitution's insurance program."<sup>27</sup> However, if a student-athlete's only coverage is through their parent's insurance policy, then that policy's terms control what medical costs are covered.<sup>28</sup> Furthermore, "[s]uch insurance coverage must be of equal or greater value than the deductible of the NCAA Catastrophic Injury Insurance Program."<sup>29</sup> Currently, the NCAA Catastrophic Injury insurance has a deductible of \$90,000.<sup>30</sup>

Universities have a couple of options concerning the required insurance. As discussed earlier, the majority of NCAA Division I universities do provide insurance for their student-athletes.<sup>31</sup> However, this is not required by the NCAA.<sup>32</sup> Many universities only provide secondary insurance programs. These programs only cover expenses that are not covered by the student's personal insurance or their parents' insurance.<sup>33</sup> Sometimes, when a student-athlete is no longer enrolled under scholarship, the school will end these benefits.<sup>34</sup> Furthermore, the NCAA permits universities to pay for medical expenses and services to student-athletes and former student-athletes, but it is not required.<sup>35</sup>

### **III. THE NCAA'S DISABILITY INSURANCE PROGRAMS**

---

<sup>27</sup> *Id.* § 3.2.4.9.1; Lens & Lens, *supra* note 4, at 132.

<sup>28</sup> Lens & Lens, *supra* note 4, at 132.

<sup>29</sup> NCAA MANUAL, *supra* note 19, § 3.2.4.9.1; Lens & Lens, *supra* note 4, at 132.

<sup>30</sup> Lens & Lens, *supra* note 4, at 132.

<sup>31</sup> *Id.*

<sup>32</sup> *Id.*; McCune, *supra* note 19.

<sup>33</sup> Lens. & Lens, *supra* note 4, at 132; Solomon, *supra* note 21.

<sup>34</sup> Lens & Lens, *supra* note 4, at 132.

<sup>35</sup> *Id.* at 132; NCAA, 2012-13 NCAA WORKING GROUP ON COLLEGIATE MODEL - RULES QUESTIONS AND ANSWER DOCUMENT 16 (2013), [https://s3.amazonaws.com/sidearm.sites/sfajacks.com/documents/2017/6/7/QandA\\_New\\_Legislation.pdf](https://s3.amazonaws.com/sidearm.sites/sfajacks.com/documents/2017/6/7/QandA_New_Legislation.pdf) [hereinafter NCAA WORKING GROUP].

While the NCAA does not supply its student-athletes with health insurance, it does provide them with a form of disability insurance. Disability insurance, similarly to health insurance, shifts the risk and provides reimbursement for financial loss to the insured.<sup>36</sup> However, the financial loss reimbursed under the NCAA's disability insurance is different from health insurance because it insures against a student-athlete's inability to make a living as a result of an accident, injury, or illness.<sup>37</sup> There are two types of traditional disability insurance. Short-term disability insurance is used to replace the insured's income for a specific, short period. Usually, a short-term disability policy will provide an employee with one-half to two-thirds of her pre-disability income for a limited period of thirteen, twenty-six, or fifty-two weeks.<sup>38</sup> Long-term disability insurance typically commences at the expiration of short-term disability benefits, and these benefits can pay anywhere from one-half to two-thirds of lost wages.<sup>39</sup>

There are two types of long-term disability insurance, differing in the extent to which the insured can perform the work they were previously engaged in and any other type of work.<sup>40</sup> Under the first type, an insured will be "disabled" if the "insured can no longer perform occupational duties."<sup>41</sup> "The term "occupation" refers to the occupation that the insured was carrying on at the time of injury."<sup>42</sup> The second type of long-term disability insurance denies a finding of disability "if the insured can follow any remunerative occupation, whether his or her present vocation or another."<sup>43</sup> However, this does not mean any occupation, and it only includes occupations that fit

---

<sup>36</sup> Lens & Lens, *supra* note 4, at 133; NCAA WORKING GROUP, *supra* note 35.

<sup>37</sup> Lens & Lens, *supra* note 4, at 133.

<sup>38</sup> *Id.* at 134; Alena Allen, *State-Mandated Disability Insurance as Salve to the Consumer Bankruptcy Imbroglio*, 2011 BYU L. REV. 1327, 1342 (2011).

<sup>39</sup> Allen, *supra* note 38, at 1342.

<sup>40</sup> Lens & Lens, *supra* note 4, 134.

<sup>41</sup> *Id.*; APPLEMAN, *supra* note 16, § 31-187.01.

<sup>42</sup> APPLEMAN, *supra* note 16, § 31-187.06(A); Lens & Lens, *supra* note 4, at 134.

