

Amended pursuant to Rule 6-1(1)(a) of the
Supreme Court Civil Rules.
Original filed on July 16, 2014

No. S-145512
Vancouver Registry



In the Supreme Court of British Columbia

Arland Richard Bruce

Plaintiff

and

Mark Steven Cohon,
Leo Ezerins,
B.C. Lions Football Club Inc.,
Edmonton Eskimo Football Club,
Calgary Stampeders 2012 Inc.,
Saskatchewan Roughrider Football Club Inc.,
Winnipeg Blue Bombers,
The Hamilton Tiger-Cat Football Club,
Toronto Argonauts Football Club Inc.,
Compagnie Club de Football des Alouettes de Montréal,
Capital Gridiron Limited Partnership,
Capital Gridiron GP Inc.,
The Canadian Football League (CFL) Alumni Association,
Charles H. Tator,
Krembil Neuroscience Centre

Defendants

AMENDED NOTICE OF CIVIL CLAIM

This action has been started by the plaintiff for the relief set out in Part 2 below.

If you intend to respond to this action, you or your lawyer must

- (a) file a response to civil claim in Form 2 in the above-named registry of this court within the time for response to civil claim described below, and
- (b) serve a copy of the filed response to civil claim on the plaintiff.

If you intend to make a counterclaim, you or your lawyer must

- (a) file a response to civil claim in Form 2 and a counterclaim in Form 3 in the above-named registry of this court within the time for response to civil claim described below, and
- (b) serve a copy of the filed response to civil claim and counterclaim on the plaintiff and on any new parties named in the counterclaim.

JUDGMENT MAY BE PRONOUNCED AGAINST YOU IF YOU FAIL to file the response to civil claim within the time for response to civil claim described below.

Time for response to civil claim

A response to civil claim must be filed and served on the plaintiff,

- (a) if you were served with the notice of civil claim anywhere in Canada, within 21 days after that service,
- (b) if you were served with the notice of civil claim anywhere in the United States of America, within 35 days after that service,
- (c) if you were served with the notice of civil claim anywhere else, within 49 days after that service, or
- (d) if the time for response to civil claim has been set by order of the court, within that time.

CLAIM OF THE PLAINTIFF

Part 1: STATEMENT OF FACTS

1. The plaintiff, Arland Richard Bruce, is an unemployed professional football player and has an address for service at 18th Floor, 777 Dunsmuir Street, Vancouver, British Columbia.
2. The defendant, Mark Steven Cohon (“Commissioner Cohon”), is the commissioner of the Canadian Football League from 2007 to the present, with a business address at 50 Wellington Street East, 3rd Floor, Toronto, Ontario.
3. The defendant, Leo Ezerins (“Leo Ezerins”), is the founder and executive director of the CFL Alumni Association and lives in Hamilton, Ontario.
4. The defendant, B.C. Lions Football Club Inc. (“BC Lions”), is a company incorporated under the laws of British Columbia, with its registered office at 1500 - 1055 West Georgia Street, Vancouver, British Columbia.

5. The defendant, Edmonton Eskimo Football Club (“Edmonton Eskimos”), is a company incorporated under the laws of Alberta, with its registered office at 2900, 10180 – 101 Street, Edmonton, Alberta.
6. The defendant, Calgary Stampeders 2012 Inc. (“Calgary Stampeders”), is a company incorporated under the laws of Alberta, with its registered office at 2400, 525 – 8 Avenue SW, Calgary, Alberta.
7. The defendant, Saskatchewan Roughrider Football Club Inc. (“Saskatchewan Roughriders”), is a company incorporated under the laws of Saskatchewan, with its registered office at 1463 Albert Street, Regina, Saskatchewan.
8. The defendant, Winnipeg Blue Bombers (“Winnipeg Blue Bombers”), is a company incorporated under the laws of Manitoba, with its registered office at 315 Chancellor Matheson Road, Winnipeg, Manitoba.
9. The defendant, The Hamilton Tiger-Cat Football Club (“Hamilton Tiger-Cats”), is a company incorporated under the laws of Ontario, with a head office address at 154 Main Street East 100, Hamilton, Ontario.
10. The defendant, Toronto Argonauts Football Club Inc. (“Toronto Argonauts”), is a company incorporated under the laws of Ontario, with its registered office address at 212 King Street West, Suite #501, Toronto, Ontario.
11. The defendant, Compagnie Club de Football des Alouettes de Montréal (“Montréal Alouettes”), is a company incorporated under the laws of Quebec, with an address at 1260, Rue University, 1er etage, Montreal, Quebec.
12. The defendant, Capital Gridiron Limited Partnership, doing business as Ottawa Redblacks Football Club (“Ottawa Redblacks”), is a limited partnership registered under the laws of Ontario, with a business address at 700 Industrial Avenue, No. 220, Ottawa, Ontario.
13. The defendant, Capital Gridiron GP Inc., the general partner of Capital Gridiron Limited Partnership, is a company incorporated under the laws of Ontario, with its

registered office address c/o Jackie Whalen at 700 Industrial Avenue, Suite # 220, Ottawa, Ontario.

14. The defendant, The Canadian Football League (CFL) Alumni Association (“CFLAA”), is a Canadian company having a registered office at 6050, 166th Street, Surrey, British Columbia.
15. The defendant, Charles H. Tator (“Dr. Tator”), is the Project Director of the Canadian Sports Concussion Project at the Krembil Neuroscience Centre, Toronto Western Hospital, with a business address at Primary LAB, Toronto Western Hospital, Krembil Discovery Tower, 7KD 406, 60 Leonard Avenue, Toronto, Ontario.
16. The defendant, Krembil Neuroscience Centre (“KNC”), is a health care facility specializing in treating patients with diseases and injuries to the brain, spinal cord and eyes, with an administrative office at R. Fraser Elliott Building, 1st Floor, 190 Elizabeth Street, Toronto, Ontario.

(Collectively referred to as the “Canadian Sports Concussion Project”)

17. The CFL is an unincorporated association consisting of separately owned and independently-operated professional football teams which operate out of nine different cities in Canada.
18. The CFL is engaged in interprovincial promotion, operation, organizing, and regulating the major professional football league in Canada.
19. At all material times the BC Lions, Edmonton Eskimos, Calgary Stampeders, Saskatchewan Roughriders, Winnipeg Blue Bombers, Hamilton Tiger-Cats, Toronto Argonauts, Montreal Alouettes and Ottawa Redblacks were the franchised teams of a professional sports league known as The Canadian Football League (the “Teams”).

20. The CFL is a legally distinct and separate entity from both the other teams and the Teams.

20-21. The Teams are jointly and severally liable as partners or alternatively a joint venture for all act and omission of the CFL and its employees, servants and agents including but not limited to Commissioner Cohen and the Defendants.

21-22. The CFL is not, and has not been, the employer of the plaintiff, who was employed during the material times with the BC Lions and the Montreal Alouettes.

22-23. At the material times the CFL requested, received, and gave funding for medical advice from medical consultants, including but not limited to, Dr. Tator, the members of the Canadian Sports Concussion Project, The CFLAA and Leo Ezerins, about the health risks associated with playing football, including the link between concussive and sub-concussive injuries and Chronic Traumatic Encephalopathy (“CTE”).

23-24. At all material times, Dr. Tator, The Canadian Sports Concussion Project, Leo Ezerins, and the CFLAA were engaged as the agent, trustee, servant, joint venture, contractor, and/or employee of the CFL for the purpose of promoting concussion awareness, prevention, management and research.

24-25. On September 29, 2012, the plaintiff played a football game for the BC Lions against the Saskatchewan Roughriders (the “Game”) at the Mosaic Stadium in Regina, Saskatchewan.

25-26. The plaintiff was knocked unconscious for several minutes after colliding with Saskatchewan Roughrider, Milt Collins, during the Game (the “Incident”).

26-27. On November 18, 2012, the plaintiff was permitted to return to play in the CFL West Division Final against the Calgary Stampeders despite still suffering from the effects of concussion.

27-28. On November 18, 2012, the plaintiff, during the course of the CFL West Division Final, sustained multiple sub-concussion and concussive hits while playing the position of wide receiver.

~~28.~~29. Further, despite the fact that the plaintiff was displaying the ongoing effects of concussion to medical professionals and coaching staff he was permitted to return to play in the 2013 CFL season for the Montréal Alouettes.

The Canadian Football League (the “CFL”)

~~29.~~30. The CFL oversees Canada’s professional football league, acting as an association for the benefit of 9 independently operated teams.

~~30.~~31. Since its inception the CFL has governed and promoted the game of football, by acting as the governing body, establishing the rules related to player health and safety, league policies and team ownership.

~~31.~~32. The CFL from its inception has adopted the role of protecting the players, informing players of safety concerns and imposing, unilaterally, a wide variety of rules to protect the players from injuries.

~~32.~~33. The CFL generates revenue through marketing, sponsorship, licensing, merchandise, and by selling national broadcasting rights to the games.

~~33.~~34. The Teams share a percentage of the CFL’s overall revenue.

~~34.~~35. The CFL has enormous influence over the game of football at all levels of the game because of its financial strength, monopoly status and high visibility.

~~35.~~36. The CFL has expanded its influence over Canada to all levels of football generally through its use of media, and mass communications medium.

~~36.~~37. Part of the CFL’s marketing strategy is to promote and glorify the brutality and ferocity of CFL football, in part, by lauding the most brutal plays and ferocious players and collisions; yet the CFL is claiming to take on a leadership role in the promotion of concussion awareness, prevention, research and treatment.

~~37.~~38. On June 28, 2008, the CFL launched the CFL mission statement:
“This Is Our League”

38.39. Over a song written by Neverending White Lights called “*Always*,” a media announcer explains the meaning of the mission statement as follows:

“This is a league of fast and crush where there is no safety in a sideline”...

“This is a league of black and blue”...

“This is a league of sons and daughters and mothers and fathers”...

“This is a league as diverse as our country”...

“This is my league... and it’s your league... this is our league”...

Emphasis added

39.40. A list of pictures and video created by the CFL glorifying violent hits is posted on the CFL website (www.CFL.ca) which includes, but is not limited to, the yearly “Top 10 Hits”.

40.41. The numerous images and videos on the CFL website contain numerous explicit examples of how the CFL market and glorify the violent nature of the CFL.

41.42. On one hand the CFL threatens to fine players for hits that are characterized as “illegal and dangerous”. On the other hand the CFL makes profits off of promoting these types of hits.

The Representation of the CFL made by Commissioner Cohon

42.43. On May 3, 2011, in Toronto, Ontario, Commissioner Cohon publicly announced the CFL was voluntarily taking on a leadership role to promote concussion awareness, prevention, management and research (the “Campaign”).

43.44. Commissioner Cohon was joined at the Campaign by representatives of Football Canada, the umbrella organization for minor football, Canadian Interuniversity Sport (CIS), the Canadian School Sport Federation, The Canadian Football League Players Association, (CFLAP), Leo Ezerins, Executive Director of the Canadian Football League Alumni Association (CFLAA), Dr. Charles Tator the director of the Canadian Sports Concussion Project, and Matt Dunnigan, the spokesperson for ThinkFirst, described as a national charitable foundation dedicated to the prevention of brain and spinal cord injuries founded by Dr. Charles Tator.

