

On the Gridiron, the Ice or in Court, Latham Partner Thomas Heiden Plays to Win

By Jenna Greene
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In law and sports, fielding the right team is everything.

The Illinois High School Association found its champion in Latham & Watkins partner Thomas Heiden, who scored a win last week in a case with far-reaching implications for high school football and other contact sports.

For Heiden, the case resonated personally. Because in addition to being the global head of Latham's product liability, mass torts and consumer class actions practice, he's also a die-hard hockey coach for elite teams of all ages. In 2000, he coached his son's team, the West Michigan Coyotes, to win the North American hockey championship for 11- and 12-year-olds. ("Time management" is his explanation for how he continues to fit it all in.)

A former Notre Dame hockey player himself, Heiden understands the risk of contact sports—and also the joy.

Both were at the heart of a would-be class action—the first of its kind—that was filed in the Circuit Court of Cook County, Illinois, by a former high school football player who suffered a concussion.

Plaintiff Alex Pierscionek, represented by Joseph Siprut and Brandon Cavanaugh of Siprut in Chicago,



Credit: Pamela Moore/iStockphoto.com

wanted the court to impose heightened safety standards to prevent and treat concussions. He also wanted medical monitoring for the class—defined as thousands of current and former high school football players.

"It is now widely understood and acknowledged that concussions pose serious risks to participants in contact sports, and especially football," states the complaint, which was filed in January. "Among those risks are brain trauma and potentially debilitating long-term brain injuries." The developing brains of teenagers are especially vulnerable to injury, Siprut argued, making the issue even more urgent.



Thomas Heiden

from a blow to his head on the final play of a game in Chicago.

There's also the suit by retired players against the National Football League over concussions. A federal judge approved a \$900 million-plus settlement in April.

It's clear that safety is an issue in football. Just like it's an issue in other sports, including boys' water polo, gymnastics and softball. All are more deadly based on fatality rates than football, according to the National Center for Catastrophic Sport Injury, though football still leads in terms of overall injuries.

The point is, most sports carry some risk, but they also offer incredible benefits, such as team work, fitness and sportsmanship. And they're fun. Even the plaintiff, Pierscionek, played two more years of high school football after he recovered from his concussion in 2012.

Indeed, the case had some major league problems, both legally and practically.

The suit stood to "alter the way high school football is played, and called into question whether it would be played at all," Heiden said in an interview.

"This issue is really something for the state legislature or local governments to address," he continued. "It's

not something the courts are equipped to do, to take over and run high school sports."

It sounds compelling. I'm the mother of a 16-year-old boy, and frankly, I'm glad he doesn't play football.

That feeling is compounded by every news report of another high school player dying from a football-related injury. The seventh this year, 17-year-old Andre Smith, died on Oct. 26

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Judge LeRoy Martin agreed in a forceful decision that offered six different grounds why the suit cannot stand.

His top reason: "This is a nonjusticiable public policy dispute for the legislature and school boards."

Martin found that the Illinois High School Association, which has nearly 800 member schools and oversees interscholastic athletics in the state, already "has acted to protect student athletes." To require them to do more is not a job for the courts.

The remedies that the plaintiffs seek "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," he wrote.

The plaintiffs wanted the judge to require medical personnel with specific expertise in concussions to be present at all football games, and also to be on call for all practices. They wanted baseline testing, statewide policies, guidelines, reporting and tracking.

Heiden points out that the sought-after relief would be expensive, and could make football unaffordable for poorer schools.

High school football is not like the NFL, which brings in billions in revenue and has 2,500 pro players at any given time. "In high school football, there are no billionaire owners," he said, and 1.1 million players each year.

As the judge put it, "Imposing broader liability on this defendant would certainly change the sport of football and potentially harm it or cause it to be abandoned."

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