

# **Scholarship Athletes: Are They Employees or Students of the University? The Debate Continues**

**John W. Wolohan**  
**Iowa State University**  
**Ames, Iowa**

## **■ INTRODUCTION**

Are scholarship athletes employees of their colleges and universities, or are they merely attending school for the purpose of an education? Are college sports and the athletes who play them an integral part of colleges and universities? These questions may sound easy enough to answer, but the answer you are likely to receive depends largely on who you ask.

In March, 1993, in a ruling that could change college athletics, the Texas Workers' Compensation Commission ruled that former Texas Christian University (TCU) football player Kent Waldrep was an employee of TCU when he was paralyzed during a football game in 1974 (*NCAA News*, March 31, 1993). As an employee of TCU, the Commission ruled that Waldrep was entitled to workers' compensation benefits covering his past and future medical expenses plus a weekly salary, retroactive to 1974, for the rest of his life.

On the other side of the argument, Paul Rogers, Dean of the Southern Methodist University Law School and President of the Southwest Conference, along with most athletic administrators and courts, believes that colleges and universities are in the business of education and not athletics (Davis, March, 1993) (see also *NCAA News*, March 31, 1993).

No matter whom you ask, however, both sides will agree that the amount of money involved in college athletics today is staggering. A recent College Football Association (CFA) poll showed that the average Division I men's football and basketball programs generated a combined income of \$419 million (Katz, May, 1993). That same survey, also showed that Division I schools spend on average over \$250 million for the same two programs (Katz, May, 1993). With that much money involved in college athletics, the question of whether scholarship athletes are employees of the schools, or are at school for an education, is getting harder and harder to answer.

In light of the Texas Workers Compensation Commission's ruling in *Waldrep*, this article examines the current relationship between workers' compensation laws and scholarship athletes and the possible impact the *Waldrep* ruling could have of future claims. The article begins by examining the history and policy behind our

current workers' compensation laws. Next, the article reviews the case history of scholarship athletes who have filed workers' compensation claims. The article then reviews the facts in the *Waldrep* case and the impact the ruling could have on college athletics. Finally, the article concludes by examining the NCAA's Catastrophic Insurance Plan and the effect it will have on injured athletes in the future.

## ■ THE HISTORY OF WORKER'S COMPENSATION

The current workers' compensation laws in the United States were enacted to alleviate the injustice of the common law system. Under the common law, when an employee was injured on the job, there was a good chance the injuries would go uncompensated due to the doctrines of assumption of risk, contributory negligence, and the fellow servant rule (Larson, 1992).

Those injured workers who could overcome the above three defenses usually faced a series of other problems before they received any compensation for their injuries. First, faced with little or no income, injured workers were under enormous financial pressure to settle their claim, usually accepting much less than the true value of their claim in order to support themselves and their families. Second, even if the injured employee was able to withstand the financial pressure and could afford to litigate the claim, the employer was often able to use the court system to his or her advantage and delay paying the employee any compensation. Finally, if the injured worker was fortunate enough to recover his or her damages, the award was usually reduced by hefty attorney fees (Prosser & Keeton, 1984).

In an effort to protect injured workers and do away with the injustice of the common law system, states began to enact workers' compensation laws modeled after the German and English systems (Larson, 1992). The first state to enact workers' compensation was New York in 1910 (Larson, 1992). By 1920, all but eight states had adopted some type of workers' compensation act. The last state to enact a workers' compensation statute was Mississippi in 1949 (Larson, 1992). The statutes, which vary from state to state, provide benefits, including lost wages, usually around one-half to two-thirds of the employee's weekly wages, and medical care, to an employee who is injured or killed in the course of employment, regardless of fault (Larson, 1992). "The right to compensation benefits depends on one simple test: Was there a work-connected injury?" (Larson, 1992). In exchange for this protection, the injured worker agrees to forego any tort claim he or she might have against the employer (Larson, 1992).