44.45. Commissioner Cohon represented that the goal of the Campaign was as follows:

- (a) distribute simple to follow “concussion flyers and posters” to hundreds of thousands of athletes and coaches across the country; and
- (b) ensure the basic but all important information is on every coach’s clipboard, posted in every team’s locker room, and available to every parent and player.

Emphasis added

45.46. Distribution of the concussion awareness flyers and posters was aimed at 100,000 kids playing pee wee minor football, 3,200 high schools with 750,000 athletes playing football and other sports and 52 universities with 2,000 football players and 8,500 other student athletes.

46.47. The concussion awareness poster and flyer state the following:

CONCUSSION AWARENESS & MANAGEMENT

THINGS YOU NEED TO KNOW

CONCUSSION: Signs & Symptoms

- Confusion and Disorientation
- Loss of Consciousness
- Headache
- Dizziness
- Nausea and Vomiting
- Loss of Balance
- Double Vision or Fuzzy Vision
- Ringing in the Ears
- Slow or Slurred Speech
- Seeing “Stars”
- Feeling Stunned or Dazed
- Emotional or Personality Changes

CONCUSSION: Management & Rehabilitation

An athlete should never return to play while symptomatic.
When a player shows ANY SYMPTOMS or SIGNS of a concussion...

- ✗ The player should not be allowed to return to play in the current game or practice.
- ✗ The player should not be left alone, regular monitoring for deterioration is essential.
- ✓ The player should be medically evaluated.

CONCUSSION: Guidelines for Coaches, Players, Parents & Officials

- Concussion is a Brain Injury
- You do not have to lose consciousness to have a concussion
- Symptoms are often subtle
- Wear properly fitted protective equipment
- **The head (helmet/facemask) should never be used to make initial contact with another player**
- A concussion may be caused by a direct blow to the head, face, neck, or anywhere else that causes a severe and sudden movement to the head/neck
- Medical Clearance by an appropriate physician is mandatory before return to play

CONCUSSION: Follow these 6 steps before returning to play.

Players must be asymptomatic for 24 hours BETWEEN each step.

1. No activity, complete rest. Once asymptomatic, proceed to step two
2. Light aerobic exercise such as walking or stationary cycling
3. Sport-specific training, (e.g. running in football, skating in hockey)
4. Non-contact training drills. May start progressive resistance training
5. Full-contact training after medical clearance
6. Game Play

Logos: CFL, CFCU, CIS, thinkfirst, Alumni

(the “Concussion Initiative”)

47.48. Commissioner Cohon made the following statement at the Campaign: “ ...Our sport, with a long and proud history in Canada, is an integral part of the fabric of this nation, so we feel a special obligation to learn all we can and lead whenever and wherever we can.”

48.49. At the Campaign the CFLAA voluntarily committed to work to make the game safer through best practices to give back to the game.

49.50. At the Campaign Commissioner Cohon and the CFL announced the following initiatives:

- (a) All teams must follow a standard protocol for assessing concussions known as SCAT2, developed by experts in the international medical community.
- (b) Ensure the league keeps accurate records on concussions by using a computerized system that is leading technology in the sports industry.
- (c) All CFL roster players be submitted to minimum baseline cognitive testing with the IMPACT system during training camp.
- (d) Rules and discipline procedures, when it comes to things such as spearing and blatant hits to the head, are designed to prevent injury.
- (e) All player concussion assessments are left solely and strictly in the hands of team medical personnel and therapists; coaches have no influence over when an athlete is to be cleared to play.
- (f) Coaches stress importance of players keeping their heads up at all times, a point reinforced with coaches and players by league officials after reviewing game tapes each week.
- (g) Constantly assess advances in helmet technology or any other innovation that would promote player health and safety.
- (h) Supports research being conducted by medical professionals such as Dr. Charles Tator.
- (i) All CFL players will receive educational materials to aid in recognizing signs and symptoms of concussion.
- (j) Administrations from all levels of football report a pronounced change in the “culture” from the expectation that the player “get back in there” to one that encourages the players to be honest about the symptoms and coaches to err on the side of extreme caution.

Emphasis added

50.51. In a Yahoo Sports Article dated May 2, 2011, Andrew Bucholtz quotes Commissioner Cohon as stating the following: “*I am convinced that every*

concussion is being reported and dealt with. "I trust our doctors, I trust our therapists. I trust our teams to report that."

51.52. At the May 3, 2011 Campaign, Commissioner Cohn made the following statements:

- (a) The CFL has been looking at ways to improve concussion treatment for years.
- (b) The CFL has brought in standardized concussion treatment procedures, and the new computerized system will help even more.
- (c) A key element of the CFL's concussion procedure is enhancing the distinction between football and medical personnel, and making sure that medical personnel are the ones making decisions about when players can return, one of the most critical areas in addressing concussions.
- (d) There is a "clear" delineation between the football people and the medical staff. Commissioner Cohon stated: "The football people don't want to be involved with this."
- (e) The CFL's efforts were not occurring in a vacuum.
- (f) The CFL was paying close attention to what was going on in the NFL and in American research institutions like Boston University's Center for the Study of Traumatic Encephalopathy.
- (g) The CFL planned to share information from the concussion studies they were involved in America.
- (h) The CFL has a "very solid relationship with the NFL."
- (i) The CFL will share the concussion information they gather with people at the NFL, with our colleagues on the panel, with anyone who plays any sport.
- (j) Unreported concussions are far less of a problem in the CFL than they used to be, which is a positive sign that things are starting to change.
- (k) Every concussion is being reported and being dealt with.
- (l) The doctors and therapists can be trusted.
- (m) The teams can be trusted to report concussion.
- (n) Players realize how serious concussions are because of the increased awareness of concussion and its long term effects.
- (o) The CFL culture has changed.
- (p) Player safety plays a crucial role in the most recent collective bargaining agreement negotiations in 2010.
- (q) Player safety was the focus of the collective bargaining negotiations.

52.53. On September 2, 2013 Commissioner Cohon made the following statements:

- (a) What we have been doing for years is putting the right protocols in place. We actually had protocols in place on our sidelines well before the NFL had them.
- (b) ... We're focused on making sure we're doing the right things today, and we've done that in the past...

The Canadian Sports Concussion Project

53.54. The Canadian Sports Concussion Project is based at the Krembil Neuroscience Centre at the University Health Network's Toronto Western Hospital.

54.55. At the material time, the following individuals were members of the Canadian Sports Concussion Project:

- (a) Charles Tator, MD, PhD, FRCPS, neurosurgeon & founder of Think First;
- (b) Karen D. Davis, PhD neuroscientist;
- (c) Lili-Naz Hazrati, MD, PhD, FRCPC neuropathologist;
- (d) Carmela Tartaglia, MD, FRCPC neurologist in Alzheimer;
- (e) Richard Wennberg, MD, FRCPC neurologist in Epilepsy;
- (f) Robin Green, PhD, CPsych neuropsychologist and Canada Research Chair (Tier 2) in traumatic brain injury;
- (g) David Levy, MD, DOHS, DipSM team doctor, Hamilton Tiger Cats;
- (h) Leo Ezerins, Executive Director, Canadian Football League Alumni Association Advisory Board; and
- (i) Matt Dunigan, spokesperson for ThinkFirst.

55.56. At the material time, the Canadian Sports Concussion Project represents that the organization is the world's first program dedicated to a four prong approach to concussions, research, education, diagnosis and treatment.

56.57. At the material time, The Canadian Sports Concussion Project represents that it is led by internationally acclaimed concussion expert, Dr. Charles Tator.

57.58. At the material time, The Canadian Sports Concussion Project represents that the members includes world leaders in brain injuries, imaging, genetics, clinical care and psychiatry.

~~58.59.~~ At the material time, the members represented that they were studying repetitive concussion in sport to shed light on how concussion affects us all.

~~59.60.~~ At the material time, The Canadian Sports Concussion Project represented that their initiative was to translate their findings to help sports organizations and medical professions provide the best care so all sports can be enjoyed safely.

~~60.61.~~ The Canadian Sports Concussion Project advertises for former athletes to donate their brains.

~~61.62.~~ However, the Canadian Sports Concussion Project permits former CFL players to donate their brains without participation in the clinical study.

~~62.63.~~ On December 21, 2012, the following members of the Canadian Sports Concussion Project: Dr. Tater, Leo Ezerins, Lili-Naz Hazrati, Maria C. Tartaglia, Phedias Diamandis, Karen Davis, Robin E Green, and Richard Wennberg (the “Research Team”) submitted to *The Frontiers in Human Neuroscience* an article titled *Absence of Chronic Traumatic Encephalopathy in retired football players with multiple concussions and neurological symptomatology.* (the “Absence of CTE Article”)

~~63.64.~~ On May 8, 2013, five months after submission, the Absence of CTE was published.

~~64.65.~~ The Absence of CTE Article represents that although the connection between repeated concussions and CTE type neurodegeneration had “recently been proposed” the causal relationship had not yet been firmly established.

~~65.66.~~ The Background section in the Absence of CTE Article states that the prevalence of CTE among athletes with multiple concussions was “unknown”.

~~66.67.~~ The Research Team performed a case series of brain autopsy studies on six retired professional football players from the CFL with histories of multiple concussion and significant neurological decline.

~~67.68.~~ The Research Team released the following findings in the Absence of CTE Article stating: “only three” (out of 6 donors) had post mortem neuropathological findings consistent with CTE. The three other participants in the study had Alzheimer’s Disease, Amyotrophic lateral sclerosis (ALS) and Parkinson’s disease.

~~68.69.~~ The Discussion section in the Absence of CTE written by the Research Team made the following representations:

- (a) Our case studies highlight that not all athletes with a history of repeated concussions and neurological symptomology present neuropathological changes of CTE.
- (b) The “preliminary findings” support the need for further research into the link between concussion and CTE as well as the need to expand the research into “other possible causes” of tauopathy in athletes.
- (c) The results point to a “critical need” for prospective studies with “good sampling methods” to allow us to understand the relationship between multiple concussions and the development of CTE.

Dr. Charles Tator

~~69.70.~~ Dr. Tator received his M.D. at the University of Toronto 1961 and his Ph.D. in Neuropathology at the University of Toronto 1965.

~~70.71.~~ Dr. Tator is the founder of ThinkFirst, an injury prevention advocacy group.

~~71.72.~~ In 2012, ThinkFirst Canada joined Safe Communities Canada, SMARTRISK, and Safe Kids Canada to create Parachute, a national, charitable organization dedicated to preventing injury and saving lives.

~~72.73.~~ Parachute is an advocacy group and injury prevention program.

~~73.74.~~ Dr. Tator is the project director of the Canadian Sports Concussion Project at the Krembil Neuroscience Centre in Toronto.

~~74.75.~~ Dr. Tator is a co- author of a scientific article titled, *Absence of Chronic Traumatic Encephalopathy in retired football players with multiple concussions and neurological symptomatology.*

~~75.76.~~ Dr. Charles Tator was a panel member at the Campaign on May 3, 2011.