<sup>43</sup> APPLEMAN, *supra* note 16, § 31-187.07(A); Lens & Lens, *supra* note 4, at 134.

the individual's age, health, training, and experience or which the individual is reasonably qualified for.<sup>44</sup>

Long-term disability will usually have a waiting or elimination period that has to elapse before benefits are paid.<sup>45</sup> “The insured must remain disabled during this period to obtain the benefits. The length of the period can vary; it may be as short as ninety days or as long as a year.”<sup>46</sup> The purpose of this waiting period is likely to ensure that the individual claiming disability is actually disabled.<sup>47</sup>

It is important to note that while it is likely a student would have health insurance without the NCAA mandating it, they are unlikely to have any form of disability insurance coverage. Unlike health insurance, a parents' disability insurance policy is not going to cover the student-athlete. What is more important is that while student-athletes are in school, they will most likely not work, at least at the Division I level. For this reason, they would be unable to recover any loss under traditional disability insurance because they do not have any present income.

However, the student-athlete will lose future income if he is disabled. If elite student-athletes have the opportunity to play at the professional level and become disabled, they will likely miss out on millions of dollars in future income. Therefore, student-athletes should be very concerned with what type of disability insurance protection the NCAA provides for them.

### ***A. The NCAA's Catastrophic Injury Insurance Program***

---

<sup>44</sup> Lens & Lens, *supra* note 4, at 134–35; APPLEMAN, *supra* note 16, § 31-187.07(A).

<sup>45</sup> Lens & Lens, *supra* note 4, at 135; APPLEMAN, *supra* note 16, § 31-187.02(H)(4).

<sup>46</sup> Lens & Lens, *supra* note 4, at 135; APPLEMAN, *supra* note 16, § 31-187.02(H)(4).

<sup>47</sup> Lens & Lens, *supra* note 4, at 135; *see also* Colin Lalley, *Disability Insurance Elimination Periods*, POLICYGENIUS (Mar. 22, 2018), <https://www.policygenius.com/disability-insurance/disability-insurance-elimination-periods/> (discussing the purpose of elimination periods).



The NCAA does provide some disability insurance through its Catastrophic Insurance Program. The NCAA pays the full premiums for the catastrophic injury policy, and all member NCAA schools are automatically provided with the insurance coverage.<sup>48</sup> The insurer of the policy is the Mutual of Omaha Insurance Company.<sup>49</sup> The NCAA catastrophic program provides three main types of benefits: medical benefits, true catastrophic injury benefits, and death benefits.<sup>50</sup>

The “[m]edical benefits are available to those Insured Persons<sup>51</sup> who meet the deductible within the required timeframe, incur medical expenses in excess of the deductible as a result of an injury sustained during a Covered Event, and has not triggered the date of recovery clause.”<sup>52</sup> A covered event under the policy is “a. a Qualifying Intercollegiate Sport competition scheduled by the Insured Person’s Participating School; b. official team activities; c. [c]onditioning; or d. practice sessions.”<sup>53</sup> Events held by organizations other than the participating school, such as camps or clinics, are not covered.<sup>54</sup> A policy deductible is “the total amount of eligible medical expenses

---

<sup>48</sup> NCAA, NCAA CATASTROPHIC INJURY INSURANCE PROGRAM FREQUENTLY ASKED QUESTIONS: APPLICABLE TO 8/1/17 TO 7/31/2021 POLICY PERIOD, [https://www.ncaa.org/sites/default/files/2018\\_Cat%20FAQs\\_20180105.pdf](https://www.ncaa.org/sites/default/files/2018_Cat%20FAQs_20180105.pdf) [hereinafter CATASTROPHIC FAQ].

<sup>49</sup> *Id.*

<sup>50</sup> *Id.*

<sup>51</sup> The policy defines “Insured Person” as:

- a. a Student attending or registered to attend the Participating School and participating as:
  - 1) a player on an athletic team in a Qualifying Intercollegiate Sport sanctioned and recognized by the Participating School; or as
  - 2) a Student cheerleader of a cheer team officially recognized as such by the Participating School (includes dance team members and mascots); or as
  - 3) a Student coach, Student manager, or Student trainer of an athletic team in a Qualifying Intercollegiate Sport sanctioned and recognized by the Participating School or of a cheerleading unit officially recognized as such by the Participating School;
- b. a person as identified by the Participating School and as approved in writing by the Company and endorsed onto this Policy; or
- c. a prospective student that has graduated from high school and signed an irrevocable commitment to participate in a Qualifying Intercollegiate Sport (or its equivalent for cheerleading) at a Participating School.

Catastrophic Injury Blanket Insurance Policy from the Mut. Of Omaha Ins. Co. to the Nat’l Collegiate Athletic Assoc. app. at 8 (August 1, 2017) (on file with author) [hereinafter Catastrophic Injury Blanket Insurance Policy].