The basic policy behind the workers' compensation system is that "the cost of the product should bear the blood of the worker" (Prosser & Keeton, 1984). In other words, the employer is required by the state to secure through private insurance, state funded insurance, or self-insurance any damages suffered by an employee. The employer in turn treats injuries and workers' compensation insurance as part of the cost of production. Thereby, the costs are added to the cost of the production and passed on to the consumer (Larson, 1992).

Workers' compensation is therefore a form of strict liability. It does not matter whether the injury was caused by the employee's negligence or pure accident; all the employee has to show is that he or she was injured in the course of employment (Larson, 1992). As a result, the injured worker receives quick financial assistance

with minimal interruption in their lives. Another benefit of workers' compensation is that the injured worker is relieved of the burden and expense of litigation.

In the case of scholarship athletes, the injured athlete must satisfy the same two prong test before he or she can recover workers' compensation benefits. First, the athlete must show that he or she was an employee of the college or university. In the Waldrep case, the Texas Workmen's Compensation Statute defines an employee as "every person in the service of another under any contract of hire . . ." (Tex. Rev. Civ. Stat. Ann. Art. 8301. sec 1). The four factors needed to find a "contract for hire" are: 1) the employer's right of control over the employee; 2) the employer's right to hire and fire the employee; 3) payment to the employee; and 4) the work performed is in the usual course of the trade, business, profession or occupation of the employer.

The second prong of the test is that the injury suffered by the scholarship athlete must have occurred in the course of his or her employment with the school. Therefore, even if the courts find that a scholarship athlete is an employee of the school, the Court can still deny worker's compensation benefits if the injury occurred outside the scope of the athlete's employment with the school.

## ■ CASE HISTORY

A quick look at the case history demonstrates the problems the Courts have traditionally had in analyzing the relationship between scholarship athletes and colleges and universities. The first case to address the issue was *University of Denver v. Nemeth*, (1953). In *Nemeth*, the Colorado Supreme Court, in affirming the decision of the Industrial Accident Commission, held that since Nemeth's scholarship (employment) was contingent on his athletic ability, he should receive workers' compensation for any injury incurred on the football field.

In *Nemeth*, the student, Ernest Nemeth, was paid \$50 per month by the University to perform work in and around the university tennis court. The University deducted \$10 each month to cover the cost of three meals per day, which Nemeth ate in the school cafeteria. Nemeth's student housing fee was also waived by the university for custodial work Nemeth performed around the premises.

Nemeth, who was injured while playing spring football practice, filed a workers' compensation claim against the university alleging that he was employed by the university to play football, and that his injury arose out of and in the course of that employment. Nemeth based his worker's compensation claim on the fact that he was awarded the jobs, meals, and housing only because he was a member of the school's football team. The university, however, argued that while Nemeth was an employee of the university he did not receive any special consideration for playing football. The opportunities extended to Nemeth, the university argued, were extended because Nemeth was a student at the university, and not because of his football activities. Therefore, the university claimed, Nemeth's request should be denied since his injury did not arise out of his employment, nor while he was performing his duties as an employee.

The Colorado Supreme Court, in finding for Nemeth, held that Nemeth was an employee of the University and that his injury arose out of and in the course of his employment. In reaching its decision, the Court found that it was "decided on the

football field who received the meals and jobs” (University of Denver v. Nemeth, 1953, p. 426). Therefore, since only those students who worked hard on the football field received a “meal ticket,” Nemeth’s employment was dependent on his playing football.

Four years later, in *State Compensation Fund v. Industrial Commission* (1957), the Colorado Supreme Court was again asked to determine the relationship between scholarship athletes and their schools. In this case, the Industrial Commission of Colorado awarded death benefits to the widow of an athlete, who was fatally injured while playing football for Fort Lewis A&M College. The Colorado Supreme Court, however, reversed the commission’s award, finding no evidence to support the claim that the athlete, Ray Dennison, was an employee of the college at the time of his injury.

