

CASE NO. _____

JEFFERSON CIRCUIT COURT
DIVISION _____
JUDGE _____

COOPER MARCHAL

PLAINTIFF

v.

Electronically filed

SAINT XAVIER HIGH SCHOOL, INC.

DEFENDANT

SERVE:

Perry E. Sangalli
1609 Poplar Level Road
Louisville, Kentucky 40217

COMPLAINT

The Plaintiff, Cooper Marchal, by counsel, for his Complaint against Defendant, Saint Xavier High School states as follows:

PARTIES, JURISDICTION AND VENUE

1. Defendant, Saint Xavier High School, Inc. ("*Saint X*"), is a Kentucky non-profit corporation with an office in Louisville, Jefferson County, Kentucky.

2. Plaintiff, Cooper Marchal, is an individual and a resident of Louisville, Jefferson County, Kentucky.

3. Plaintiff seeks damages in excess of the minimum damages available in this Court.

4. This Court has jurisdiction over this matter under Ky. Const. § 112(5) and KRS 23A.010.

5. Venue in this Court is proper under KRS 452.450.

FACTUAL BACKGROUND

6. St. X is a member of the Kentucky High School Athletic Association (“*KHSAA*”).

7. Through KRS § 156.070, as implemented by 702 KAR 7:065, the Kentucky Board of Education designated the KHSAA to manage high school athletics in the Commonwealth of Kentucky.

8. The Kentucky Medical Association Committee on Physical Education and Medical Aspects of Sports issued recommended procedures to the KHSAA regarding Procedures for Avoiding Heat Injury/Illness Through Analysis of Heat Index and Restructuring of Activities and Recommendations for Cooling Methods Due to Heat Related Illness (the “*Policy*”).

9. In 2002, the KHSAA’s Board of Control adopted the Policy.

10. At all pertinent times herein, St. X was a member of KHSAA and thereby agreed to abide by KHSAA policies regarding high school athletics, including the Policy.

11. The Policy provides hot weather standards, protocols and procedures to prevent heat-related injuries and illnesses to students.

12. On or about July 22, 2017, in Louisville, Jefferson County, Kentucky, the Defendant Saint X conducted a cross-country running practice at Iroquois Park. The practice included a twelve (12) mile run.

13. On or about July 22, 2017, Plaintiff, a student at St. X and a member of its cross-country running team, attended the practice at Iroquois Park and at all times pertinent herein was under the care and supervision of Saint X.

14. On information, on July 22, 2017, the Louisville Metro area was under a heat advisory due to unseasonably hot temperatures and high relative humidity.

15. According to the federal National Oceanic and Atmospheric Administration (“*NOAA*”), the heat index on July 21, 2017 reached 107 degrees.

16. According to NOAA, the air temperature at 10:00 am on July 22, 2017 was 90 degrees Fahrenheit with a calculated heat index of 101 degrees.

17. In preparation for and during the July 22, 2017 practice run, Saint X failed to take adequate measures and precautions to mitigate against, prevent, warn of, and identify heat-related injuries and illnesses.

18. During the July 22, 2017 practice run, St. X failed to adequately supervise, screen, test, monitor, and treat the student runners for heat-related injuries and illness.

19. At some point during the run, between approximately 9:30 a.m. and 10:00 a.m. on the morning of July 22, 2017, Plaintiff suffered a heat stroke, resulting in a loss of consciousness and hospitalization wherein Plaintiff was placed in a medically-induced coma.

20. As a direct and proximate result of the Defendant’s negligence, Plaintiff suffered bodily injury, past and future medical expenses, past and future mental and physical pain and suffering, loss of enjoyment of life, destruction of the power to labor and earn money, physical impairment and disability, reputational injury, and the loss of athletic scholarships for college.

COUNT I: NEGLIGENCE

21. At the time of Plaintiff’s injury, Defendant owed duties of care to Plaintiff, to, including but not limited to the duty: to monitor Plaintiff for heat-related injury and illness; to educate Plaintiff and St. X employees regarding the signs and symptoms of heat-related injuries;

to take reasonable precautions and measures to prevent, warn of, identify, mitigate against, and treat heat-related injuries and illnesses, including but not limited to delaying, limiting, shortening, or canceling practice and/or providing water and/or cooling towels to student runners; to select, hire, train, discipline, and/or control the coaching staff of the cross-country team; to provide adequate staffing levels to supervise and monitor the student athletes; to conduct the running practice in a safe and careful manner; to ensure Plaintiff's safety; to warn Plaintiff of the risks and dangers of heat-related injuries; and to otherwise exercise the care and skill of a reasonably prudent person under the same or similar circumstances.