~~76.77.~~ On May 3, 2011 Dr. Charles Tator made the following statements at the Campaign:

- (a) It is important for everyone to be properly informed when it comes to concussions, while researchers try to learn more about them.
- (b) We are at our “infancy” in examining the issue.
- (c) It is extremely important for scientist to be involved.
- (d) The definition of concussion has changed over the past few years. For example a few years ago we did not know that exercise could bring on the symptoms of concussion.
- (e) In my view this is a new ball game.

~~77.78.~~ At the Campaign Dr. Tator made the following statement about the CFL. “I can’t praise the CFL enough for its mature response and approach to solving these issues.”

~~78.79.~~ At the Campaign Dr. Tator urged parents, coaches and players to do the following:

- (a) Understand the signs and symptoms of concussion, including confusion, dizziness and fussy vision;
- (b) ensure the athlete never returns to play when symptomatic; and
- (c) follow a careful and gradual medically supervised step by step protocol before returning an athlete to play.

~~79.80.~~ At the Campaign, Matt Dunnigan, the spokesman for ThinkFirst, made the following statement: “*football is a great teacher of values such as teamwork, perseverance and leadership. ...But perseverance should never be confused with bad judgment and true leadership understands there is more to sport and life than the next play. So be a great teammate: ThinkFirst*”

~~80.81.~~ In a Canadian Press article for Sportsnet Magazine dated July 26, 2011, Dr. Tator made the following statements about the Canadian Sports Concussion Project’s research on two of four CFL players found not to have Chronic Traumatic Encephalopathy (by virtue of their testing methods’):

- (a) We have been lead to believe by other work that this condition happens to everybody who has repeated concussions.

- (b) Our Finding is quite different...and it adds to the importance of doing further research into this, because only two of our four professional football players - all of whom had multiple concussions- were found (to have) this degenerative condition. And we don't know why this is so.
- (c) Right now we have more questions than answers about the relationship between repeated concussions and late brain degeneration.

81-82. Dr. Tator made this public statement before the publication of The Absence of CTE Article.

82-83. In the publication of the Absence of CTE Article, the Canadian Sports Concussion Project found three instances of CTE in the brains of six former CFL players.

CFL Alumni Association (CFLAA)

83-84. The CFLAA was founded in 2008.

84-85. The mandate of the CFLAA is to bring former players together in friendship events and philanthropy.

85-86. The CFLAA voluntarily made concussion research and brain donation a strategic priority for the purpose of research and to provide insight into sport related brain injuries to past and current CFL players, including the plaintiff.

86-87. The CFLAA has voluntarily taken a leadership role in promoting research and awareness of brain injury and concussion to past and current CFL players including the plaintiff.

87-88. The Executive Director of the CFLAA, is Mr. Leo Ezerins.

Mr. Leo Ezerins

88-89. Leo Ezerins is a former CFL linebacker through the 1980's.

89-90. Leo Ezerins graduated from Whitworth College in Spokane, Washington with a BA in Economics and Business.

~~90.91.~~ Leo Ezerins is the current executive director of the CFLAA, which has approximately 1000 participants.

~~91.92.~~ Leo Ezerins is responsible for the day to day operations of the CFLAA.

~~92.93.~~ Leo Ezerins is a member of the Canadian Sports Concussion Project Team in the category of Sports.

~~93.94.~~ Mr. Ezerins is listed as a co- author of *The Absence of Chronic Traumatic Encephalopathy in retired football players with multiple concussions and neurological symptomatology.*

~~94.95.~~ Leo Ezerins was a presenter at the 2nd Annual Symposium: Canadian Sports Concussion Project University Health Network.

~~95.96.~~ The title of the symposium was *Research on the Concussion Spectrum Disorders.*

~~96.97.~~ The symposium was held on, Saturday January 11, 2014.

~~97.98.~~ Leo Ezerins spoke at the symposium on the importance of concussion studies for retired CFL players.

~~98.99.~~ Leo Ezerins' presentation was marketed with the 1905 quote from Theodore Roosevelt which states: "*Football is on trial. Because I believe in the game, I want to do all I can to save it.*"

~~99.100.~~ At the Campaign in May 2011, Leo Ezerins stated that the CFL Alumni Association supports the research of Dr. Tator and has been "*actively*" working with Dr. Tator and his Research team to find brain donors for clinical study.

~~100.101.~~ In a seven part guest series on concussion authored by Terry Ott published on David Finch's *Concussion Blog*, Leo Ezerins made the following representation: "The CFLAA is not an advocacy group".

The B.C. Lions Football Club Inc.

102. The BC Lions are a professional Canadian football team competing in the Western Division of the CFL.
103. The BC Lions headquarters is based in Vancouver British Columbia with their home games played at BC Place in downtown Vancouver.
104. The BC Lions employ an executive committee, football operations, training staff, and medical personnel.
105. On January 27, 2012, the BC Lions entered into a Standard Player Contract and Addendum to the Canadian Football League Contract setting out separate terms and condition for salary and bonus with the plaintiff.
106. The terms of the Standard Player Contract extended from January 27, 2012 until February 15, 2012.

Negligence

107. At the material time the BC Lions, their employees, servants and agents were responsible for the health and safety of the athletes under contract with the BC Lions.
108. The plaintiff's injuries were caused or contributed to by the negligence and or breach of common law or statutory duty of the BC Lions, their employees, servants and agents, singly or in combination, the particulars of which include the following:
- (a) permitting the plaintiff to play in the CFL West Division Final against the Calgary Stampeders despite still suffering from obvious signs of concussion;
 - (b) failing to keep computerized records of the concussions sustained by the plaintiff;
 - (c) failing to provide the plaintiff with helmet sensor technology after sustaining multiple concussive and sub concussive blows to the head;
 - (d) failing to err on the side of reasonable caution when dealing with a player who has sustained a concussive or sub concussive injury;

- (e) failing to provide educational materials on when to stop playing football as a consequence of sustaining concussive and sub concussive injuries;
- (f) allowing the plaintiff to continue to play skilled football despite the plaintiff displaying the ongoing effects of concussion to medical professionals and coaching staff as defined in paragraph 21 of the Standard Player Contract; and
- (g) allowing the plaintiff to play skilled football despite displaying the ongoing effects of concussion to medical professionals and coaching staff in the in 2012 CFL Football Season.

Failure to Warn

109. At the material time the BC Lions, their employees, servants and agents were aware or ought to have been aware that multiple concussive and sub concussive blows to the head could lead to long-term brain injury included but not limited to memory loss, dementia, depression, and Chronic Traumatic Encephalopathy (“CTE) and its related symptoms.
110. At the material time, the BC Lions, their employees, servants and agents failed to advise the plaintiff of the following:
- (a) the serious risk of long term and short term consequences from traumatic impacts to the head to which the plaintiff was exposed;
 - (b) the short and long term dangers faced in returning to play skilled football after sustaining repetitive concussive and sub concussive head trauma;
 - (c) failing to provide the plaintiff with the relevant medical literature demonstrating the serious risks of both the short and long term consequences to which the plaintiff was exposed;
 - (d) failing to warn the plaintiff of the connection between CTE and sustaining multiple sub-concussive and concussive head trauma;
 - (e) ignoring or being willfully blind to the heightened risks of latent neurological damage that arises from repetitive head impacts during CFL games and practices; and
 - (f) such further and other particulars as counsel may advise.

Negligent Misrepresentation

111. At the material time, the BC Lions, their employees, servants, and agents made misrepresentation to the Plaintiff which were intended to induce and did induce the plaintiff to return to play football in the CFL.

112. The particulars of the misrepresentation include the following:

- (a) denying the proven link between repetitive traumatic head impacts and later in life cognitive brain injury including CTE and related symptoms;
- (b) downplaying the dangers the plaintiff faced in returning to action and the long term effects of continuing to play after sustaining the concussion;
- (c) concealing information about technology available to record and report the plaintiff's ongoing and continuing head trauma;
- (d) misleading the plaintiff about the value of the technology available to report and report the impact of suffering multiple sub-concussive and concussive blows to the head; and
- (e) such further and other particulars as counsel may advise.

113. The BC Lions made these representations when it knew or ought to have known because of its superior position of knowledge that the plaintiff faced serious health problems if he returned to play skilled football after sustaining multiple concussive and sub concussive head trauma.

114. The BC Lions knew or ought to have known the misleading nature of the statements when they were made to the plaintiff.

115. The BC Lions made the representations knowing that the plaintiff would and did rely on the misrepresentations or omission in making the decision to return to CFL football after the Incident.

Punitive and Aggravated Damages

116. The plaintiff relies on the following in support of his claim for punitive and aggravated damages against the BC Lions:

- (a) The BC Lions knew of the long term harmful effects of multiple concussive and sub concussion on the plaintiff's brain and actively concealed these facts from the plaintiff;
- (b) The BC Lions failed to disseminate to the plaintiff the relevant health information it possessed regarding multiple concussions leading to long term brain injury including but not limited to, memory loss, dementia, depression and CTE related symptoms, showing contempt for the plaintiff's rights by unnecessarily endangering the plaintiff's life;
- (c) The BC Lions intentionally concealed information about technology available to record and report the plaintiff's ongoing and continuing head trauma and intentionally mislead the plaintiff about the value of the

technology available to report and report the impact of suffering multiple sub-concussive and concussive blows to the head while playing football prior to the plaintiff returning to play after the Incident; and

(d) such further and other particulars as counsel may advise.

Compagnie Club de Football des Alouettes de Montreal (the Alouettes)

117. The Alouettes are a Canadian football team based in Montreal Quebec.

118. The Alouettes were founded in 1946.

119. The Alouettes compete in the Eastern Division of the CFL.

120. The Alouettes employ an executive committee, football operations, training staff, and medical personnel.

121. The Alouettes home field is Percival Molson Memorial Stadium for the regular season and Olympic Stadium -for the playoffs.

122. On January 21, 2013, the plaintiff and the Alouettes entered into a Standard Player Contract and Addendum to the Canadian Football League Contract setting out separate terms and condition for salary and bonus.

123. The term of the Standard Player Contract extended from January 21, 2013 until February 15, 2014.

124. On Wednesday February 25, 2014, the plaintiff was released from the Alouettes.

Negligence

125. At the material time the Alouettes, their employees, servants and agents were responsible for the health and safety of the athletes under contract with the Alouettes.

126. The plaintiff's injuries were caused or contributed to by the negligence and or breach of statutory duty of the Alouettes, their employees, servants and agents, singly or in combination, the particulars of which include the following:

- (a) allowing the plaintiff to continue to play skilled football despite the plaintiff displaying the ongoing effects of concussion to medical professionals and coaching staff as defined in paragraph 21 of the Standard Player Contract;
- (b) allowing the plaintiff to play skilled football despite displaying the ongoing effects of concussion to medical professionals and coaching staff in the in 2012 CFL Football Season;
- (c) failing to keep computerized records of the concussions sustained by the plaintiff;
- (d) failing to provide the plaintiff with helmet sensor technology after sustaining multiple concussive and sub concussive blows to the head;
- (e) failing to err on the side of reasonable caution when dealing with a player who has sustained a concussive or sub concussive injury;
- (f) failing to provide educational materials on when to stop playing football as a consequence of sustaining concussive and sub concussive injuries; and
- (g) such further and other particulars as counsel advises.

