

NO

EXHIBITS



CASE NO. 2018L011847

DATE: 10/31/18

CASE TYPE: Personal Injury - Other

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CASE NOTE

IN THE CIRCUIT COURT OF COOK COUNTY, ILLINOIS
COUNTY DEPARTMENT, LAW DIVISION

FILED
10/31/2018 5:04 PM
DOROTHY BROWN
CIRCUIT CLERK
COOK COUNTY, IL
2018L011847

Lynn DiCanio Trieb, on behalf of the Estate of Darrin Trieb, deceased

v.

National Collegiate Athletic Association

2018L011847

No.

CIVIL ACTION COVER SHEET - CASE INITIATION

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Jury Demand [X] Yes [] No

PERSONAL INJURY/WRONGFUL DEATH

CASE TYPES:

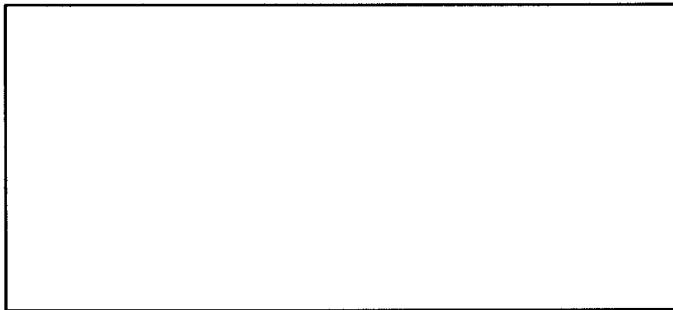
- [] 027 Motor Vehicle
[] 040 Medical Malpractice
[] 047 Asbestos
[] 048 Dram Shop
[] 049 Product Liability
[] 051 Construction Injuries
[] 052 Railroad/FELA
[] 053 Pediatric Lead Exposure
[X] 061 Other Personal Injury/Wrongful Death
[] 063 Intentional Tort
[] 064 Miscellaneous Statutory Action
[] 065 Premises Liability
[] 078 Fen-phen/Redux Litigation
[] 199 Silicone Implant

TAX & MISCELLANEOUS REMEDIES

CASE TYPES:

- [] 007 Confessions of Judgment
[] 008 Replevin
[] 009 Tax
[] 015 Condemnation
[] 017 Detinue
[] 029 Unemployment Compensation
[] 031 Foreign Transcript
[] 036 Administrative Review Action
[] 085 Petition to Register Foreign Judgment
[] 099 All Other Extraordinary Remedies

By: Matthew J. Healy ID# 63002
(Attorney) (Pro Se)



(FILE STAMP)

COMMERCIAL LITIGATION

CASE TYPES:

- [] 002 Breach of Contract
[] 070 Professional Malpractice
[] 071 Fraud
[] 072 Consumer Fraud
[] 073 Breach of Warranty
[] 074 Statutory Action
[] 075 Other Commercial Litigation
[] 076 Retaliatory Discharge

OTHER ACTIONS

CASE TYPES:

- [] 062 Property Damage
[] 066 Legal Malpractice
[] 077 Libel/Slander
[] 079 Petition for Qualified Orders
[] 084 Petition to Issue Subpoena
[] 100 Petition for Discovery

**

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Pro Se Only: [] I have read and agree to the terms of the Clerk's Office Electronic Notice Policy and choose to opt in to electronic notice form the Clerk's Office for this case at this email address:

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12-Person Jury

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IN THE CIRCUIT COURT OF COOK COUNTY, ILLINOIS
COUNTY DEPARTMENT, LAW DIVISION

LYNN DICANIO TRIEB, on behalf)
of the ESTATE OF DARRIN TRIEB,)
deceased,)
)
Plaintiff,)
)
v.)
)
NATIONAL COLLEGIATE)
ATHLETIC ASSOCIATION,)
)
Defendant.)

2018L011847

COMPLAINT AND DEMAND FOR JURY TRIAL

NOW COMES the Plaintiff, LYNN DICANIO TRIEB, on behalf of the ESTATE OF DARRIN TRIEB, deceased, by and through her attorneys, and complaining against NATIONAL COLLEGIATE ATHLETIC ASSOCIATION (“NCAA”), states as follows:

Plaintiff alleges as follows upon personal knowledge and, as to all other matters, upon information and belief, including investigation conducted by her attorneys.

PRELIMINARY STATEMENT

1. When the brain experiences a concussive impact, brain tissue shifts, overextends, and tears, causing a cascade of ionic, metabolic, and physiological events.
2. Immediately after the brain is concussed, it is in a vulnerable and exposed state, requiring rest while it begins the process of healing.
3. Introducing second, third, fourth and so on, concussive and sub-concussive impacts to a brain that is already in this vulnerable state increases the risk of later-in-life degenerative brain disease.