The facts of the case show that Ray Dennison was employed as a gas station attendant when the football coach at Fort Lewis A&M College approached him about playing football for the college. The coach offered to find Dennison another job, which would not interfere with football practice and an athletic scholarship, if he would play football for the college. Dennison, who needed to work to support his family, accepted the coach’s offer. During one of Fort Lewis’ games, Dennison suffered a severe head injury and died of his injuries two days later.

The Colorado Supreme Court held that since the deceased was under no contractual obligation to play football, the employer-employee relationship could not exist. Unlike Nemeth, the Court held Dennison’s agreement with the college was not dependent upon the deceased playing football. In fact, the Court concluded that “none of the benefits Dennison received could, in any way, be claimed as consideration to play football” (*State Compensation Fund v. Industrial Commission*, 1957, p. 290). The Court also found significant the fact that the school “was not in the football business and no benefits” were derived from the sport (*State Compensation Fund v. Industrial Commission*, 1957, p. 290).

The next case, and State, to examine the relationship between scholarship athletes and their schools was California in *Van Horn v. Industrial Accident Commission*, (1963). In *Van Horn*, the estate of Edward Van Horn filed a claim for workers’ compensation benefits when the plane for the California State Polytechnic College football team crashed returning from a game. Van Horn’s widow argued that he was employed to play football for the College and died while on the job. Therefore, she argued, the estate should receive workers’ compensation death benefits.

In order to get Van Horn to play football for the College, Van Horn not only received a scholarship, he also received money from a special account the football coach utilized to supplement the rent of married football players. Additionally, Van Horn was paid an hourly rate for lining the football fields. The facts also show that, but for the scholarship and additional compensation, Van Horn would not have played football for the school.

The California District Court of Appeal, Second District, in annulling the decision of the Industrial Accident Commission, held that Van Horn was an employee of the school and that a contract of employment existed between Van Horn and the school. After reviewing the evidence, the court held that Van Horn

rendered a service to the school, playing football, for which he was compensated by receipt of his scholarship and rent money. Therefore, the court concluded that Van Horn was an employee of the school and eligible for worker's compensation benefits. It is important to note that the court based its decision on Van Horn's scholarship and not his job. As long as the services were not gratuitous, the court held, the form of compensation, whether academic credit, free tuition and board or wages "is immaterial" (*Van Horn v. Industrial Accident Commission*, 1963, p. 172-173).

In opposition to Van Horn's claim, the commission made the following arguments. First, the commission argued that playing on the football team was not rendering a service to the college within the meaning of the workers' compensation statute. Next, the commission argued that awarding workers' compensation benefits in the present case would be against public policy. In rebutting these arguments, the court held that it was possible for someone to have a "dual capacity of student and employee," and that public policy was best served if the workers' compensation statute was liberally construed (*Van Horn v. Industrial Accident Commission*, 1963, p. 173-74). Finally, the court noted that not every scholarship athlete is not automatically an "employee of the school" (*Van Horn v. Industrial Accident Commission*, 1963, p. 175). Only where the evidence establishes an employment contract will the court find a "contract of employment," to do otherwise would deprive the student of his or her right to sue for damages (*Van Horn v. Industrial Accident Commission*, 1963, p. 175).

The California courts had another opportunity to review the issue in *Graczyk v. Workers' Compensation Appeals Board*, (1986). In *Graczyk*, the California Court of Appeals denied workers' compensation benefits to Ricky Graczyk after he sustained head, neck, and spine injuries while playing football for California State University, Fullerton.

The evidence in the case established that Graczyk was attending college on an athletic scholarship to play football. Once the relationship was established, the workers' compensation judge, using the statutory definition of employee as interpreted by the Van Horn court, concluded that Graczyk was an employee of the university and eligible for workers' compensation benefits.