Failure to Warn

127. At the material time the Alouettes, their employees, servants and agents were aware or ought to have been aware that multiple concussive and sub concussive blows to the head could lead to long-term brain injury included but not limited to memory loss, dementia, depression, and Chronic Traumatic Encephalopathy (“CTE) and its related symptoms.

128. At the material time, the Alouettes, their employees, servants and agents failed to advise the plaintiff of the following:

- (a) the serious risk of long term and short term consequences from traumatic impacts to the head to which the plaintiff was exposed;
- (b) the short and long term dangers faced in returning to play skilled football after sustaining repetitive concussive and sub concussive head trauma;
- (c) failing to provide the plaintiff with the relevant medical literature demonstrating the serious risks of both the short and long term consequences to which the plaintiff was exposed;
- (d) failing to warn the plaintiff of the connection between CTE and sustaining multiple sub-concussive and concussive head trauma;
- (e) ignoring or being willfully blind to the heightened risks of latent neurological damage that arises from repetitive head impacts during CFL games and practices; and

(f) such further and other particulars as counsel may advise.

Negligent Misrepresentation

129. At the material time, the Alouettes, their employees, servants, and agents made misrepresentation to the Plaintiff which were intended to induce and did induce the plaintiff to return to play football in the CFL.

130. The particulars of the misrepresentation include the following:

(a) denying the proven link between repetitive traumatic head impacts and later in life cognitive brain injury including CTE and related symptoms;

(b) downplaying the dangers the plaintiff faced in returning to action and the long term effects of continuing to play after sustaining the concussion;

(c) concealing information about technology available to record and report the plaintiff's ongoing and continuing head trauma and intentionally mislead the plaintiff about the value of the technology available to report and report the impact of suffering multiple sub-concussive and concussive blows to the head; and

(d) such further and other particulars as counsel may advise.

131. The Alouettes made these representations when it knew or ought to have known because of its superior position of knowledge that the plaintiff faced serious health problems if he returned to play skilled football.

132. The Alouettes knew or ought to have known the misleading nature of the statements when they were made to the plaintiff.

133. The Alouettes made the representations knowing that the plaintiff would and did rely on the misrepresentations or omission in making the decision to return to CFL football after the Incident.

Punitive and Aggravated Damages

134. The plaintiff relies on the following in support of his claim for punitive and aggravated damages against the Alouettes:

(a) The Alouettes knew of the long term harmful effects of multiple concussive and sub concussion on the plaintiff's brain and actively concealed these facts from the plaintiff;

(b) The Alouettes failed to disseminate to the plaintiff the relevant health information it possessed regarding multiple concussions leading to long term brain injury including but not limited to, memory loss, dementia, depression and CTE related symptoms, showing contempt for the plaintiff's rights by unnecessarily endangering the plaintiff's life;

(c) the Alouettes intentionally concealed information about technology available to record and report the plaintiff's ongoing and continuing head trauma and intentionally mislead the plaintiff about the value of the technology available to report and report the impact of suffering multiple sub-concussive and concussive blows to the head while playing football prior to the plaintiff returning to play after the Incident; and

(a)(d) _____ such further and other particulars as counsel may advise.

The Plaintiff, Arland Richard Bruce

~~101.135.~~_____ At the material time, the plaintiff was employed as a wide receiver for the BC Lions.

~~102.136.~~_____ The plaintiff began his CFL career with the Winnipeg Blue Bombers in 2001.

~~103.137.~~_____ After playing for the San Francisco 49ers in 2003, the plaintiff returned to the CFL, playing for the Toronto Argonauts from 2004-2009.

~~104.138.~~_____ From 2009-2011, the plaintiff was contracted to the Hamilton Tiger Cats.

~~105.139.~~_____ Following the Incident, the plaintiff played for the Montreal Alouettes in 2013.

~~106.140.~~_____ The plaintiff was a CFL All-Star for the 2009 and 2010 season.

~~107.141.~~_____ It was known or ought to have been known by the CFL and the Teams that the plaintiff had sustained multiple sub-concussive and concussive injuries over the span of his 14 year career in both the NFL and CFL.

~~108.142.~~_____ In the Incident, the plaintiff was knocked unconscious for several minutes.

~~109.~~143. After the Incident, the plaintiff had an extensive period of amnesia regarding the Incident itself and a significant period of amnesia for a time after he regained consciousness.

~~110.~~144. The plaintiff reported concussion signs and symptoms to the BC Lions medical personnel and coaching staff including but not limited to the following:

- (a) fogginess;
- (b) headaches;
- (c) sensitivity to light;
- (d) sensitivity to sound;
- (e) memory loss;
- (f) confusion;
- (g) dizziness;
- (h) anxiety; and
- (i) personality changes.

~~111.~~145. At the material time the plaintiff was quoted in the Vancouver Sun, a newspaper publication, as not being 100% recovered before being cleared to play in the Canada West Final.

~~112.~~146. If the plaintiff did not play in the Canada West Final, which was only 49 days after the Incident, the plaintiff would not qualify to play in the Grey Cup Final.

~~113.~~147. The day before the 2012 Canada West Final, for the benefit of the CFL and the Teams, the plaintiff issued a message to the fans telling the general public to buy a ticket because he was coming back to play.

~~114.~~148. At the material time, the plaintiff was exposed to and experienced multiple sub concussive and /or concussive hits compounding the injury sustained at the time of the Incident.

~~115.~~149. Despite ongoing symptoms of concussion the plaintiff was medically cleared to play the 2013 season for the Montreal Alouettes.

~~116.~~150. During the 2013 season, the plaintiff displayed symptoms and signs of concussion including but not limited to:

- (a) forgetfulness,
- (b) anxiety,
- (c) paranoia,
- (d) lack of impulse control,
- (e) headache, and
- (f) insomnia.

~~117.~~151. During the 2013 CFL season the plaintiff experienced multiple sub concussive and concussive impacts compounding the effects of the Incident.

~~118.~~152. The plaintiff relied upon the statements made by the Defendants and returned to play football for the CFL believing that there was “more questions than answers” between concussion and sub-concussion brain trauma and neurodegenerative disease.

153. The plaintiff relied upon the statements made by the Defendants and returned to football after the Incident believing that the CFL, Commissioner Cohon, CFLAA, Leo Ezerins, Dr. Tator and KNC were at the forefront of concussion prevention and awareness.

Plaintiff's Injuries

154. The plaintiff has suffered the following injuries as a result of the concussive and sub concussive head trauma:

- (a) Chronic Traumatic Encephalopathy.
- (b) personality changes;
- (c) depression;
- (d) anxiety;
- (e) paranoia;
- (f) insomnia;
- (g) delusions;
- (h) inability to concentrate;

(i) headaches; and

(a)(j) such further and other injuries as counsel advises.

What the Defendants Knew or Ought to have known at the Time the Plaintiff returned to play

~~119.~~155. At the material time the CFL, CFLAA, Leo Ezerins, Dr. Tator, and the members of the Canadian Sports Concussion Project were aware or ought to have been aware that multiple sub concussive and concussive blows to the head can lead to long term brain injury including but not limited to memory loss, dementia, depression, and CTE and its related symptoms.

The Canadian Medical Association

~~120.~~156. The Canadian Medical Association defines concussion as follows:

Concussion – also known as mild traumatic brain injury (TBI) - is defined as ‘A complex pathophysiological process affecting the brain, induced by traumatic biomechanical forces.’ Typically, concussion results in rapid-onset neurophysiologic and neurologic dysfunction that resolves in a spontaneous manner over a relatively short period.

The History of Concussion and CTE

~~121.~~157. It has been known for decades that multiple blows to the head can lead to long- term brain injury, including but not limited to memory loss, dementia, depression, and CTE and its related symptoms.

~~122.~~158. In 1928, pathologist Harrison Martland described the clinical spectrum of abnormalities found in “almost 50 percent of fighters [boxers] . . . if they kept at the game long enough” (the “Martland study”).

~~123.~~159. The Martland Study was published in the *Journal of the American Medical Association*.

~~124.~~160. The Martland study was the first to link sub-concussive blows and “mild concussions” to degenerative brain disease (aka “Punch Drunk”).

~~125.161.~~_____ As early as 1937, the American Football Coaches Association published a report warning that players who suffer a concussion should be removed from sports demanding personal contact.

~~126.162.~~_____ In 1948, the New York State Legislature created the Medical Advisory Board of the New York Athletic Commission for the specific purpose of creating mandatory rules for professional boxing designed to prevent or minimize the health risks to boxers. After a three year study, the Medical Advisory Board recommended, among other things,

- (a) an accident survey committee to study ongoing accidents and deaths in boxing rings;
- (b) two physicians at ring-side for every bout;
- (c) post-bout medical follow-up exams;
- (d) a 30-day period of no activity following a knockout and a medical follow up for the boxer, all of which was designed to avoid the development of “punch drunk syndrome,” also known at the time as “traumatic encephalopathy”;
- (e) a physician’s prerogative to recommend that a boxer surrender temporarily his boxing license if the physician notes that boxer suffers significant injury or knockout; and
- (f) a medical investigation of boxers who suffer knockouts numerous times.

~~127.163.~~_____ The recommendations were codified as rules of the New York State Athletic Commission.

~~128.164.~~_____ In or about 1952, the *Journal of the American Medical Association* published a study of encephalopathic changes in professional boxers.

~~129.165.~~_____ That same year, an article published in the *New England Journal of Medicine* recommended a three-strike rule for concussions in football (i.e., recommending that players cease to play football after receiving their third concussion).

~~130.166.~~_____ In 1962, Drs. Serel & Jaros looked at the heightened incidence of chronic encephalopathy in boxers and characterized the disease as a “Parkinsonian” pattern of progressive decline.

~~131.~~167._____A 1963 study by Drs. Mawdsley & Ferguson found that some boxers sustain chronic neurological damages as a result of repeated head injuries. This damage manifested in the form of dementia and impairment of motor function. See “*Neurological Disease in Boxers*,” *Lancet* 2: 795-81.

~~132.~~168._____A 1967 study examined brain activity impacts from football by utilizing EEG to read brain activity in game conditions, including after head trauma. Drs. Hughes & Hendrix, “*Telemetered EEG from Football Player in Action*,” *Electroencephalography & Clinical Neurophysiology* 24: 183-86.

~~133.~~169._____In 1969 (and then again in the 1973 book entitled *Head and Neck Injuries in Football*), a paper published in the *Journal of Medicine and Science in Sports* by a leading medical expert in the treatment of head injuries recommended that any concussive event with transitory loss of consciousness requires the removal of the football player from play and requires monitoring.

~~134.~~170._____In 1973, Drs. Corsellis, Bruton, & Freeman-Browne studied the physical neurological impact of boxing. This study outlined the neuropathological characteristics of “Dementia Pugilistica” (“DP”), including loss of brain cells, cerebral atrophy, and neurofibrillary tangles.