4. There are preventative measures, known by the NCAA since 1933, that are designed to minimize and protect against repeated head impacts in football.

5. These preventative measures are known as return-to-play protocols and concussion-management protocols.

6. Plaintiff's decedent, Darrin Trieb ("Darrin"), played college football in the late 1980s and early 1990s.

7. Darrin was subjected to repeated concussive and sub-concussive impacts to the head in the same practices and games. He was routinely returned to play in those same practices and games with a vulnerable brain, and then succumbed to second, third, fourth and so on, concussive and sub-concussive hits to the head.

8. There were no return-to-play or concussion-management protocols in place at the time to protect Darrin.

9. According to the NCAA, it was founded in 1906 to safeguard the well-being of student athletes on and off the field.

10. The NCAA is the authority that enacts, governs and regulates college football playing rules.

11. The NCAA's rule-making authority precludes its member schools from enacting their own playing rules to promote safety.

12. Through licenses and television contracts, the NCAA takes in annual revenues between \$700,000,000 and \$1,000,000,000 (one billion).

13. Historically, the NCAA has been reluctant to impose safety rules on its football, cognizant that the traditional appeal of viewing its football is the raw experience of witnessing

young men fight, get knocked down, and get back up again and continue fighting, and cognizant not to challenge this tradition and risk declining viewership.

14. However, in an environment devoid of return-to-play and concussion-management protocols, there can be a misguided incentive for individual teams to continue to play a head-injured, starting player, for, to keep that starting player on the sidelines could be a significant competitive disadvantage. In this environment, a team could be disinclined to self-impose a protocol that isn't also applied to its competitors.

15. On game day, young student-athletes are riled up and encouraged to do what it takes to win, to push their bodies to the limit, to "shake off" pain, and "to leave it all on the field."

16. However, while the student-athletes competed, and the fans cheered, the NCAA kept critical information in the dark: years after student-athletes leave the playing fields, some of them who were exposed to repetitive head trauma begin to experience insidious, neurological events that slowly entangle their brains and forever alter their lives.

17. Repetitive head trauma increases a student-athlete's risk of acquiring later-in-life brain disease, including Chronic Traumatic Encephalopathy ("CTE").

18. CTE is not a newly discovered disease.

19. Its discovery dates back to the early 1900s.

20. It was given a few different names such as "traumatic encephalopathy," "traumatic encephalitis," and "dementia pugilistica."

21. CTE can only be diagnosed post-mortem, once the brain is examined under microscope.

22. CTE, like Alzheimer's disease, is a progressive, degenerative brain disease.

23. CTE symptoms include memory loss, impaired judgment, impulse control problems, aggression, depression, suicidality, parkinsonism, and eventually progressive dementia.

24. CTE symptoms often manifest years, or even decades, after the last brain trauma.

25. However, unlike Alzheimer's, whose onset typically begins in a person's 60s, the onset of CTE typically begins in one's 40s.

26. While the first stage of Alzheimer's involves memory problems, the first stage of CTE involves mood changes, impulsivity and aggression.

27. Dating back to 1933, the NCAA knew about the later-in-life, grave consequences arising out of the repetitive head trauma in college football. The NCAA also knew about the corresponding protocols designed to prevent repetitive head trauma. Somehow, this critical information and the corresponding protocols did not make their way down to the schools and the student-athletes.

28. The NCAA chose not to enact rules that imposed concussion-management or return-to-play protocols, in an environment that needed these protocols to be imposed and applied universally to all member schools.

29. Had the NCAA enacted return-to-play and concussion protocols, the back-to-back, repetitive head trauma on the practice and playing fields would have been minimized or altogether prevented.

30. Had the NCAA enacted and imposed return-to-play and concussion protocols, Darrin would not have suffered CTE and its devastating cognitive and behavioral dysfunction that prematurely took his life.

PARTIES

31. Plaintiff, Lynn DiCanio Trieb, resides in the County of Cook, Illinois.

32. Lynn DiCanio Trieb is a former spouse of Darrin Trieb and mother of her and Darrin Trieb's two children.

33. Lynn DiCanio Trieb was duly appointed Independent Administrator of the Estate of Darrin Trieb by order of the Circuit Court of Cook County, Illinois.

34. Plaintiff's decedent, Darrin Trieb, prior to his death, resided in the County of Cook, Illinois.

35. The majority of medical treatment Darrin received for his cognitive and behavioral dysfunction prior to his death was with doctors and hospitals located in the County of Cook, Illinois.