<sup>52</sup> CATASTROPHIC FAQ, *supra* note 48.

<sup>53</sup> Catastrophic Injury Blanket Insurance Policy, *supra* note 51, at 4.

<sup>54</sup> CATASTROPHIC FAQ, *supra* note 48.

that must be incurred as a result of an injury sustained during a Covered Event before the benefits under the NCAA catastrophic policy will be available.”<sup>55</sup> Furthermore, “[t]he deductible must be met within two years following the date of injury.”<sup>56</sup> Currently, the deductible is \$90,000, increasing from \$75,000 recently.<sup>57</sup> If all institutions comply with the NCAA mandatory health insurance regulations, the “[c]atastrophic program deductible will be covered by the student-athlete’s or parents’ personal insurance coverage or through a basic accident medical policy carried by the institution.”<sup>58</sup> The NCAA explains that the goal of this requirement is to “avoid a situation where a student-athlete is faced with paying the amount under the NCAA Catastrophic policy deductible out-of-pocket.”<sup>59</sup>

The Catastrophic Injury policy does not always pay benefits instantly after the deductible is met.<sup>60</sup> The policy is written only to pay after all other sources of insurance have been exhausted.<sup>61</sup> Therefore, “if a student-athlete has health insurance through his or her parents plus the institution buys an excess accident medical policy, it is possible the NCAA Catastrophic policy will not become involved in a claim even if the policy’s deductible has been met.”<sup>62</sup>

Even if the deductible is met, the insured is still not entitled to all the policy benefits. Because there are several types of coverage in the policy, “[a]nyone who meets the deductible and has not triggered the date of recovery<sup>63</sup> is eligible for Medical, Dental, Rehabilitation, and

---

<sup>55</sup> *Id.*

<sup>56</sup> *Id.*

<sup>57</sup> *Id.*

<sup>58</sup> *Id.*

<sup>59</sup> *Id.*

<sup>60</sup> Catastrophic Injury Blanket Insurance Policy, *supra* note 51, at 15.

<sup>61</sup> CATASTROPHIC FAQ, *supra* note 48.

<sup>62</sup> *Id.* (explaining that the NCAA policy will not come into play if all the expenses are covered through other avenues).

<sup>63</sup> Catastrophic Injury Blanket Insurance Policy, *supra* note 51, at 6.

Custodial Care benefits.”<sup>64</sup> However, just meeting the deductible does not require one to receive disability benefits.

Under the policy, “[t]rue catastrophic injury benefits are available to an [individual who is] Totally or Partially Disabled as defined in the policy.”<sup>65</sup> These benefits include, among other things, “special benefits for home and vehicle modifications, family counseling, rehabilitation, and college/vocational education.”<sup>66</sup> The policy defines “Total Disability” as:

[T]he Insured Person, within two years of the date of a Covered Accident<sup>67</sup> and as a result of that Covered Accident: has suffered an irrecoverable loss of use of both arms, use of both legs, or use of one arm and one leg and is unable to perform at least three ADL(s);<sup>68</sup> or has suffered an irrecoverable loss of speech, hearing of both ears, or sight in both eyes and is unable to perform at least three ADL(s) or at least three IADL(s);<sup>69</sup> or has suffered severely diminished mental capacity due to brain stem or other neurological damage and is unable to perform at least three ADL(s) or at least four IADL(s).<sup>70</sup>

The definition of “Partially Disability” in the policy is:

[T]he Insured Person, within two years of the date of a Covered Accident and as a result of that Covered Accident: has suffered an irrecoverable loss of use of both arms, use of both legs, or use of one arm and one leg and is unable to perform at least one ADL(s); or has suffered an irrecoverable loss of speech, hearing of both ears or sight in both eyes and is unable to perform at least one ADL(s) or at least

---

<sup>64</sup> CATASTROPHIC FAQ, *supra* note 48.

<sup>65</sup> *Id.*

<sup>66</sup> *Id.*

<sup>67</sup> See Catastrophic Injury Blanket Insurance Policy, *supra* note 51, at 4, for definition of Covered Accident.

<sup>68</sup> *Id.* at 4.

<sup>69</sup> *Id.* at 7.