~~135.~~171._____A 1975 study by Drs. Gronwall & Wrightson looked at the cumulative effects of concussive injuries in non-athletes and found that those who suffered two concussions took longer to recover than those who suffered from a single concussion. The authors noted that these results could be extrapolated to athletes given the common occurrence of concussions in sports.

~~136.~~172._____In 1973, a potentially fatal condition known as “Second Impact Syndrome”—in which re-injury to the already-concussed brain triggers swelling that the skull cannot accommodate—was identified. It did not receive this name until 1984. Upon information and belief, Second Impact Syndrome has resulted in the deaths of at least forty football players.

~~137.~~173. Between 1952 and 1994, numerous additional studies were published in medical journals including the *Journal of the American Medical Association*, *Neurology*, and the *New England Journal of Medicine*, and *Lancet* warning of the dangers of single concussions, multiple concussions, and/or football-related head trauma from multiple concussions. These studies collectively established that:

- (a) repetitive head trauma in contact sports, including boxing and football, has potential dangerous long-term effects on brain function;
- (b) encephalopathy (dementia pugilistica) is caused in boxers by repeated sub-concussive and concussive blows to the head;
- (c) acceleration and rapid deceleration of the head that results in brief loss of consciousness in primates also results in a tearing of the axons (brain cells) within the brainstem;
- (d) with respect to mild head injury in athletes who play contact sports, there is a relationship between neurologic pathology and length of the athlete's career;
- (e) immediate retrograde memory issues occur following concussions;
- (f) mild head injury requires recovery time without risk of subjection to further injury;
- (g) head trauma is linked to dementia;
- (h) a football player who suffers a concussion requires significant rest before being subjected to further contact; and,
- (i) minor head trauma can lead to neuropathological and neurophysiological alterations, including neuronal damage, reduced cerebral blood flow, altered brainstem evoked potentials and reduced speed of information processing.

~~138.~~174. In the early 1980s, the Department of Neurosurgery at the University of Virginia published studies on patients who sustained MTBI and observed long-term damage in the form of unexpected cognitive impairment. The studies were published in neurological journals and treatises within Canada and the United States.

~~139.~~175. In 1982, the University of Virginia and other institutions conducted studies on college football teams that showed that football players who suffered MTBI suffered pathological short-term and long-term damage. With respect to concussions, the same studies showed that a person who sustained one concussion was more likely to sustain a second, particularly if that person was not properly

treated and removed from activity so that the concussion symptoms were allowed to resolve.

~~140.176.~~_____The same studies showed that two or more concussions close in time could have serious short-term and long-term consequences in both football players and other victims of brain trauma.

~~141.177.~~_____In 1986, Dr. Robert Cantu of the American College of Sports Medicine published Concussion Grading Guidelines, which he later updated in 2001.

~~142.178.~~_____By 1991, three distinct medical professionals/entities, all independent from the NFL, Dr. Robert Cantu of the American College of Sports Medicine; the American Academy of Neurology; and the Colorado Medical Society—developed return-to-play criteria for football players suspected of having sustained head injuries.

~~143.179.~~_____By 1991, the NCAA football conferences and individual college teams' medical staffs, along with many lower-level football groups (e.g., high school, junior high school, and pee-wee league), had disseminated information and adopted criteria to protect football players even remotely suspected of having sustained concussions.

~~144.180.~~_____In 1999, the National Center for Catastrophic Sport Injury Research at the University of North Carolina conducted a study involving eighteen thousand (18,000) collegiate and high school football players. The research showed that once a player suffered one concussion, he was three times more likely to sustain a second in the same season.

~~145.181.~~_____In 1999, former Pittsburgh Steeler and Hall of Fame inductee Mike Webster filed with the NFL a request that he receive complete disability benefits based on the fact that he had sustained repeated and disabling head impacts while a player for the Steelers. In 1999, Webster submitted extensive medical reports and testimony that stated, among other things, that Webster suffered from

“traumatic or punch drunk encephalopathy [brain disease]” sustained from playing football that left Webster totally and permanently disabled as of 1991.

~~146.~~182._____The NFL’s own physician independently examined Webster and concluded that Webster was mentally “completely and totally disabled” as of the date of his retirement and was certainly disabled when he stopped playing football sometime in 1990.”

~~147.~~183._____In 2001, a convention of neurological experts in Vienna, attended by Dr. Charles Tator and other Canadian leaders in the neurological field, created a medical protocol that recommended that a player never be returned to play while symptomatic, and coined the phrase, “when in doubt, sit them out.”

~~148.~~184._____Mike Webster died in 2002 at the age of fifty.

~~149.~~185._____In 2002, Dr. Bennet Omalu conducted the post mortem examination of Mike Webster’s brain.

~~150.~~186._____Dr. Omalu holds four board certifications in Anatomic Pathology, Clinical Pathology, Forensic Pathology and Neuropathology.

~~151.~~187._____Dr. Omalu is also board certified in Medical Management and is a Certified Physician Executive.

~~152.~~188._____Dr. Omalu was the first to find physical evidence of Chronic Traumatic Encephalopathy [CTE] or dementia pugilistica in the brain as a disease entity in football players and boxers.

~~153.~~189._____In 2006 a media wide publication stated that “all standard U.S. guidelines, such as those first set by the American Academy of Neurology and the Colorado Medical Society, agree that athletes who lose consciousness should never return to play in the same game.”

~~154.~~190._____In 2008 the Centre for the Study of Traumatic Encephalophy at Boston University School of Medicine established the CSTE brain bank in Bedford VA

Hospital to analyze the brain and spinal cords after the deaths of athletes, military veterans and civilians who had experienced repetitive mild traumatic brain injury.

~~155.~~191._____ Dr. Ann McKee is a Professor of Neurology and Pathology at VA Boston Health Care System and Boston University School of Medicine.

~~156.~~192._____ Dr. Ann McKee is the Co-Director of the Center for the Study of Traumatic Encephalopathy, Director of the VISN-1 Neuropathology Laboratory for the New England VA Medical Centers and Director of Brain Banks for the Alzheimer Disease Center and Framingham Heart Study.

~~157.~~193._____ Dr. McKee is a board certified neurologist and neuropathologist, with a particular interest in chronic traumatic encephalopathy and other neurodegenerations that follow traumatic brain injury.

~~158.~~194._____ In 2008, in addition to the work being done by Dr. Omalu, Dr. Ann McKee found CTE in the brains of two deceased NFL players, John Grimsley and Tom McHale.

~~159.~~195._____ Dr. McKee, went on to investigate 85 donors. The 85 donor brains were comprehensively analyzed for evidence of CTE as well as for other neurodegenerative diseases.

~~160.~~196._____ Evidence of CTE was found in 68 of the 85 donors, or 80%.

~~161.~~197._____ One of the 85 donors who participated in the study participated in the CFL.

~~162.~~198._____ As a result of her research, Dr. McKee authored *Chronic Traumatic Encephalopathy in Athletes Progressive Tauopathy After Repetitive Head Injury* 2009 J Neuropathol Exp Neurol. 2009 Jul;68(7):709-35 (the "Publication").

~~163.~~199._____ The Publication defines CTE as a progressive neurodegenerative disease that is a long-term consequence of single or repetitive closed head injuries for which there is no treatment and no definitive pre-mortem diagnosis.

Clinical Signs of CTE

~~164.200.~~ From the Publication the following symptoms and impairments of CTE were identified:

- (a) disorientation;
- (b) slurred speech and problems with language;
- (c) attention deficit;
- (d) headaches;
- (e) poor information processing;
- (f) memory impairment;
- (g) behavior and personality disturbances (e.g. depression, suicidal tendencies, apathy, poor impulse control including, drugs and alcohol gambling and sexual promiscuity);
- (h) psychiatric symptoms such as PTSD;
- (i) speech and gait abnormalities;
- (j) symptoms of parkinsonism;
- (k) occasionally motor neuron diseases, and
- (l) dementia.

Stages of CTE

~~165.201.~~ From the Publication the following four stages of CTE were identified:

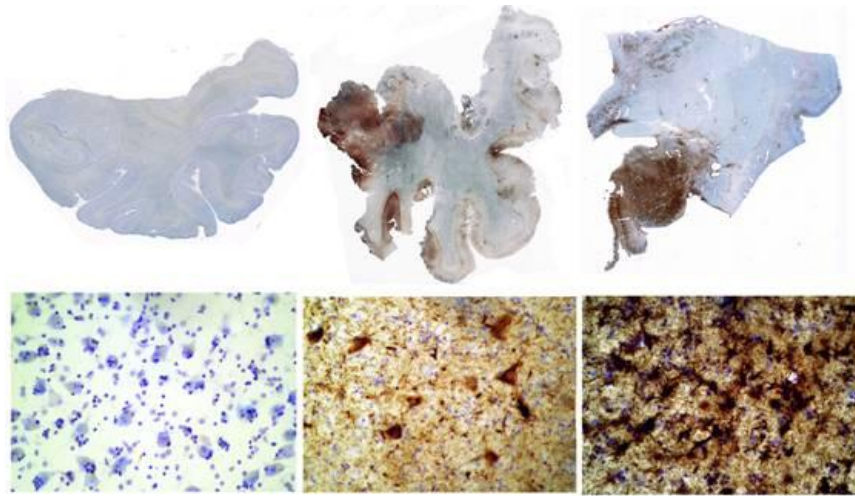
- (a) **Stage I:** This stage is marked by headache and loss of attention. It may also include short-term memory problems, depression, and aggressive tendencies. A couple of the individuals had had problems with executive function and explosively.
- (b) **Stage II:** In this stage, individuals were more likely to have experienced headache, attention and concentration problems, mood swings, short-term memory loss, and impulsivity. Less commonly they may have also experienced suicidal thoughts and language problems.
- (c) **Stage III:** This stage is marked by the symptoms of the previous stages, with the possible addition of visuospatial difficulties, more extensive cognitive and memory problems, and apathy. The authors say that at this

stage, 75% of the individuals “were considered cognitively impaired.

(d) **Stage IV:** This stage is commonly associated with more significant cognition problems and memory loss. “Most subjects also showed profound loss of attention and concentration, executive dysfunction, language difficulties, explosivity, aggressive tendencies, paranoia, depression, gait and visuospatial difficulties,” the authors say. Over 30% were suicidal at some point, and a few experienced problems with physical movement known as parkinsonism.

Images of CTE

166.202. From the Publication the pathological signs of CTE were photographed.



167.203. In the photograph above, brain tissue has been immunostained for tau protein, which appears as a dark brown color.

168.204. The Tau immunostained sections of medial temporal lobe above were obtained from 3 individuals and are identified above as follows:

- (a) Top left: Whole brain section from a 65 year old control subject showing no tau protein deposition.
- (b) Bottom left: Microscopic section from 65 year old control subject also shows no tau protein deposition.
- (c) Top middle: Whole brain section from John Grimsley showing abundant tau protein deposition in the amygdala and adjacent temporal cortex.
- (d) Bottom middle: Microscopic section showing numerous tau positive neurofibrillary tangles and neurites in the amygdala.