22. On or about July 22, 2017, Defendant breached its duties of care, to wit, by failing to reasonably or adequately: monitor Plaintiff for heat-related injury and illness; educate Plaintiff and its employees regarding the signs and symptoms of heat-related injuries; take precautions and measures to prevent, warn of, identify, and mitigate against and treat heat-related injuries and illnesses, including but not limited to delaying, limiting, shortening, or canceling practice and/or providing water, cooling towels, and/or breaks to the student athletics; select, hire, train, discipline, monitor and/or control the coaching staff of the cross-country team; provide adequate staffing levels to supervise and monitor the student athletes; conduct the running practice in a safe and careful manner; ensure Plaintiff's safety; warn Plaintiff of the risks and dangers of heat-related injuries; and otherwise exercise the care and skill of a reasonably prudent person under the same or similar circumstances.

23. As a direct and proximate result of Saint Xavier's negligence, Mr. Marchal was caused to sustain injuries in and about the body and has suffered and will in the future suffer pain of the body and mind, and has incurred medical expenses, and will in the future incur medical

expenses, and has suffered the loss of enjoyment of life and the destruction of the power to labor and earn money, physical impairment and disability, as well as the loss of athletic scholarships for college, all in excess of the minimal amount necessary to confer jurisdiction upon this Court.

24. The negligence of Saint X, its acts or omissions being otherwise negligent, is the direct and proximate cause of all the damages suffered by Plaintiff or is a substantial cause in causing same.

25. Plaintiff is entitled to an award of damages and other relief against Defendant.

COUNT II: NEGLIGENCE PER SE

26. Defendant, Saint X, is liable to Plaintiff for damages on a theory of negligence *per se*.

27. The KHSAA hot weather policy, the Policy, was adopted and intended to protect the Plaintiff and other athletes from suffering heat-related injuries and illnesses.

28. In its acts and/or omissions, Defendant, Saint X violated the letter and spirit of the KHSAA Policy and/or other applicable policies, rules, and/or laws in preparing for and conducting the July 22, 2017 cross-country running practice.

29. As a direct and proximate result of Defendant Saint X's negligence, Plaintiff suffered injury and is entitled to appropriate relief against Defendant Saint X in the form of an award of damages.

COUNT III: NEGLIGENT HIRING, SUPERVISION, AND TRAINING

30. On or about July 22, 2017, Saint X conducted the cross-country running practice through its coaches and coaching staff, who are employees, agents or sub-agents of Saint X, including head coach Charles Medley and assistant head coach Andrew Meirose.

31. Saint X was negligent in hiring, training, educating, and supervising its coaches and coaching staff, including head coach Charles Medley and assistant head coach Andrew Meirose, which negligence caused injury to Plaintiff.

32. As a direct and proximate result of Defendant Saint Xavier's negligence, Plaintiff suffered injury and is entitled to appropriate relief against Defendant Saint X in the form of an award of damages.

COUNT IV: VICARIOUS LIABILITY

33. On or about July 22, 2017, Saint X employees and coaches, including Charles Medley and Andrew Meirose, were each negligent in discharging their duties of care to the Plaintiff.

34. With respect to the July 22, 2017 practice, Charles Medley, Andrew Meirose, and other members of St. X's coaching staff acted within the course and scope of their employment with Defendant Saint X, or were agents of the Defendant Saint X, and acted in the futherance of Defendant Saint X's interests.

35. The Defendant Saint X is vicariously liable for the aforesaid negligence of its employees, including Charles Medley, Andrew Meirose, and other members of Saint X's coaching staff.

36. As a direct and proximate result of Defendant Saint X's negligence, Plaintiff suffered injury and is entitled to appropriate relief against Defendant Saint X in the form of an award of damages.

PRAYER FOR RELIEF

WHEREFORE, the Plaintiff Cooper Marchal, by counsel, prays for a trial by jury and the following relief:

- A. For entry of a Judgment against the Defendant Saint X representing Plaintiff's special and compensatory damages including medical costs, pasts and future, pain and suffering both past and future, emotional and mental distress, loss of enjoyment of life, lost wages and future earnings, destruction of the power to labor and earn money, temporary and permanent disability and imparement, and other pecuniary loss, and all other amounts which will fairly and reasonably compensate Plaintiff for the damages incurred as a result of Defendant's negligence in an amount to be determined at trial;
- B. For all costs incurred herein, including a reasonable attorney's fee;
- C. For all interest available under law on the above sums until paid; and,
- D. For any and all other relief to which Plaintiff may be justly entitled.

Respectfully submitted,

TAYLOR COUCH PLLC

/s/ Nina B. Couch

NINA B. COUCH

ZACHARY L. TAYLOR

130 Saint Matthews Avenue, Suite 301

Louisville, Kentucky 40207

Phone: (502) 625-5000

ncouch@taylorcouchlaw.com

ztaylor@taylorcouchlaw.com

Counsel for Plaintiff Cooper Marchal