<sup>70</sup> *Id.* at 10.

one IADL(s); or has suffered severely diminished mental capacity due to brain stem or other neurological damage and is unable to perform at least one ADL(s) or at least two IADL(s).<sup>71</sup>

The last term that is important to define is Date of Recovery. The definition of “Date of Recovery” is:

a. [F]or an Insured Person who suffered the complete and irreparable severance of an arm or leg at or above the wrist or ankle joint, but who was not Totally Disabled, the date immediately following a period of twenty-four (24) consecutive months during which the Insured Person received no Medically Necessary treatment or service as a result of the Covered Accident for which benefits had been received under this Policy; b. for an Insured Person not Totally Disabled and who has not suffered the complete and irreparable severance of an arm or leg at or above the wrist or ankle joint, the earlier of: 1) the date the Insured Person receives medical clearance to participate in Qualifying Intercollegiate Sports; or 2) the date immediately following a period of “twenty-four” (24) consecutive months during which the Insured Person received no Medically Necessary treatment or service as a result of the Covered Accident for which benefits had been received under this Policy; or [f]or an Insured Person who was Totally Disabled, the date such Insured Person no longer qualifies as Totally Disabled as defined herein.<sup>72</sup>

This unnecessarily wordy language mandates that there is a time limitation set for reporting and assessing injuries. In order to qualify for the benefits outlined in the policy, “one must report the injury and residual effects, ‘within twenty-four consecutive months immediately following the

---

<sup>71</sup> *Id.* at 8.

<sup>72</sup> *Id.* at 6.

date of the accident.”<sup>73</sup> Importantly, “[t]here is no coverage granted to student-athletes who do not realize and report the impacts of severe injuries until later on in life.”<sup>74</sup>

The NCAA provides for two circumstances in which an institution should report a claim under the NCAA Catastrophic policy. The first is true catastrophic injuries, which are rare and “require immediate response and coordination.”<sup>75</sup> In particular, “[s]evere head or spinal cord injuries should be reported no later than the first business day following the injury.”<sup>76</sup> The second situation is when an injury occurs that the institution believes is likely to exceed the catastrophic policy deductible.<sup>77</sup> The NCAA explains that an institution may not know this immediately following the injury, but as soon as they realize that there is a potential of the cost to exceed the deductible they should report it to the insurer immediately.<sup>78</sup>

Now that it is known when the Catastrophic Injury Policy will payout, the next important thing to examine is how much the insurance policy will pay. Section I of the Policy examines the Schedule of Benefits. The maximum benefit amount per Insured Person per Covered Accident is \$20,000,000.<sup>79</sup> While that may seem like a lot, this amount includes all medical, dental, rehabilitation, custodial care expense benefits, disability benefits, and ancillary benefits combined.<sup>80</sup> Examining the exact amount of disability benefits is important because it is likely to be the only source of income disabled student-athletes will have if they suffer a catastrophic injury that leaves them disabled. The Total Disability benefits are as follows:

---

<sup>73</sup> Kline, *supra* note 15, at 66.

<sup>74</sup> *Id.*

<sup>75</sup> CATASTROPHIC FAQ, *supra* note 48.

<sup>76</sup> *Id.*

<sup>77</sup> *Id.*

<sup>78</sup> *Id.*

<sup>79</sup> Catastrophic Injury Blanket Insurance Policy, *supra* note 51, at 1.

<sup>80</sup> *Id.*

\$400 each month, not to exceed twelve (12) months, and \$2,700 each month thereafter during which the Insured Person remains Totally Disabled. The \$2,700 monthly Total Disability benefit amount will be increased by 3% after the \$2,700 benefit has been paid for twelve (12) consecutive months and after each subsequent twelve (12) consecutive month period while the Insured Person remains Totally Disabled.<sup>81</sup>

However, the Total Disability benefit is limited by an offset provision, which provides:

The monthly benefit for Total Disability will be reduced by one-half (1/2) of the after-tax monthly compensation earned by the Insured Person in excess of \$1,000 per month beginning on the first anniversary after the date of the Covered Accident.

That \$1,000 will be increased by 2.5% each subsequent twelve (12) consecutive month period thereafter.<sup>82</sup>

Essentially, the offset provision allows for the insurer to reduce the benefits to \$0 if a student-athlete is capable of working any normal job after being rendered disabled while participating in a college sport. While this may seem harsh, it is a pretty common provision in most disability insurance policies. The Partial Disability benefits are extremely similar, except the amount received is drastically decreased due to the assumption that the insured can still work in some capacity.<sup>83</sup>

### ***B. Major Flaws in the Policy that Lead to Ineffective Coverage***

---

<sup>81</sup> *Id.* at 2.

<sup>82</sup> *Id.*

<sup>83</sup> *Id.*

There are a few major flaws in the Catastrophic Injury Program that lead to ineffective coverage of student-athletes. The first major flaw in the coverage is the time limitations set for reporting and assessing injuries under the policy. “In order to qualify for the long term benefits outlined in the program, one must report the injury and residual effects, ‘within twenty-four consecutive months immediately following the date of the accident.’”<sup>84</sup> This means that student-athletes who discovered the effects of an injury and the impacts of that injury later in life are not covered.<sup>85</sup> This issue leads to the major flaw in the policy—ineffective coverage of brain injuries.