The Appellate Court, however, ruled that it was the intent of the state legislature to exclude Graczyk, and all scholarship athletes, from receiving workers' compensation benefits for injuries received on the playing field. The court pointed out that the California State Legislature, only two years after the Van Horn decision, amended the state's workers' compensation statute to exclude "any person, other than a regular employee, participating in sports or athletics who receives no compensation for such participation other than the use of athletic equipment, uniforms, transportation, travel, meals, lodging, or other expenses incidental thereto" from the definition of employee (*Graczyk v. Workers' Compensation Appeals Board*, 1986, p. 499). The California State Legislature amended the statute further in 1981 when it specifically excluded "[a]ny student participating as an athlete in amateur sporting events sponsored by any public agency, public or private nonprofit college, university or school, who receives no remuneration for such participation other than the use of athletic equipment, uniforms, transportation, travel, meals, lodging, scholarships, grants in aid, and other expenses" from the

definition of employee (West's Ann.Cal.Labor Code §3353 (k)).

California is not the only state to expressly exclude scholarship athletes from workers' compensation benefits. Hawaii and New York also deny scholarship athletes benefits (Haw. Rev. Stat. § 386-1 (1990)) (see also Whitmore, M. R. (1991)).

The next case to address the issue of scholarship athletes and workers' compensation, and the case which probably demonstrates the most popular view of the courts today, is *Rensing v. Indiana State University Board of Trustees*, (1983). In *Rensing*, the Indiana Supreme Court overturned a Court of Appeals decision awarding Rensing workers' compensation benefits and denied Fred Rensing benefits after he became permanently disabled due to injuries sustained during spring football practice.

Indiana State University offered Rensing a scholarship covering his tuition, room and board, and a book allowance, in return for playing football. Rensing's scholarship also stated that if he became physically unable to continue playing football, Indiana State would continue to honor his scholarship. In the case of an injury, Rensing would be required to work at other jobs to the extent of his physical capabilities.

Rensing was rendered a quadriplegic while tackling a teammate during spring practice drills. After his injury, Rensing filed a workers' compensation claim with the Industrial Board of Indiana. The Industrial Board ruled that Rensing had failed to establish an employer-employee relationship and denied his claim for worker's compensation benefits. The Indiana Court of Appeals reversed the Board's ruling and found that Rensing had established an employer-employee relationship and that maintaining a football team was in the usual course of a university's trade or business (*Rensing v. Indiana State University Board of Trustees*, 1982).

The Indiana Supreme Court reversed the Court of Appeals decision and found that no employer-employee relationship between Rensing and Indiana State University based on Rensing's football scholarship (*Rensing v. Indiana State University Board of Trustees*, 1983). The court based its ruling on the fact that neither the University, the National Collegiate Athletic Association (NCAA), nor Rensing considered the scholarship to be income. In support of its findings the court pointed out that neither Rensing nor the University intended to enter into an employer-employee relationship. The court also found that neither the NCAA nor the University considered Rensing's scholarship "pay" for playing football. Finally, the court concluded that not even Rensing consider his scholarship income; otherwise he would have claimed it for tax purposes. Therefore, the court held that since Rensing held no job with the University he "cannot be considered an employee of the university within the meaning of the Workmen's Compensation Act" (*Rensing v. Indiana State University Board of Trustees*, 1983, p. 1173).

In *Coleman v. Western Michigan Univ.*, (1983), the Court of Appeals of Michigan, citing the *Rensing* decision, also concluded that scholarship athletes are not employees within the meaning of the workers' compensation statute. During football practice, the plaintiff, Willie Coleman, was injured and thereafter could no longer play football. Before his injury, Coleman received a full scholarship to play football at Western Michigan. After his injury, however, the University reduced Coleman's scholarship and he was forced to drop out of the University. Coleman

brought the following suit after his workers' compensation claim was denied by the state workers' compensation board.

