

Univ. Of Chicago To Pay \$13.5M In Financial Aid Antitrust Deal

By **Lauren Berg**

Law360 (August 14, 2023, 7:09 PM EDT) -- Former students accusing top private universities of conspiring to limit financial aid asked an Illinois federal judge Monday to sign off on the \$13.5 million deal they reached with the University of Chicago, the first institution to settle out of the proposed antitrust class action.

Following on the heels of their "**agreement in principle**" in April, the former students told U.S. District Judge Matthew F. Kennelly that the University of Chicago has agreed to pay \$13.5 million to bow out of their lawsuit, according to the **motion** for preliminary approval of the partial settlement. Sixteen other institutions still face allegations that they flaunted an exemption from antitrust liability for coordinating only "need-blind" admissions and financial aid, when they in fact clearly favored wealthy applicants.

"Plaintiffs have reasonably concluded that the proposed cash settlement was in the best interests of the settlement class, among other reasons because, if finally approved, the settlement would assure the settlement class of a significant cash recovery without diminishing the joint and several liability of the remaining sixteen defendants," the motion states.

Under the settlement agreement, the students said they will also benefit from additional information from the University of Chicago that they believe will help them better understand the alleged conspiracy.

"Notably, UChicago is a relatively small undergraduate institution, nearly unique among the defendants for being located in the city in which the case is pending," the motion states. "And UChicago appears to have stopped participating in the alleged cartel about eight years before the case was filed, and to have done so because the cartel was limiting its ability to compete on price."

The suit, which has been **rife with discovery disputes**, was filed in early 2022 and accuses a host of private universities of working together to remove financial aid as a point of competition between them, resulting in the total price of attendance being essentially fixed for around 170,000 students over 20 years.

The suit names Brown University, California Institute of Technology, Columbia University, Cornell University, Dartmouth College, Duke University, Emory University, Georgetown University, Massachusetts Institute of Technology, Northwestern University, University of Chicago, University of Notre Dame, University of Pennsylvania, Vanderbilt University, Rice University and Yale University. An amended complaint in February 2022 added Johns Hopkins University.

At the center of the case and much of the overlapping discovery disputes is Section 568 of the Improving America's Schools Act of 1994, which conveys antitrust immunity for schools coordinating admissions, provided all students are admitted on a "need-blind basis" without considering finances.

The former students said the schools formed a price-fixing cartel with a 568 Presidents Group, under which they agreed to implement a common approach to evaluating an applicant's ability to pay for school and for using that calculation when making admission decisions.

The students contended the schools have already all but admitted liability in public admissions that the 568 group was meant to reduce differences in prices and maximize how much families could

afford to pay, making the case now "largely about damages."

Judge Kennelly last August rejected assertions of immunity in a decision **refusing to dismiss** the suit, although at least some of the schools continue to assert an **immunity defense**, while several have sworn off that defense.

According to Monday's motion for preliminary approval of the UChicago deal, all members of the settlement class who timely submit claims will receive payments from the net settlement fund in proportion to the damages they allegedly suffered, according to the motion.

Class counsel intends to seek no more than \$4.5 million, or one-third of the gross settlement fund, in attorney fees and litigation costs, as well as \$5,000 for each of the eight class representatives, the motion states.

The proposed settlement class is defined as, "All U.S. citizens or permanent residents who have during the class period (a) enrolled in one or more of defendants' full-time undergraduate programs, and (b) received at least some need-based financial aid from one or more defendants, and (c) directly purchased from one or more defendants tuition, fees, room or board that was not fully covered by the combination of any types of financial aid or merit aid (not including loans) in any undergraduate year," according to the motion.

The class period for UChicago, Columbia, Cornell, Duke, Georgetown, MIT, Northwestern, Notre Dame, Penn, Rice, Vanderbilt and Yale is from 2003 through the date of preliminary approval, while the class period for Brown, Dartmouth and Emory is from 2004 through the date of preliminary approval, the motion states.

For the CalTech, the class period is from 2019 through the date of preliminary approval and for Johns Hopkins, it's from 2021 through the date of preliminary approval, according to the motion.

The students said the settlement class here includes about 200,000 members.

"The \$13.5 million is a significant sum — it will help to compensate plaintiffs for their injuries, to deter the misconduct that plaintiffs have alleged, and to enable further compensation from the remaining defendants for the alleged injury to their alumni and current students," Edward Normand of Freedman Normand Friedland LLP, an attorney for the students, said in a statement Monday.

Robert D. Gilbert of Gilbert Litigators & Counselors PC, another attorney for the students, added, "The defendants' colossal endowments have grown to surpass \$230 billion. Surely the defendants can and should give larger scholarships to their incoming middle class and working class students, and compete for their attendance."

"Reducing student debt and providing substantially more funds for scholarships will be good for our country," Gilbert said. "It is the right thing to do."

In a statement to Law360 on Monday, UChicago said it "is committed to removing financial barriers for undergraduate students who are admitted to the college and is proud of the extensive financial aid we offer to students."

The university said it believes the students' claims "are without merit," but that it looks "forward to putting this matter behind us and continuing to focus our efforts on expanding access to a transformative undergraduate education."

The students are represented by Robert D. Gilbert, Elpidio Villarreal, Robert S. Raymar and Steven Magnusson of Gilbert Litigators & Counselors PC, Eric L. Cramer, Caitlin G. Coslett, Daniel J. Walker, Robert E. Litan and Hope E. Brinn of Berger Montague, and Edward Normand, Devin Freedman, Peter Bach-y-Rita and Richard Cipolla of Freedman Normand Friedland LLP.

The University of Chicago is represented by James L. Cooper, Leah J. Harrell, Michael A. Rubin, Thomas La Voy and Valarie Hays of Arnold & Porter.

Brown is represented by Morgan Lewis & Bockius LLP. CalTech is represented by Cooley LLP. Columbia

is represented by Skadden Arps Slate Meagher & Flom LLP. Cornell and Rice are represented by King & Spalding LLP. Dartmouth is represented by Jenner & Block LLP. Duke is represented by Gibson Dunn & Crutcher LLP and Saul Ewing LLP. Emory is represented by Jones Day. Georgetown is represented by Mayer Brown LLP. Johns Hopkins is represented by Ropes & Gray LLP. MIT is represented by Freshfields Bruckhaus Deringer LLP and Goldman Ismail Tomaselli Brennan & Baum LLP. Northwestern is represented by Sidley Austin LLP. Notre Dame is represented by Williams & Connolly LLP and Michael Best & Friedrich LLP. The University of Pennsylvania is represented by WilmerHale and Miller Shakman Levine & Feldman LLP. Vanderbilt is represented by White & Case LLP. Yale is represented by Hogan Lovells and Armstrong Teasdale LLP.

The case is *Sia Henry et al. v. Brown University et al.*, case number 1:22-cv-00125, in the U.S. District Court for the Northern District of Illinois.

--Additional reporting by Bryan Koenig and Nadia Dreid. Editing by Lakshna Mehta.