Each year between 1.7 and 3 million sports-related concussions occur. Unsurprisingly, around 300,000 are football-related.<sup>86</sup> What is more concerning is that half of all concussions go unreported or undetected. Concussions are not limited to football. Women’s soccer has the second most concussions followed by women’s basketball.<sup>87</sup> From 2013 to 2015, 501 concussions were reported by major college football programs.<sup>88</sup> More importantly, more than 60 FBS programs refused to report their numbers for those years.<sup>89</sup> Therefore, it is safe to say that the number of concussions is substantially higher. One would think that if this issue was so widespread the NCAA would take extra care to make sure to protect its student-athletes financially from it. But yet again, the NCAA does not protect its student-athletes.

---

<sup>84</sup> Kline, *supra* note 15, at 66; NCAA CATASTROPHIC INJURY INSURANCE PROGRAM BENEFIT SUMMARY FOR THE PERIOD 8/1/17 Through 7/31/20, NCAA, [https://ncaaorg.s3.amazonaws.com/ncaa/insurance/2017-20INS\\_NCAA\\_CatastrophicBenefitSummary.pdf](https://ncaaorg.s3.amazonaws.com/ncaa/insurance/2017-20INS_NCAA_CatastrophicBenefitSummary.pdf) (last visited Apr. 12, 2020) [hereinafter CATASTROPHIC INJURY INSURANCE PROGRAM].

<sup>85</sup> CATASTROPHIC INJURY INSURANCE PROGRAM, *supra* note 84; Kline, *supra* note 15, at 66.

<sup>86</sup> *Concussion Facts and Statistics*, UPMC SPORTS MEDICINE, <https://www.upmc.com/services/sports-medicine/services/concussion/about/facts-statistics> (last visited Apr. 12, 2020).

<sup>87</sup> *Id.*

<sup>88</sup> Timothy Bella, *What Have We Learned From 500 Concussion in 3 Years of College Football*, ALJAZEERA AMERICA (Dec. 31, 2015, 12:15 PM), <http://america.aljazeera.com/watch/shows/america-tonight/articles/2015/12/30/500-concussions-ncaa-college-football-reporting.html>.

<sup>89</sup> *Id.*

Brain trauma and spinal cord injuries make up a majority of injuries subject to coverage outside the \$90,000 deductible.<sup>90</sup> However, the Catastrophic Injury Program is designed to pay for the one-time treatment of an athlete following a “catastrophic” injury. It does not cover medical expenses that a student-athlete may need for future treatment of the injury. Concussions unfortunately are both initially inexpensive to treat, and the severe damage from concussions usually takes years to manifest. Therefore the deductible will not be met, and by the time the student-athlete experiences the severe symptoms of the concussion, the insurance policy will no longer be required to pay any of the medical expenses. Some of the suspected long-term effects of concussions include Alzheimer’s, Parkinson’s, ALS, and Chronic Traumatic Encephalopathy (CTE).<sup>91</sup> All of these diseases are extremely expensive to treat and could not be subject to insurance coverage of post-college insurance plans.<sup>92</sup>

The NCAA tried to alleviate some of these issues by introducing a new policy that would cover the medical expenses after the student-athlete left the institution. The new policy required the institution to provide medical care for an athletically related injury for at least two years after the student-athlete left the institution or until they qualify for coverage under the NCAA Catastrophic Injury Insurance Program.<sup>93</sup> However, this does nothing to alleviate injuries that individuals can suffer from for more than two years. It also fails to alleviate the issue of covering injuries that take more than two years to manifest like concussions. Because the NCAA is not required to pay for these medical bills, nor do they supply the student-athletes with insurance

---

<sup>90</sup> UNIVERSITY OF NORTH CAROLINA CHAPEL HILL, CATASTROPHIC SPORTS INJURY RESEARCH 4 (Spring 2015), [https://nccsir.unc.edu/wp-content/uploads/sites/5614/2013/10/NCCSIR-33rd-Annual-All-Sport-Report-1982\\_2015.pdf](https://nccsir.unc.edu/wp-content/uploads/sites/5614/2013/10/NCCSIR-33rd-Annual-All-Sport-Report-1982_2015.pdf); Kline, *supra* note 15, at 67.

<sup>91</sup> Kline, *supra* note 15, at 67–68.

<sup>92</sup> *Id.* at 68.

<sup>93</sup> NCAA MANUAL, *supra* note 19, § 16.4.1.



programs that could help pay some of the expenses, student-athletes are unfortunately left wondering how they might possibly afford a life post-concussion.