In reviewing the relationship between Coleman and Western Michigan, the Court used the "economic reality test" (*Coleman v. Western Michigan Univ.*, 1983, p. 225). Under the economic reality test, the court examined the following factors to determine whether there existed an "expressed or implied contract for hire" between Coleman and Western Michigan:

"(1) the proposed employer's right to control or dictate the activities of the proposed employee; (2) the proposed employer's right to discipline or fire the proposed employee; (3) the payment of "wages" and, particularly, the extent to which the proposed employee is dependent upon the payment of wages or other benefits for his daily living expenses; (4) whether the task performed by the proposed employee was "an integral part" of the proposed employer's business" (*Coleman v. Western Michigan Univ.*, 1983, p. 225).

The Court found that Coleman could only satisfy one of the four factors, the third factor, since his scholarship did constitute wages. As far as the other factors, the court found that the university's right to control and discipline Coleman required by the first two factors was substantially limited. In considering the fourth factor, the court held "that the primary function of the defendant university was to provide academic education rather than conduct a football program" (*Coleman v. Western Michigan Univ.*, 1983, p. 226). The term "integral," the court held, suggests that the task performed by the employee is essential for the employer to conduct his business. The "integral part" of the university is not football, the court said, but education and research.

The next example of a scholarship athlete filing a workers' compensation claim against a college or university never made it to court. It is included, however, to demonstrate another potential pitfall for scholarship athletes who try to collect workmen's compensation benefits.

In *Tookes v. Florida State University*, Claim No. 266-39-0855, a basketball player at Florida State University suffered a knee injury during the 1981-82 season which required him to sit out most of the season. As a result of his injury, Tookes filed a workers' compensation claim for lost wages and medical expenses. Tookes argued that he was an employee of the University, due to his athletic scholarship, and therefore entitled to workers' compensation benefits (Wong, 1988).

The Florida Department of Labor and Employment Security and Industrial Claims Judge, however, disagreed. The judge determined that there was no employer-employee relationship between Tookes and the University. Even if there was an employer-employee relationship between Tookes and the University, the judge held that Tookes would still be ineligible for benefits. If Tookes was employed by the University to play basketball, under Florida law he would be considered a professional athlete and therefore a member of a class specifically excluded under the Florida Workers' Compensation Statute (Wong, 1988). Currently, Florida, Massachusetts, and Texas restrict workers' compensation benefits to professional athletes. Three other states, Indiana, Minnesota, and Pennsylvania, are also considering amending their state workers compensation statutes to exclude professional athletes (Weisman, May 27, 1993).

## ■ FACTS IN WALDREP

On October 26, 1974, Texas Christian University was in Birmingham, Alabama to play a football game against the University of Alabama. Kent Waldrep, then a running back at TCU, was hit and flipped into the air. Waldrep landed head first and crushed his fifth cervical vertebra. His spinal cord was compressed by fragments of his fractured vertebra upon contact with the artificial turf and he was immediately paralyzed from the neck down (Wolohan & Wong June, 1993).

At the time of his injury, Kent Waldrep was in his third year at TCU. However, due to his injury, Waldrep was no longer able to satisfy his athletic commitment to the University, and was forced to leave the university after TCU withdrew his scholarship for the next school year. After extensive rehabilitation, Waldrep has been able to regain limited use of his arms but still remains confined to a wheelchair. In May, 1991, having incurred an estimated \$500,000 in medical expenses, Waldrep filed a workers' compensation claim with the Texas Workmen's Compensation Commission. In his claim, Waldrep argued that since his scholarship to TCU was directly related to his performance on the athletic field, he should be considered an employee of TCU. As an employee, Waldrep argued that he was entitled to workers' compensation benefits for any injuries he received in the course of his employment.

After reviewing the facts, the Texas Workers' Compensation Commission agreed with Waldrep and held that he was an employee of TCU and that his injury occurred in the course of that employment. Therefore the Commission ruled, Waldrep was entitled to \$500,000 in past medical expenses, all future medical expenses, and a weekly salary of \$70 per week, retroactive to 1974, for the rest of his life (Davis, March 28, 1993).