- (e) Top right: Whole brain section from a 73 year old world champion boxer with severe dementia showing very severe tau protein deposition in the amygdala and thalamus.
- (f) Bottom right: Microscopic section from a 73 year old world champion boxer with severe dementia showing extremely dense tau positive neurofibrillary tangles and neurites in the amygdala.

~~169-205.~~_____The Publication concluded that “*the easiest way to decrease the incidence of CTE in contact sport athletes is to decrease the number of concussions.*”

~~170-206.~~_____The Publication concluded that “there is overwhelming evidence that CTE is the result of repeated sublethal brain trauma.”

~~171-207.~~_____At the material time, it was known that Dr. Omalu, reported that CTE can only be definitively diagnosed by direct tissue examination. Without full autopsies and immunohistochemical brain analyses the cases may not be identified.

~~172-208.~~_____The Publication concluded that concussion prevention is the most compelling way to combat CTE.

~~173-209.~~_____At the material time, the Canadian Sports Concussion Project had a developed relationship with the authors of the Publication.

~~174-210.~~_____At the material time, the Canadian Sports Concussion Project had access to the findings in the Publication explaining CTE.

Helmet Sensor Technology

~~175-211.~~_____At the material time, the CFL, CFLAA, Leo Ezerins, Dr. Tator, and the members of the Canadian Sports Concussion Project were aware or ought to have been aware of the Riddell Revolution IQ Head Impact Telemetry System (HITS) Helmet (The “HITS Helmets”).



176-212. HITS Helmets allow every football player on the field to monitor the number and severity of impacts received during game play.

177-213. The inner crown of the headgear is ringed with sensors that measure the number of hits to the head a player takes, what part of the head is contacted and the force of the impact.

178-214. The HITS Helmets contain a system of sensors that store data about the last 100 impacts a player has taken.

179-215. Up to six helmets can be linked to each HITS receiver, and players and trainers can access data with a web application for later evaluation.

180-216. This data collected by HITS Helmets can later be wirelessly transmitted to a laptop for examination.

181-217. HITS assists the medical personnel to pinpoint the type of head contact.

182-218. Since 2008, the Calgary Stampeders have been using the HITS Helmets.

183-219. After a game, Pat Clayton, the Stampeders' medical director, takes the helmet to his office and a scanner reads the data and computer software graphs a chart for him.

184-220. The data collected by HITS reveals that offensive lineman average between 86 and 92 hits to the head a game.

~~185.221.~~ At the material time, Commissioner Cohon was aware that the Stampeders were using the HITS system.

~~186.222.~~ In 2011 an article entitled *Stampeders Make Strides on Concussion Research*, Pat Clayton states:

- (a) If we identify a player who has a history of concussion it is in the player's best interest and the interest of the team to be able to monitor that player for the rest of their career.
- (b) Information from the HITS system lead to the retirement of CFL quarterback Dave Dickenson in 2009.

~~187.223.~~ Specifically, Pat Clayton, stated in the article: "*It determined Dave Dickenson's career. It determined he was not going to play anymore because we sat him down and said 'look at this Dave. It was this minor of a hit that caused you this concussion, so it's time for you to coach.'*"

~~188.224.~~ The helmet costs \$999 and the HITS receiver costs \$299.

~~189.225.~~ At the material time, the plaintiff was not aware, advised, offered or provided with the opportunity to utilize a HITS Helmet by the CFL, the BC Lions and/or the Montreal Alouettes.

~~190.226.~~ At the material time, the plaintiff relied upon the representation of the CFL that the best helmet technology was being made available to him.

Leo Ezerins

~~191.227.~~ In the spring of 2011, 25 retired Tiger- Cats consented to take a cognitive ImPact Tests administered by and interpreted by experts at the Dave Braley Sport Medicine and Rehabilitation Centre at McMaster University (the "Tiger Cats Study").

~~192.228.~~ Leo Ezerins was invited to join the Tiger Cats Study, but declined to take the test.

~~193.229.~~ Just after testing was complete, Leo Ezerins and former Hamilton Tiger-Cats Alumni president, Dave Lane, met with representative from McMaster University and ImPact.

~~194.230.~~ Five days after the meeting with the Leo Ezerins and Dave Lane the experts at the Dave Braley Sport Medicine and Rehabilitation Centre at McMaster University were no longer willing to interpret the test results.

~~195.231.~~ Leo Ezerins made the following public statement in response to stopping the Tiger Cat Study: *“We are really protecting the CFL” ... “It is a very important issue and we want to make sure it does not reflect poorly on the game of football that we have the proper perspective.”*

~~196.232.~~ Further, Mr. Ezerins stated that the: *“stories of concussion and its long term effects do not represent the majority of former football players”*.

~~197.233.~~ In a seven part guest series written by Terry OTT, published on Dustin Fink’s Concussion Blog, Leo Ezerins is quoted as stating that the Boston University CTE researchers are on a “feed bag”; and his concern for concussions is more for “psychosomatic symptoms of brain injury”.

~~198.234.~~ The plaintiff relied on the representation of Leo Ezerins and the CFLAA that with their specialized knowledge and relationship to information respecting retired players, the plaintiff was not at risk of long term neurodegenerative disease by sustaining multiple sub-concussive and concussive head trauma.

~~199.235.~~ As a result of the Incident, the plaintiff sustained injuries due to exposure to multiple sub concessive and concussive blows to the head.

~~200.236.~~ The plaintiff's injuries have and will continue to cause him suffering, loss of enjoyment of life, permanent physical disability, loss of earning capacity, past and future, and loss of housekeeping capacity, past and future.

~~201.237.~~ The plaintiff will be more susceptible to future injury and degenerative changes because of his injuries.

~~202,238.~~_____The plaintiff has sustained damages for the cost of medical treatment, including past and future costs of health care services to be provided in the USA and to be provided by the government of British Columbia. The plaintiff continues to undergo medical care and treatment and continues to sustain damages, particulars of which will be provided at the trial of this action.

~~203,239.~~_____As a result of his injuries, the plaintiff has received and continues to receive care and services from his family.

Part 2: RELIEF SOUGHT

1. The plaintiff claims the following from the defendants:
 - (a) General damages;
 - (b) Special damages;
 - (c) General and special damages “in trust” for the care and services provided by his family;
 - (d) Punitive damages;
 - (e) Aggravated damages;
 - (f) Interest under the *Court Order Interest Act*, RSBC 1996, c. 79;
 - (g) Past and future costs of health care services under the *Health Care Costs Recovery Act*, SBC 2008, c. 27; and
 - (h) Costs.

Part 3: LEGAL BASIS

The CFL and Commissioner Mark Cohon

Common Law Duty of Care

1. At the material time, the CFL, their employees, servants and agents, singly or in combination voluntarily assumed the role of protecting players on and off the field; informing players of safety concerns, and imposing unilaterally a wide variety of rules and equipment requirements to protect players from injury.
2. The CFL, its employees, servants and agents, singly or in combination voluntarily held themselves out and acted as the guardian of the sport of football for the players and the general public to act in the best interests on health and safety issues.

3. At the material time, the CFL received medical advice and funded research regarding the health risks associated with playing football, including the health risks associated with concussive and sub-concussive injuries.
4. At the material time, the ongoing medical advice and research accumulated and conducted by the CFL and Commissioner Cohon placed the CFL and its agents, trustees, servants, joint ventures, contractors, and/or employees in a position of ongoing superior knowledge to the plaintiff.
5. Combined with the CFL's unilateral power to set rules and determine policies throughout its game, the CFL at the material time was in a position to influence and dictate how the game would be played to define the risks to which the players would be exposed.
6. At the material time, the CFL unilaterally assumed a duty to act in the best interests of the health and safety of the plaintiff, to provide truthful information to the plaintiff regarding the risks to his health and to take all necessary steps to ensure the safety of the players.
7. The CFL's voluntary actions and authority established a common law duty to make the game of football safer for the players, including the plaintiff, and to keep the players informed of safety information, including the plaintiff.
8. At the material time, Commissioner Cohon made it known to the plaintiff and the general public that the CFL was taking an active leadership role in governing player health and safety on and off the field.
9. At the material time, Commissioner Cohon made it known to the plaintiff and general public that the CFL would be taking the necessary steps for the safety, health and wellbeing of the plaintiff, his family and the participants of football generally.
10. At the material time, the CFL, through the voluntary creation of the Canadian Sports Concussion Project, affirmatively assumed a duty to use reasonable care in the study of concussion and post-concussion syndrome in CFL players.

11. At the material time, the CFL assumed a duty to use reasonable care in the study of brain trauma by Dr. Tator and the Canadian Sports Concussion Project and use the information they compiled accurately in the publication and pronouncement of informing the general public and CFL player, including the plaintiff about the risk of sub concussion and concussion.
12. For these reasons, the plaintiff relied upon the representation made by the Defendants to intervene in matters of player safety, to recognize issues of player safety, and to be truthful on the issues of player safety.

Negligent Misrepresentation

13. At the material time, Mark Cohon was an agent and employee of the CFL and made misrepresentations to the plaintiff which he intended to induce and did induce the plaintiff to return to play football in the CFL.
14. The particulars of the misrepresentations include the following:
 - (a) The CFL was aware and understood the significance of the published medical literature demonstrating the serious risk of both short term and long term adverse consequences from the kind of traumatic impacts to the head to which the plaintiff was exposed and denied that there was a scientifically proven link between repetitive traumatic head impacts and later in life cognitive brain injury including CTE and related symptoms.
 - (b) Misrepresenting the dangers the plaintiff faced in returning to action after sustaining a concussion and the long term effects of continuing to play after a concussion.
 - (c) Issuing a Concussion Initiative to the general public and the CFL players, including the plaintiff, and omitting from the Concussion Initiative 1) any information about the increased risks of concussion after an initial concussion; 2) when a player should not return to football (three strikes and you're out); and 3) what to do if the player is unsure of his concussions symptoms ("when in doubt sit out").
 - (d) Issuing public statements, articles and the Concussion Initiative to the plaintiff which mislead, downplayed, and obfuscated to the plaintiff the true and serious risks of repetitive traumatic head impacts.
 - (e) Withheld information from the plaintiff about the significance of the published medical literature demonstrating the serious risk of both the short term and long term adverse effects of concussion to which the plaintiff was exposed.