### ***C. Exceptional Student-Athlete Disability Insurance Program***

The Catastrophic Injury Insurance Program is not the only insurance the NCAA offers. The NCAA also offers extra disability insurance coverage to a select group of elite athletes. This disability insurance coverage is known as the “Exceptional Student-Athlete Disability Insurance” program. “This program ‘helps’ elite college athletes—those who will likely earn millions from careers in professional sports—get insurance . . . [if] an injury causes a playing career to end.”<sup>94</sup> The ESDI program began in 1990, but it initially only covered football and men’s basketball.<sup>95</sup> The NCAA explains the original reason the program was created was to protect student-athletes from “both injury concerns and attempts by agents to lure the student-athletes away from school and into the professional leagues.”<sup>96</sup> Another concern listed was that it was designed to protect NCAA athletes’ amateur status because agents were giving money to players to purchase insurance.<sup>97</sup>

For a student-athlete to be eligible for the ESDI program, the student-athlete must have remaining athletic eligibility at an NCAA institution in football, basketball, baseball, or men’s ice hockey.<sup>98</sup> The student-athlete must also demonstrate that “they have professional potential to be selected in the first two rounds of the upcoming National Football League or National Hockey

---

<sup>94</sup> Marc Isenberg, *The “Student-Athlete Disability Insurance Program” Isn’t What the NCAA Cracks It Up to Be*, COACHING FOR SUCCESS (Mar. 20, 2013), <http://coachgeorgeraveling.com/the-student-athlete-disability-insurance-program-isnt-what-the-ncaa-cracks-it-up-to-be/>.

<sup>95</sup> *Id.*

<sup>96</sup> Michael D. Randall, *Even I Can’t Cover Me: Examining the NCAA’s Effective Prohibition on “Loss of Value” Insurance For Its Student-Athletes*, 21 CONN INS. L. J. 521, 531–32 (2015).

<sup>97</sup> Isenberg, *supra* note 94.

<sup>98</sup> NCAA ESDI, *supra* note 12.

League draft or the first round of the upcoming draft of the National Basketball Association, Major League Baseball or Women’s National Basketball Association.”<sup>99</sup> However, “[t]he policy does not explicitly list what criteria is used to determine whether a student-athlete demonstrates ‘professional potential,’ but the NCAA often uses professional scouting services to assist in their evaluations, which can be an inexact science.”<sup>100</sup> The NCAA also notes that the program is not limited to the sports listed above as other student-athletes are eligible for coverage, but their cases are reviewed on a case-by-case basis.<sup>101</sup>

Athletes are not required to apply for the program before the season starts but are capable of playing their way into the ESDI program.<sup>102</sup> Essentially, if a student-athlete is found to be ineligible before the start of a collegiate season, but he plays well enough during the season to increase his draft stock, they can then apply and obtain coverage mid-season.<sup>103</sup> “The policies are written in a way that incentivizes players to want to continue playing their sport, as they will be able to earn more as a professional than they would by collecting on a policy.”<sup>104</sup>

The policy acquired through the ESDI program is not paid for by the NCAA or the student-athlete’s institution but instead is paid by the student-athlete or their family. However, student-athletes approved for the program are automatically eligible for a loan to pay the premiums on the policy.<sup>105</sup> If the student-athlete acquires a loan to pay the premiums, they are not responsible for making any payment on the loan until one of the following occurs: “(1) the student-athlete signs a professional contract, (2) the disability benefits become available due to a covered injury

---

<sup>99</sup> *Id.*

<sup>100</sup> Randall, *supra* note 96, at 532; NCAA ESDI, *supra* note 12.

<sup>101</sup> NCAA ESDI, *supra* note 12.

<sup>102</sup> Randall, *supra* note 96, at 532.

<sup>103</sup> *Id.*

<sup>104</sup> *Id.* at 533. See also Mike Herndon, *NCAA Insurance Program Protects Elite Athletes, Future Earnings Against Injury*, AL.COM (Aug. 1, 2010), [https://www.al.com/sports/2010/08/are\\_you\\_in\\_good\\_hands.html](https://www.al.com/sports/2010/08/are_you_in_good_hands.html).

<sup>105</sup> NCAA ESDI, *supra* note 12.

or sickness or (3) the coverage is no longer in effect and the loan note matures.”<sup>106</sup> Because the ESDI program is a group program, the premiums are relatively affordable.<sup>107</sup> This is because the insurer can share the administrative cost and spread the risk among the participating athletes.<sup>108</sup> The premiums “for the policy can be as much as ten thousand to twelve thousand per one million insured.”<sup>109</sup>

The ESDI program carries a twenty-four month maximum policy term for any student-athlete eligible for the program and pays out in a single lump sum after the elimination period has expired.<sup>110</sup> “An elimination period is an interval of time during which no benefits are payable to the insured student-athlete in order to determine the nature of the disability.”<sup>111</sup> The elimination period is twelve consecutive months from the date total disability has been determined.<sup>112</sup> The program administrator individually determines the amount of coverage provided by the policy.<sup>113</sup>

For the policy to pay out for a permanent total disability, the student athlete’s disability must have resulted from an injury or sickness that occurred while the policy was in force and the athlete must have been “under the regular care of a qualified physician” and be “unable to engage in sporting activity at the professional level.”<sup>114</sup> Furthermore, the ““applicable elimination period” must have elapsed,” and the total disability must prevent him or her from signing “any employment contract with any professional team as a professional athlete in his or her sporting activity.”<sup>115</sup>

---

<sup>106</sup> Randall, *supra* note 96, at 535; Herndon, *supra* note 104.