Kent Waldrep is not celebrating his victory yet, however. On March 25, 1993, the same day the Commission made its ruling, attorneys for the Texas Employers' Insurance Association filed a notice of appeal with the Travis County District Court in Austin (*Flint v. Waldrep*, cause # 93-03451, Travis County District Court, filed March, 1993). The issue now will be decided by the Travis County District Court, thus causing Waldrep further delays and mounting medical and legal costs.

## ■ THE POSSIBLE IMPACT OF THE WALDREP RULING

Kent Waldrep claims that one of the reasons he filed his claim was to "establish that an athlete is an employee of the university and is due the benefits any other employee is due" (*NCAA News*, March 31, 1993). If the Texas Courts uphold the Workers' Compensation Commission ruling, the following are just some of the widespread implications this case could have for both universities and athletes. For example, in Texas and in most states, workers' compensation insurance rates are determined by actuarial tables which take into account the numbers of accidents and claims for that particular group of employees. If athletes are all of a sudden added into the group, the number of injuries and claims is going to rise substantially. Therefore, the primary effect of the Commission's decision is that colleges and universities in Texas will probably no longer be able to find an insurance company within the Texas Employers' Insurance Association who will insure them. Even if they could find an insurance company willing to insure the school, the increased



exposure would require the insurance company to raise rates. Faced with higher insurance rates and/or the potential liability of self-insuring, schools will be forced to reevaluate whether the increased cost and exposure is worth having an athletic program.

Other possible consequences of the Waldrep decision are:

- **Additional Workers' Compensation Claims**

The reason Waldrep was able to file a claim for benefits almost seventeen years after his injury is because in 1971 the state of Texas amended its statute of limitations on workers compensation claims. In Texas, the statute of limitations on workers compensation claims does not start running until the employer files an injury report with the Texas Workers' Compensation Commission. TCU never filed an injury report.

It is unlikely that any college or university in Texas has ever filed an injury report with the Commission on a scholarship athlete. To do so, the school would be admitting that scholarship athletes are employees of the school. Therefore, every scholarship athlete since 1971 who suffered an injury and missed at least a week of work (athletics) would still be entitled to file a claim for workers compensation benefits (Wolohan & Wong, June, 1993).

- **Tax Effect on School**

The Commission's decision also raises some interesting tax questions for not only colleges or universities but also for scholarship athletes as well. Does the scholarship athlete now have to pay taxes on income, the scholarship? Also, will schools now be required to pay FICA and Medicare tax on the student's income? If so, how are the taxes to be paid? Since the student does not receive wages, would he or she be required to pay the tax directly or would the school withhold part of the scholarship? (Wolohan, & Wong, June, 1993).

- **Employee Benefits**

The Commission's decision also raises the question of whether scholarship athletes are eligible for employee benefits as full-time employees. Besides tuition, room, board and books, are scholarship athletes now going to be eligible for life, medical, and dental insurance? How about the school's employee retirement plan? Would scholarship athletes be eligible? (Wolohan, & Wong, June, 1993).

- **National Impact**

Although the court's final decision on Waldrep's claim will only be binding in Texas, the decision could eventually affect every college or university in the nation that recruits a high school athlete from Texas. After Waldrep, when a school comes into Texas to recruit high school athletes, the school is potentially subjecting itself to Texas' workers' compensation laws if that athlete is later injured. The injured athlete could argue that since the employment contract (scholarship) was signed in Texas, Texas' workers' compensation laws should apply (Wolohan, & Wong, June, 1993).

- Non- Scholarship Athletes

No matter what the final outcome in the Waldrep case, any athlete who does not receive a scholarship to participate in athletics will still not be covered by workers' compensation. Since these athletes receive no compensation, they have no contractual relationship with the university to compete in athletics. Therefore, the athlete can never be deemed an employee. The only recourse available to these scholarship athletes would be the NCAA's Catastrophic Insurance Plan or a civil law suit (Wolohan, & Wong, June, 1993).