- (f) Making public statements at the Campaign that the CFL was at the worldwide forefront of helmet technology without HITS Helmets mandatory or available league wide.
 - (g) Making public statements at the Campaign that the CFL was at the worldwide forefront of concussion research without disclosing to the plaintiff or the general public that Dr. Omalu and the work of Dr. Ann McKee at the Sports Legacy Institute had studied more donated brains effected with CTE.
 - (h) Making public statements at the Campaign that the CFL was at the worldwide forefront of instituting concussion protocols without disclosing to the plaintiff and the general public that the Concussion Initiative was largely based on information the CFL knew or ought to have known in 2001.
 - (i) Making public statements at the Campaign that the CFL was at the worldwide forefront of instituting concussion protocols without disclosing to the plaintiff and the general public that the Concussion Initiative omitted well known phrases such as, “when in doubt sit out” and “three strikes and you’re out.”
 - (j) Making public statements at the Campaign highlighting the importance of medical independence in the diagnosis and return to play after a player sustained a concussion when it was aware of the pressure on coaching and medical staff to return players to games as soon as possible and not to report concussion. The reluctance to report concussion was compounded by the fact that non-guaranteed contracts would mean players, including the plaintiff, would expose themselves to increased risk of injury to maintain work.
 - (k) Making public statements at the Campaign that the CFL was at the worldwide forefront uniform reporting and documentation of concussion across the CFL when it knew or ought to have known that the only way to be certain about the reporting and documentation of concussion was to use the HITS Helmets.
15. The CFL and Commissioner Cohon made these misrepresentations when it knew or ought to have known because of its superior position of knowledge that the plaintiff faced serious health problems if he returned to the play football or returned too soon the play the game of football.
16. The CFL and Commissioner Cohon knew or ought to have known the misleading nature of the statements when they were made.

17. The CFL and Commissioner Cohon made the representations knowing that the plaintiff would and did rely on the misrepresentations or omissions in making his decision to return to CFL football after the Incident.

Negligence

18. The plaintiff's injuries were caused or contributed to by the negligence and or breach of statutory duty of the CFL, their employees, servants and agents, singly or in combination, the particulars of which include:
 - (a) failing to institute the use of helmet sensor technology league wide for the purpose of recording, reporting and creating statistical data;
 - (b) failing to warn the plaintiff of the long term medical risks associated with repetitive head impacts during CFL games and practices;
 - (c) failing to warn the plaintiff of the connection between CTE and sustaining multiple sub-concussive and concussive head trauma;
 - (d) ignoring or being willfully blind to heightened risks of latent neurological damage that arises from repetitive head impacts during CFL games and practices;
 - (e) failing to provide truthful scientific research and information about the risks of concussive and sub-concussive injuries to the plaintiff who relied on the CFL and Commissioner Cohon's pronouncements about the associated risks;
 - (f) promoting and funding disinformation designed to dispute accepted and valid neuroscience regarding the connection between repetitive traumatic brain injuries and concussions and degenerative brain disease such as CTE;
 - (g) promoting and funding disinformation by supporting Dr. Charles Tator and the Canadian Sports Concussion Project who directed their research at downplaying and obfuscating the work of independent scientist and neurologist, with a larger research base than KNC. The goal of the disinformation campaign was to discredit the connection between multiple sub-concussive and concussive head trauma by stating the research was "inconclusive and subject to doubt";
 - (h) rather than taking immediate measures to protect CFL players from these known dangers, the Commissioner Cohon and the CFL failed to disseminate to the CFL players, including the plaintiff, the relevant health information it possessed regarding the significant risks associated with concussion; and
 - (i) such further and other particulars as counsel may advise.

Punitive and Aggravated Damages

19. The plaintiff relies on the following in support of his claim for punitive and aggravated damages against the CFL and Commissioner Cohon:
- (a) The CFL and Commissioner Cohon knowingly knew of the long term harmful effects of multiple concussion and sub-concussion on the plaintiff's brain and actively concealed these facts from the plaintiff.
 - (b) The CFL and Commissioner Cohon wilfully and knowingly failed to disseminate to the plaintiff the relevant health information it possessed regarding multiple concussions leading to a long term brain injury including, but not limited to, memory loss, dementia, depression and CTE related symptoms, showing contempt for the plaintiff's rights by unnecessarily endangering the plaintiff's life.
 - (c) The CFL and Commissioner Cohon's conduct of wilfully and knowingly failing to disseminate rights by unnecessarily endangering the plaintiff's life.
 - (d) The CFL and Commissioner Cohon intentionally concealed information about technology available to record and report the plaintiff's ongoing and continuing head trauma and intentionally mislead the plaintiff about the value of the technology available to record and report the impact of suffering multiple sub-concussive and concussive blows to the head while playing football both prior to the plaintiff returning to play professional football and after the Incident.
 - (e) The CFL and Commissioner Cohon intentionally concealed and intentionally mislead the plaintiff about the available technology and its value to record and report the impact of suffering multiple sub-concussion and concussive blows to the head while playing football. The intentional concealment was reprehensible and offended the ordinary standards of decent conduct in the community and showed contempt for the general public and the plaintiff's rights by unnecessarily endangering the plaintiff's life.
 - (f) The CFL and Commissioner Cohon publicly supported Dr. Charles Tator and the Sports Concussion Project knowing that their finding contradicted the research of independent world renowned scientists including, but not limited, to Dr. Omalu and Dr. McKee.
 - (g) The CFL and Commissioner Cohon publicly supporting and funding the research of Dr. Charles Tator and the Sports Concussion Project knowing that their work was against the weight of the scientific evidence and was based on biased data collection techniques was reprehensible and offended the ordinary standards of decent conduct in the community and showed contempt for the general public and the plaintiff's rights by unnecessarily endangering the plaintiff's life.
 - (h) Such further and other particulars as counsel may advise.

Dr. Tator and The Canadian Sports Concussion Project

Common Law Duty of Care

20. At the material time Dr. Tator, KNC and the members of the Canadian Sports Concussion Project have been aware that multiple blows to the head resulting in sub-concussive and concussive head trauma can lead to long term brain injury including but not limited to memory loss, dementia, depression and CTE and its related symptoms.
21. Dr. Tator and the Canadian Sport Concussion Project voluntarily assumed the responsibility to investigate and advise the CFL on the research into the risks associated with multiple sub-concussive and concussive head trauma.
22. Dr. Tator and The Canadian Sports Concussion Project accepted the funding and influence of the CFL, Commissioner Cohon, the CFLAA and Leo Ezerins for the purpose of conducting research into the connection between multiple sub-concussive and concussive head trauma and its link to CTE.
23. Having participated in worldwide seminars including the 2001 Concussion Summit in Zurich, Dr. Tator had a unique and historical vantage point for the scientific investigation of multiple sub-concussive and concussive head trauma and its link to CTE.
24. Having teamed up with the CFL, Commissioner Cohon, The CFLAA and Leo Ezerins, Dr. Tator, KNC and the members of the Canadian Sport Concussion Project had resources and access to data relating to the effect of head impacts on football players making an institutional repository of decades of accumulated specialized knowledge about the link between multiple sub-concussive and concussive head trauma and CTE.
25. Dr. Tator, KNC and the Canadian Sports Concussion Project had accumulated specialized knowledge of the link between multiple sub-concussive and concussive head trauma and CTE that was superior to that readily available to the plaintiff.

26. Dr. Tator, KNC and the Canadian Sports Concussion Project voluntarily created a role for themselves by publicly pronouncing that their role was to inform players, parents, coaches and schools about the safety concerns and to assist in the creation of the Concussion Initiative.
27. Dr. Tator and the Canadian Sports Concussion Project took steps to provide public information on health and safety issues impacting the sport of football, including but not limited to the CFL.
28. At the material time, the plaintiff relied on Dr. Tator, KNC and the members of the Canadian Sports Concussion Project to intervene in matters of player safety, to recognize issues of player safety and to be truthful on the issue of player safety.

Negligent Misrepresentation

29. Dr. Tator, KNC and the Canadian Sports Concussion Project (The KNC Research Team) assumed a duty to use reasonable care in the study of concussion and post-concussion syndrome, or any brain trauma relevant to the sport of football, and use the information developed from the research and access to the historical data to give information to football players through the publication of data and/or pronouncements to make the game of football safer, instituting rule changes and reducing head injuries.
30. The particulars of the negligent misrepresentations made by the KNC Research Team are as follows:
 - (a) When the KNC Research Team disputed the link between multiple concussion and sub-concussive CTE, they did so knowing about the work of independent scientists including but not limited to Dr. Omalu and Dr. McKee.
 - (b) The KNC Research Team was publicised by the CFL and CFLAA as independent from the CFL and CFLAA.
 - (c) The KNC Research Team was not independent. At the material time, the KNC Research Team consisted of at least one person who was connected with the CFL.
 - (d) At the material time, Leo Ezerins was a member of the KNC Research Team which represents a conflict of interest.

- (e) At the material time, The KNC Research Team assisted the CFL in the establishment of the Campaign and the Concussion Initiative.
 - (f) The information that formed the basis of the Concussion Initiative was largely based on a 2001 International Conference on Concussion in Zurich.
 - (g) At the material time, Dr. Tator and the KNC Research Team worked to discredit the scientific studies that linked head impacts and concussion to CFL players and neuro-cognitive disorders and disabilities.
 - (h) The KNC Research Team published the article titled: *Absence of Chronic Traumatic Encephalopathy in retired football players with multiple concussions and neurological symptomatology* (the “Absence of CTE Article”) after having only investigated the brains of 6 former CFL players.
 - (i) In the Absence of CTE Article the KNC Research Team stated that there was more questions than answers about the negative health consequences associated with concussion, which is contrary to decades of independent scientific research.
 - (j) The Absence of CTE Article highlighted an “Absence” of CTE in retired football players after finding CTE in 50% of the donors.
 - (k) In the Absence of CTE Article, the KNC Research Team concluded that there was no provable connection between concussion and sub-concussive injuries and CTE in CFL players.
 - (l) The findings in the Absence of CTE Article were against the weight of the medical evidence.
 - (m) At the material time, the KNC Research Team knew or ought to have known that the link between CTE and multiple sub-concussive and concussive head trauma was statistically more significant than the link between smoking and lung cancer.
 - (n) The findings of the KNC Research Team was based on a biased data collection technique.
 - (o) The findings of the KNC Research Team overlooked the work of Dr. Omalu and the research and Publication of Dr. Anne McKee.
 - (p) Such further and other particulars as counsel may advise.
31. The KNC Research Team knew or ought to have known the misleading nature of the statements when they were made.
32. The KNC Research Team made the representations knowing that the plaintiff would and did rely on their misrepresentations and/or omissions in deciding when and if he would return to play CFL football.

33. The misrepresentations made by the KNC Research Team were also made negligently and with the purpose of inducing the plaintiff to return to play football in the CFL.

Negligence

34. The plaintiff's injuries were caused or contributed to by the negligence and or breach of statutory duty of the Dr. Tator and the KNC Research Team, their servants and agents, singly or in combination, the particulars of which include:
- (a) failing to warn the plaintiff of the long term medical risks associated with repetitive head impacts during CFL games and practices;
 - (c) failing to warn the plaintiff of the connection between CTE and sustaining multiple sub-concussive and concussive head trauma;
 - (d) ignoring or being willfully blind to heightened risks of latent neurological damage that arises from repetitive head impacts during CFL games and practices;
 - (e) failing to provide truthful scientific research and information about the risks of concussive and sub-concussive injuries to the plaintiff who relied on The KNC Research's Team's pronouncements about the associated risks;
 - (f) promoting disinformation designed to dispute accepted and valid neuroscience regarding the connection between repetitive traumatic brain injuries and concussions and degenerative brain disease such as CTE;
 - (g) downplaying and obfuscating the work of independent scientists and neurologists, with a larger research base than The KNC Research Team to discredit the connection between multiple sub-concussive and concussive head trauma as inconclusive and subject to doubt;
 - (h) rather than taking immediate measures to protect CFL players from these known dangers, the KNC Research Team failed to disseminate to the CFL players, including the plaintiff, the relevant health information it possessed regarding the significant risks associated with concussion and CTE; and
 - (i) such further and other particulars as counsel may advise.