<sup>107</sup> Randall, *supra* note 96, at 534.

<sup>108</sup> *Id.*

<sup>109</sup> *Id.*

<sup>110</sup> NCAA ESDI, *supra* note 12.

<sup>111</sup> *Id.*

<sup>112</sup> *Id.*

<sup>113</sup> The maximum coverage limits are \$10 million for men’s basketball, \$10 million for football, \$5 million for baseball, \$3 million for men’s ice hockey, and \$250,000 for women’s basketball. *Id.*

<sup>114</sup> NCAA ESDI, *supra* note 12; Randall, *supra* note 96, at 533.

<sup>115</sup> Randall, *supra* note 96, at 536.

The policy also provides for presumptive disability benefits. “Presumptive disability means that the insured student-athlete’s disability has been medically determined to be the result of entire and irrecoverable loss of sight in both eyes or hearing in both ears; total and irrecoverable loss of use of one hand or one foot; quadriplegia; or paraplegia . . . .”<sup>116</sup> Additionally, the disability must be “preventing the student-athlete from ever participating in the applicable sporting activity at the professional level.”<sup>117</sup> The presumptive disability benefit then provides that “[a]fter the expiration of a 90-constructive-calendar-day elimination period . . . at the option of the insured student-athlete . . . outstanding benefits may be commuted to present value lump sum at a rate agreed upon by the [insured and insurer].”<sup>118</sup> Effectively, the presumptive disability benefit includes an acceleration clause.

#### ***D. The ESDI: High Participation, Rare Claims***

The NCAA ESDI program is a highly participated in program, but it has consistently low claims rates. The NCAA has stated that “[b]etween 100 and 120 student-athletes participate [in the ESDI program] per season.”<sup>119</sup> The most recent data collected showed that roughly seventy-five to eighty percent of student-athletes enrolled in the program were college football players.<sup>120</sup> Those figures also show that seventy-five percent of first-round NBA and NFL draft picks were enrolled in the ESDI program.<sup>121</sup> However, only ten percent of MLB and NHL first-round draft picks were enrolled in the program.<sup>122</sup> Recent examples of college athletes to purchase the policy included

---

<sup>116</sup> NCAA ESDI, *supra* note 12.

<sup>117</sup> *Id.*

<sup>118</sup> *Id.*

<sup>119</sup> Kevin Fixler, *The \$5 Million Question: Should College Athletes Buy Disability Insurance?*, THE ATLANTIC (Apr. 11, 2013), <https://www.theatlantic.com/entertainment/archive/2013/04/the-5-million-question-should-college-athletes-buy-disability-insurance/274915/>; Randall, *supra* note 96, at 535.

<sup>120</sup> Glenn M. Wong & Chris Deubert, *The Legal & Business Aspects of Career-Ending Disability Insurance Policies in Professional and College Sports*, 17 VILL. SPORTS & ENT. L.J. 473, 507 (2010); Randall, *supra* note 96, at 535.

<sup>121</sup> Randall, *supra* note 96, at 535.

<sup>122</sup> *Id.*; Glary Klein, *Premium Players*, L.A. TIMES (Feb. 20, 2005, 12:00 AM), <http://articles.latimes.com/2005/feb/20/sports/sp-leinart20>.

Andrew Luck, Reggie Bush, Matt Leinart, Carson Palmer, Tim Tebow, Johnny Manziel, and Jadeveon Clowney.<sup>123</sup> However, not all high-profile college athletes choose to take part in the program. Those who chose not to participate explained that they chose not to because the program only pays out in the event of a career-ending injury and because of the high premiums.<sup>124</sup>

Even though there is consistently high participation in the ESDI program, there have been very few successful collections by student-athletes over the past fifteen years.<sup>125</sup> The NCAA has been reluctant to answer exactly how many policies have been paid out, but they have “acknowledged that fewer than half a dozen claims have been made under [the] policy.”<sup>126</sup>

The only publicized example of a student-athlete benefiting from permanent total disability coverage under the ESDI program was Ed Chester. Ed was projected to be an NFL first-round pick his junior year of college. However, his coach convinced him to stay one more year, partially because the ESDI program was in place.<sup>127</sup> During Chester’s senior season, he tore his ACL and MCL during a game and never played football again.<sup>128</sup> He subsequently collected \$1 million from a policy he paid \$8,000 for.<sup>129</sup>

It is not surprising to see such a low number of claims being filed given modern medicine and its ability to repair practically any sporting injury. The NCAA used similar reasoning to explain the low number of claims being filed. They stated, “[a]s medical technology has advanced, there’s a lot of good rehab facilities and procedures [available] that, except for the most dire of

---

<sup>123</sup> Randall, *supra* note 96, at 535.