## ■ NCAA CATASTROPHIC INSURANCE POLICY

One of the reasons Kent Waldrep is seeking worker's compensation benefits is to recover his out-of-pocket medical expenses. At the time he filed his claim, Waldrep's medical expenses were an estimated \$500,000 (Davis, March 28, 1993). Even though Waldrep and other athletes are on scholarship, their schools are under no contractual obligation to pay the medical bills of injured athletes. Although most schools will pay the medical expenses of injured athletes, there usually is a limit to their generosity. In fact, it is not uncommon for a school to stop paying an injured athlete's medical and other bills, especially when the injury is permanently disabling and the injured athlete requires prolonged medical care.

In an effort to alleviate such hardships, and perhaps to prevent future court challenges on the status of scholarship athletes, the NCAA, in August 1991, implemented a Catastrophic Insurance Plan covering every student who participates in college athletics. The NCAA's Catastrophic Insurance Plan, which covers not only student athletes but also student coaches, student managers, students trainers and cheerleaders, will cost the NCAA \$2,682,500 in 1993-94 (*NCAA News*, September 1, 1993). The NCAA paid over \$2.8 million during the 1992-93 budget year (*NCAA News*, September 1, 1993).

Interesting, the NCAA implemented its plan for many of the same reasons the states enacted workers' compensation statutes. The states enacted workers' compensation laws to alleviate the injustice and uncertainty of the common law system. The NCAA Catastrophic Insurance Plan was enacted to alleviate the injustice and uncertainty of the worker's compensation system.

The NCAA's Catastrophic Insurance Plan automatically insures every college athlete who participates in NCAA sports against catastrophic injuries. The NCAA's plan is similar to workers' compensation in that it provides medical, dental, and rehabilitation expenses, plus lifetime disability payments to students who are catastrophically injured, regardless of fault. The NCAA plan is more attractive than workers' compensation in a number of ways. First, scholarship athletes can collect benefits without litigating the issue of whether or not the athlete is an employee of the college or university. Second, the NCAA's plan provides the athlete with benefits immediately, without time delays, litigation costs, and the uncertainties involved in litigation. Finally, another benefit of the NCAA's plan is that it guarantees that catastrophically injured athletes will receive \$60,000 toward the cost of completing their undergraduate degree. The money which is above and beyond any other benefits he or she receives. is paid directly to the school.

The NCAA Catastrophic Insurance Plan, however, fails to cover two classes of athletes. First, it only covers those students who are catastrophically injured. It does not cover those scholarship athletes who suffer non-catastrophic injuries, such as broken legs or knee injuries, and are forced to quit competing in athletics. Non-catastrophically injured students-athletes would still be required to file a workers' compensation claim to receive any compensation for their injuries. The second group the NCAA's policy fails to provide sufficient protection for is those athletes who die while practicing, playing or traveling to games. Under the NCAA's plan, the families of a deceased athlete, such as Ray Dennison or Edward Van Horn, would only receive \$10,000 in burial expenses. Although the \$10,000 death benefit is just meant to cover burial expenses, if the deceased athlete was married and/or has children, the \$10,000 that the surviving spouse receives is grossly insufficient.

Another problem with the NCAA's plan is that it requires the injured athlete to incur \$25,000 in medical and/or dental and/or rehabilitation expenses before any benefits are payable. The NCAA and its' insurance company imposed this clause to cut down the number of claims by insuring that only those students who are catastrophically injured will file claims. The NCAA and it's insurance company can and will waive the deductible in certain situations; however, there are no real guidelines covering when the deductible is to be waived.

## ■ CONCLUSION

Will Kent Waldrep be the last scholarship athlete to file a workers' compensation claim now that the NCAA insures college athletes against catastrophic injuries? We will have to wait and see. The truth is the NCAA Catastrophic Insurance Plan should substantially cut down, if not eliminate, the number of workers' compensation claims filed by scholarship athletes. However, as discussed above, scholarship athletes who are inadequately compensated under the NCAA's Catastrophic Insurance Plan may still wish to take their chances in the courts.

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