Leo Ezerins and The CFLAA

Common Law Duty of Care

35. At the material time, the CFLAA was in a position of influence to dictate how the CFL football game was to be played and to define the risks to which the players were exposed, including the plaintiff.

36. At the material time, Leo Ezerins, the CFLAA, their employees, servants and agents, singly or in combination voluntarily assumed the role of protecting players on and off the field, informing players of safety concerns, and influencing the CFL and Commissioner Cohon on a wide variety of rule and equipment requirements to protect players from injury.
37. Leo Ezerins, the CFLAA, their employees, servants and agents, singly or in combination voluntarily held itself out and acted as the guardian of the sport of football for the players, former players, the general public, including the plaintiff to act in the best interests on health and safety issues.
38. At the material time, Leo Ezerins, the CFLAA their employees, servants and agents, singly or in combination received medical advice and assisted in raising funding for medical research regarding the health risks associated with playing football, including the health risks associated with concussive and sub-concussive injuries.
39. At the material time, the ongoing medical advice that Leo Ezerins, the CFLAA and its agents, trustees, servants, joint ventures, contractors, and/or employees put the defendants in a position of ongoing superior knowledge to the plaintiff.
40. At the material time, Leo Ezerins, the CFLAA and agents, trustees, servants, joint ventures, contractors, and/or employees assumed a duty to act in the best interests of the health and safety of the plaintiff, to provide truthful information to the plaintiff regarding the risks to his health and to take all necessary steps to ensure the safety of the players.
41. At the material time, Leo Ezerins made it known to the plaintiff and the general public that the CFLAA was taking an active leadership role in governing player health and safety on and off the field.
42. At the material time, Leo Ezerins, as a member of the Canadian Sports Concussion Project, voluntarily assumed a duty to use reasonable care in the

study of concussion and post-concussion resulting in neurodegenerative disease including CTE in CFL players, including the plaintiff.

43. At the material time, Leo Ezerins, as a member of the Canadian Sports Concussion Project, voluntarily assumed a duty to accurately develop, publish and share publicly the findings of Dr. Tator and the Canadian Sports Concussion Project.
44. For these reasons, the plaintiff relied upon Leo Ezerins and the CFLAA to intervene in matters of player safety, to recognize issues of player safety, and to be truthful on the issues of player safety.

Negligent Misrepresentation

45. At the material time, Leo Ezerins was an agent and the executive director of the CFLAA and made misrepresentations to the plaintiff which he intended to induce and did induce the plaintiff to return to play football.
46. The particulars of the misrepresentations include the following:
 - (a) Leo Ezerins stated publicly that the CFLAA was not an “advocacy group” however Leo Ezerins campaigned publicly and took the following action: (1) interfering with the research and investigation into ImPact tests being administered and interpreted by the Dave Braley Sports Medicine and Rehabilitation Centre at McMaster University resulting in the experts at Dave Braley Sports Medicine Rehabilitation Centre refusing to continue interpreting the results; (2) antagonizing the efforts of the researchers connected to Chris Nowinski’s Sports Legacy Institute; and (3) publicly stating that he was and would do anything to “protect the CFL.”
 - (b) The CFLAA was aware or ought to have been aware and understood the significance of the published medical literature demonstrating the serious risk of both short term and long term adverse consequences from concussion to which the plaintiff was exposed and denied that there was a scientifically proven link between repetitive concussion and later in life neurodegeneration including CTE and related symptoms.
 - (c) Misrepresented the dangers the plaintiff faced in returning to action after sustaining a head injury and the long term effects of continuing to play after a head injury.
 - (d) Participated in issuing a Concussion Initiative to the general public and the plaintiff omitting any information about the increased risks of concussion after an initial concussion; omitting information as to when a player

should not return to football (three strikes and you're out); and, omitting to include information on what to do if the player is unsure of his concussions symptoms ("When in doubt sit out").

- (e) Issuing public statements; writing articles; and assisting in preparing and advertising the Concussion Initiative to the CFL, CFLAA, general public and the plaintiff which mislead, down played, and obfuscated to the plaintiff the true and serious risks of repetitive concussion.
 - (f) Withheld information from the plaintiff about the significance of the published medical literature demonstrating the serious risk of both short term and long term adverse consequences from concussion to which the plaintiff was exposed.
47. Leo Ezerins and the CFLAA made these misrepresentations when they knew or ought to have known because of their superior position of knowledge that the plaintiff faced serious health problems if he returned to the play CFL football or returned too soon to play football in the CFL.
48. Leo Ezerins and the CFLAA knew or ought to have known the misleading nature of the statements when they were made.
49. Leo Ezerins and the CFLAA made the representations knowing that the plaintiff would and did rely on the misrepresentations, or omissions, in choosing when and if the plaintiff would return to the game of football.

Negligence

50. The plaintiff's injuries were caused or contributed to by the negligence and or breach of statutory duty of Leo Ezerins and CFLAA including their employees, servants and agents, singly or in combination, the particulars of which include:
- (a) failing to warn the plaintiff of the long term medical risks associated with multiple concussions during CFL games and practices;
 - (b) failing to warn the plaintiff of the connection between CTE and sustaining multiple sub-concussive and concussive head trauma.
 - (c) ignoring or being willfully blind to heightened risks of latent neurological damage that arise from repetitive head impacts during CFL games and practices;
 - (d) failing to provide truthful scientific research and information about the risks of concussive and sub-concussive injuries to the plaintiff who

reasonably relied on Leo Ezerins and the CFLAA's pronouncements about those associated risks;

- (e) promoting and raising funding for a campaign of disinformation designed to dispute accepted and valid neuroscience regarding the connection between repetitive traumatic brain injuries and concussions and degenerative brain disease such as CTE;
- (f) promoting and raising funding for the purpose of downplaying and obfuscating the work of independent scientists and neurologists, with a larger research base than KNC, to discredit the connection between multiple sub-concussive and concussive head trauma was inconclusive and subject to doubt;
- (g) failing to take immediate measures to protect CFL players, including the plaintiff, from the known dangers of multiple sub-concussive and concussive head trauma;
- (h) failing to disseminate to the CFL players, including the plaintiff, the relevant health information they possessed regarding the significant risks associated with concussion; and
- (j) such further and other particulars as counsel may advise.

Punitive and Aggravated Damages

51. The plaintiff relies on the following in support of his claim for punitive and aggravated damages against Leo Ezerins and the CFLAA:

- (a) Leo Ezerin and the CFLAA wilfully and knowingly knew of the long term harmful effects of multiple concussion and sub-concussion on the plaintiff's brain and actively concealed these facts from the plaintiff.
- (b) Leo Ezerin and the CFLAA wilfully and knowingly failed to disseminate to the plaintiff the relevant health information they possessed regarding multiple concussions leading to a long term brain injury including, but not limited to, memory loss, dementia, depression and CTE related symptoms, showing contempt for the plaintiff's rights by unnecessarily endangering the plaintiff's life.
- (c) Leo Ezerin and the CFLAA's conduct of wilfully and knowingly failing to disseminate to the plaintiff the health information it possessed about CTE was reprehensible and offended the ordinary standards of decent conduct in the community and showed contempt for the general public and the plaintiff's rights by unnecessarily endangering the plaintiff's life.
- (f) Leo Ezerins and the CFLAA publicly supported and funded the research of Dr. Charles Tator and the KNC Research Team wilfully and knowing that their findings contradicted well established independent research by world renowned scientists including, but not limited to, Dr. Omalu and Dr. McKee, was reprehensible and offended the ordinary standards of decent

conduct in the community and showed contempt for the general public and the plaintiff's rights by unnecessarily endangering the plaintiff's life.

(g) Leo Ezerins interfered with an independent project involving 25 retired Tiger Cats who had agreed to take cognitive ImPact tests (the Tiger Cat Study). Mr. Ezerins spoke with and ultimately stopped the researchers at the Dave Braley Sports Medicine and Rehabilitation Centre at McMaster University from interpreting the ImPact test. The conduct of Leo Ezerins in interfering with the Tiger Cat Study was reprehensible and offended the ordinary standards of decent conduct in the community and showed contempt for the general public and the plaintiff's rights by unnecessarily endangering the plaintiff's life.

(h) Leo Ezerins interfered and unduly influenced the Article and the interfered and unduly influenced the KNC Research Team to support his publicly stated agenda to "do all he can to save it [football]" The conduct of Leo Ezerins in interfering and unduly influencing the KNC Research Team was reprehensible and offended the ordinary standards of decent conduct in the community and showed contempt for the general public and the plaintiff's rights by unnecessarily endangering the plaintiff's life.

(h) Such further and other particulars as counsel may advise.

52. The plaintiff pleads the provisions of the *Negligence Act*, RSBC 1996, c. 333 and any amendments.
53. The plaintiff is a "beneficiary" within the meaning of the *Medicare Protection Act*, RSBC 1996, c. 286 and any amendments.
54. The plaintiff pleads the provisions of the *Health Care Costs Recovery Act*, SBC 2008, c. 27 and any amendments.

The plaintiff's address for service:

~~Slater Vecchio LLP
PO Box 10445 Pacific Centre North
18th Floor 777 Dunsmuir Street
Vancouver, BC V7Y 1K4
Wishart Brain and Spine Law
1400 - 570 Granville St.
Vancouver, British Columbia~~

Fax number address for service (if any):

Service by fax is not accepted

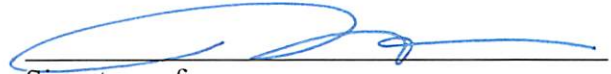
Email address for service (if any):

Service by email is not accepted

Place of trial:
The address of the registry is:

Vancouver
800 Smithe Street, Vancouver, BC V6Z 2E1

Date: 16/07/2014
[dd/mm/yyyy]


Signature of
 plaintiff lawyer for plaintiff
Robyn L. Wishart

Rule 7-1 (1) of the Supreme Court Civil Rules states:

- (1) Unless all parties of record consent or the court otherwise orders, each party of record to an action must, within 35 days after the end of the pleading period,
 - (a) prepare a list of documents in Form 22 that lists
 - (i) all documents that are or have been in the party's possession or control and that could, if available, be used by any party at trial to prove or disprove a material fact, and
 - (ii) all other documents to which the party intends to refer at trial, and
 - (b) serve the list on all parties of record.

**ENDORSEMENT ON ORIGINATING PLEADING OR PETITION
FOR SERVICE OUTSIDE BRITISH COLUMBIA**

The plaintiff claims the right to serve this pleading/petition on the defendants outside British Columbia on the ground that the proceeding is founded on a tort committed in British Columbia [Rules 4-5 of the *Supreme Court Civil Rules* and Section 10 of the *Court Jurisdiction and Proceedings Transfer Act*].