<sup>124</sup> Zac Al-Khateeb, *Tua Tagovailoa Injury Timeline: Will He Be Ready for NFL Combine, Alabama Pro Day, 2020 Season?*, SPORTING NEWS (Mar. 10, 2020), <https://www.sportingnews.com/us/nfl/news/tua-tagovailoa-injury-timeline-nfl-combine-pro-day-2020-season/1pidubc43f4tq1o3cla0o6ostz>.

<sup>125</sup> Fixler, *supra* note 119.

<sup>126</sup> Randall, *supra* note 96, at 534; Fixler, *supra* note 119.

<sup>127</sup> Isenberg, *supra* note 94.

<sup>128</sup> *Id.*

<sup>129</sup> *Id.*; Fixler, *supra* note 119.

injures, most of the time [athletes] can come back from it.”<sup>130</sup> As more and more medical advances are made it will be near impossible to be considered permanently disabled under the policy. Even now when elite student-athletes are severely injured, they still play the sport again most of the time. However, they usually drop significantly in the draft costing them millions. There is a type of insurance that can protect them from this risk—loss of value insurance.<sup>131</sup> However, loss of value insurance is only acquired if the student-athlete personally purchases it.

#### **IV. WHO REALLY BENEFITS FROM THE CURRENT NCAA INSURANCE PROGRAMS**

One of the main goals of the NCAA is to protect its student-athletes. However, programs like the ESDI actually protect the member institutions more and not the student-athletes. Currently, the ESDI is set up to incentivize student-athletes to stay in college and continue to make the college millions, even though the insurance they purchase provides for far less than any potential future earnings they might get if they left school early. The NCAA and its member institutions profit millions off student-athletes. For example, CBS has agreed to pay \$11 billion over the next ten years just to have the exclusive right to broadcast the NCAA Division I basketball tournament.<sup>132</sup> The question is clear: did the NCAA institute the insurance policies with the intent of keeping the student-athletes in school longer just to make more money? Obviously, there is no way to prove the answer one way or another. Nonetheless, it is clear that the ESDI helps keep student-athletes

---

<sup>130</sup> Fixler, *supra* note 119.

<sup>131</sup> While this is an important insurance that can help protect elite student athletes, it is outside the scope of this article. This article specifically focuses on policies that the NCAA provides and currently the NCAA does not provide loss of value insurance, and it’s only provided privately.

<sup>132</sup> Marc Tracy, *N.C.A.A. Extends Basketball Deal With CBS Sports and Turner Through 2032*, N.Y. TIMES (Apr. 12, 2016), <https://www.nytimes.com/2016/04/13/sports/ncaabasketball/ncaa-extends-basketball-deal-with-cbs-sports-and-turner-through-2032.html>.

in school longer while also making the NCAA more money—all while the student-athlete is the one who pays for insurance that never pays, not the NCAA.

## V. CONCLUSION

The mission statement of the NCAA is “to govern competition in a fair, safe, equitable and sportsmanlike manner, and to integrate intercollegiate athletics into higher education so that the educational experience of the student-athlete is paramount.”<sup>133</sup> It is clear to many that the NCAA has forgotten this mission long ago, and now many institutions use student-athletes as their cash cows raking in millions in revenue. These student-athletes put their bodies on the line for the NCAA and its member institutions, and in return for some, they receive free education. There are many arguments about whether this is right or wrong or if athletes should be compensated in other ways. However, what can be agreed upon is that the student-athletes at least deserve to be adequately protected by proper insurance, that does not have significant gaps in the coverage or little to no chance of actually paying out. This Article serves to inform about the current insurance coverage provided by the NCAA. This analysis is an overview of the NCAA insurance programs examining: (1) how each program works and (2) demonstrate some of the significant problems in each of the programs. Unfortunately, this Article does nothing to offer any solutions to the problems presented. However, student-athletes are gaining more power each year and soon will have the leverage to make the changes that need to be made.

---

<sup>133</sup> *NCAA Mission and Vision Statements Analysis*, MISSION STATEMENT ACADEMY (Nov. 23, 2019), <https://mission-statement.com/ncaa/>.