

### Ill. Court Tosses First High School Sports Concussion Suit

By **Matthew Perlman**

*Law360, New York (October 28, 2015, 8:06 PM ET)* -- An Illinois state court on Tuesday dismissed the first putative class action claiming a high school association failed to minimize the risk of concussion for student-athletes, finding that the suit sought to implement policies that should be imposed through legislation.

Students filed the suit in the Circuit Court for Cook County in November against the Illinois High School Association, a private nonprofit that helps supervise interscholastic activities at its 800 member high schools in Illinois. The action sought an injunction requiring the IHSA to update its concussion policies and procedures to bring them in line with current best practices and to set up a medical monitoring program for proposed class members.

Judge LeRoy K. Martin Jr. issued an order dismissing the case Tuesday, finding that the type of relief being fought for by the students would be better off coming from lawmakers, rather than the courts.

“The court agrees with IHSA that the claims contained in plaintiffs first amended complaint ask the court to impose policy and enact legislation by way of the grant of an injunction when determining policy and enacting legislation lies within the distinct province of the legislature,” the order said.

Judge Martin also noted that many of the putative class’ arguments were conclusory and could not be proven factually true. He also said it appeared IHSA had been at least trying to protect the students all along.

“In fact, it is clear to this court that IHSA has acted to protect student athletes in this state, that the measures alleged to be necessary by plaintiff are simply conclusions and not factual allegations capable of being proven at all, and under no circumstances would it be an appropriate endeavor for the court to impose any or all of those measures upon the IHSA by way of the extraordinary relief that is injunctive relief,” the order said.

The suit was originally filed on behalf of Daniel Bukal, who claimed he developed health problems, including memory loss, because of injuries sustained playing high school football. He said the IHSA failed to have policies in place that would have minimized the kind of concussion injuries he claimed he sustained, including basic policies for schools to follow about when to allow injured players to return to the field. Student Alex Pierscione was later named lead plaintiff.

Joseph Siprut of Siprut PC filed the suit on behalf of the proposed class. In 2011, Siprut filed the first

class action against the NCAA, on behalf of Adrian Arrington, a former member of the Eastern Illinois University football team. The NCAA litigation culminated this July in a \$75 million settlement to resolve claims over concussions.

After the IHSA suit was dismissed, Executive Director Marty Hickman issued a statement saying that the group has always been focused on minimizing injuries, and that it looked forward to pursuing that cause in less litigious venues.

“We maintain that the way to make high school football in Illinois safer is not through divisive lawsuits, but rather through collaborative efforts with key stakeholders,” Hickman said in a statement. “This ruling energizes our efforts to continue to make all sports safer for high school student-athletes in Illinois.”

An attorney for the IHSA, Thomas J. Heiden of Latham & Watkins, said the dismissal will allow the group, and others like, to get back to work trying to make high school sports more safe.

“This is a good result for high school sports in Illinois and across the country,” Heiden said in a statement. “This means the IHSA can continue to work alongside the legislature, school boards, coaches, parents, and students in their efforts to promote safety in high school sports.”

An attorney for the students did not immediately respond to a request for comment Wednesday.

The students are represented by Siprut PC.

The IHSA is represented by Thomas J. Heiden and Michael J. Nelson of Latham & Watkins.

The case is Alex Pierscionek et al. v. Illinois High School Association, case number 14-ch-019131, in the Circuit Court of Cook County Illinois, Chancery Division.

--Additional reporting by Sindhu Sundar. Editing by Patricia K. Cole.