

University Of Chicago Is 1st To Settle In Elite Schools Case

By **Bryan Koenig**

Law360 (April 20, 2023, 7:56 PM EDT) -- Former students accusing top private universities of conspiring to limit financial aid scored an important milestone Wednesday with the announcement of an "agreement in principle" that would make the University of Chicago the first institution to settle out of the Illinois federal court proposed class action.

The former students' **one-paragraph letter** offered no details of the settlement, which must still be finalized and approved by the court to allow the university to bow out. Approval would still leave 16 other institutions battling 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 and the University of Chicago will now, as quickly as reasonably possible, work to negotiate and finalize a settlement agreement, which plaintiffs would then file with the court as part of a motion for preliminary approval of the settlement," the former students said.

An attorney for the plaintiffs, Robert D. Gilbert of Gilbert Litigators & Counselors PC, welcomed the settlement in a statement.

"We look forward both to hammering out the details of the settlement with the University of Chicago and to presenting it to the court in the near future to begin the class settlement approval process," he said. "In the meantime, we are focused on continuing to litigate aggressively against the sixteen remaining defendants on behalf of the proposed class of university students."

The university acknowledged the deal in a statement promising details on the settlement in future court filings.

"The University of Chicago 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 school said.

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 say 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 contend that 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."

U.S. District Judge Matthew F. Kennelly has already rejected assertions of immunity in an August 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.

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

Brown is represented by Morgan Lewis & Bockius LLP. California Institute of Technology is represented by Cooley LLP. The University of Chicago is represented by Arnold & Porter. 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 Covington & Burling LLP, 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. Massachusetts Institute of Technology 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 Novack & Macey LLP.

The case is 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 Nadia Dreid. Editing by Rich Mills.