

CHICAGO LITIGATION DEPARTMENTS OF THE YEAR

A SPECIAL REPORT

The National Law Journal spotlights seven law firms with Chicago-based lawyers that demonstrate excellence in litigation and in five key practice areas: mass torts/products liability, intellectual property, labor & employment, insurance and white-collar defense.

LATHAM & WATKINS

MASS TORTS/PRODUCTS LIABILITY

Latham & Watkins' litigators scored a major victory when a Cook County, Illinois, judge ruled in their favor in a concussion class action with national repercussions.

In *Alex Pierscionek v. Illinois High School Association*, Latham partners Tom Heiden and Michael Nelson defeated the first concussion class action in the nation against a statewide high school athletic association. The class action litigation sought the medical monitoring of Illinois high school football players since 2002.

The effects of concussions on football players have already been the subject of lawsuits brought by former football players against the National Football League and a recent movie starring Will Smith, "Concussion."

At the urging of Latham's litigators, Cook County Circuit Court Judge LeRoy Martin Jr. dismissed the case on Oct. 27, 2015, in the pleadings stage before any discovery had taken place.

Martin said the case was a public policy dispute for the Legislature, not the courts. He also found that the plaintiffs did not state a cause of action or a claim for injunctive relief. Additionally, the lead plaintiff, a former football player who suffered a concussion in 2012



TOM HEIDEN

game, assumed some risk by playing a contact sport, Martin said.

"There have been a series of class actions against football, but also extending beyond football to other sports such as ice hockey and lacrosse," said Heiden, a partner in the litigation and trial department of Latham's Chicago office and global co-chairman of the firm's 75-lawyer products liability, mass torts and consumer class actions practice.

"The court in Illinois had to decide if this is the kind of controversy that ought to be supervised and regulated by the courts, or whether this is much better addressed by state and local governments, to try and make the activities safer and better for our sons and daughters."

The case's importance rippled beyond the Illinois border and beyond football.

As USA Today wrote: "More important than the impact on Illinois is the impact that the decision may have on high school athletics as a whole. With the rejection of the case now a plausible precedent for other such legal affairs, there's now a barrier or at least reason for hesitance for other states and groups to come forward with suits."

Heiden, himself a youth hockey coach, said it's important that children have the chance to succeed on athletic fields. "High school and other youth sports have been part of the social fabric for a hundred years and we need to preserve and encourage that," Heiden said. "Sports helps teach important life lessons and we need more of those opportunities for our sons and daughters rather than fewer."

"Michael and Tom make a great team," said Martin Hickman, former executive director of the Illinois High School Association. "They have much in common yet they both bring their own unique strengths to the table. It did not take me long to realize we were working with an exceptional and formidable legal team."

Dave Callahan, co-chairman of Latham's litigation and trial

department in Chicago, said the Illinois case and other wins were an indication of the litigation team's versatility.

About 14 lawyers in Latham's products liability, mass torts and consumer class actions practice are based in Chicago.

"We're not the biggest litigation shop, but we have great people," Callahan said. "It was great for Tom to get that win and a great testament to our breadth when we have one of our partners stepping up and having a great result."

—RICHARD ACELLO

"KEYS TO SUCCESS"

First, "discipline yourself to master the complexity of the facts of the case." Second, "earn your credibility with your audience (whether judge or jury) so they come to trust and believe you." Third, "help them to do their job." Fourth, "figure out how to present the case (no matter how complex) reduced to the utter simplicity of your trial theme."

—Tom Heiden