36. Defendant NCAA is an unincorporated association with citizenship in each of the States within which it has a member institution. The NCAA has multiple member institutions in Illinois including Northwestern University, Loyola University Chicago, and DePaul University, and as such is a citizen of, and resides in, Illinois.

37. Defendant NCAA conducts business throughout the State of Illinois and County of Cook.

HISTORICAL AND FACTUAL BACKGROUND

THE NCAA MAKES THE RULES AND IT PROCLAIMS TO BE SAFE-GUARDERS

38. Since its founding in 1906, the NCAA has proclaimed to be "dedicated to safeguarding the well-being of student-athletes and equipping them with the skills to succeed on the playing field, in the classroom and throughout life."

39. College football rules are enacted, governed and regulated by the NCAA.

40. The NCAA and its member institutions agree that the member institutions shall enforce the rules enacted by the NCAA.

41. A particular committee within the NCAA organization, namely, the Committee on Safeguards and Medical Aspects of Sports (the “Safeguards Committee”), authors a health and safety guide termed the Sports Medicine Handbook (the “Handbook”).

42. The Handbook, which is updated periodically, provides guidelines for the treatment and prevention of sports-related injuries.

43. In the 1933 edition of this Handbook, discussing “[c]oncussion of the brain” and “fracture of the skull,” the Safeguards Committee cautioned that “[t]he seriousness of these injuries is often overlooked,” and recognized that “[w]hen one realizes that ‘concussion of the brain’ should be defined as ‘bruising of brain tissues’ often accompanied with actual bleeding into the tissues, one may realize that the condition should not be regarded lightly.” The Safeguards Committee explained the signs and symptoms of concussion, cautioned about repeated “recurrent concussion cases,” recommended preventative measures, and warned that student-athletes who were concussed repeatedly should be “forbidden” to return to play.

44. However, the Handbook’s guidelines are only recommendations, not rules.

45. Only the NCAA organization, voting as a whole, can enact rules.

46. Mere recommendations do not require adherence by member institutions.

47. A more recent version of the Handbook admits that “student-athletes rightfully assume that those who sponsor intercollegiate athletics have taken reasonable precautions to minimize the risk of injury from athletics participation.”

48. The NCAA has admitted that its Sports Medicine Handbook “may constitute some evidence of the legal standard of care.”

49. The NCAA publicly admitted its duty and moral obligation to protect student-athletes, when NCAA President Mark Emmert testified to the Senate Commerce Committee in January 2014, “I will unequivocally state we have a clear moral obligation to make sure we do everything we can to protect and support student-athletes.”

50. As such, the NCAA holds itself out as a proponent of, and authority on, the treatment and prevention of sports-related injuries upon which the member institutions, student-athletes, and Darrin Trieb, can, do and did rely.

REPEATED CAUTIONS FROM THE MEDICAL COMMUNITY

51. In 1902 the editors of the *Journal of the American Medical Association* recognized that football players have experienced “brain injuries resulting in insanity...” and that “...it would seem that something might be done by those in charge of college athletics at least...”. See Editors, *The Football Mortality*, 39 JAMA 1464 (1902).

52. In 1910 an article in the medical journal, *A System of Medicine*, the author cautioned that the dangers from head impacts can arise just as easily when “no loss of consciousness occurs at all,” and that such injuries “may in the end have far graver results” due to their “escap[ing] treatment altogether in the first instance” given their less severe appearance. See Sir William Bennett, *Some Milder Forms of Concussion of the Brain*, *A System of Medicine*, Vol. 8 231-32 (2d ed. 1910).

53. Bennett called for the imposition of a strict treatment regimen immediately after a head injury, during initial recovery, and following the initial recovery period, as it is essential to the “treatment of all cases of concussion of the brain, whether they be severe or slight.”

54. In 1927, Drs. Osnato and Giliberti discussed a disease they called “traumatic encephalitis” in an article on post-concussion damage concluding that brain disease could manifest in “young men knocked out in football and other games,” but noting that the issue had “not received

adequate attention.” See Michael Osnato & Vincent Giliberti, *Postconcussion Neurosis-Traumatic Encephalitis*, 18 Archives of Neurology & Psychiatry 181 (1927).

55. In 1928, the forensic pathologist Dr. Harrison Martland authored a study called “Punch Drunk” in the *Journal of the American Medical Association*, where he described the clinical spectrum of abnormalities found in nearly 50 percent of boxers who had been knocked out or who had suffered a considerable impact to the head. See Dr. Harrison S. Martland, *Punch Drunk*, 91 JAMA 1103 (1928).

56. Throughout the 1930s, studies were conducted on boxers with a history of repeated head injuries and who were displaying signs of dementia and impaired motor function. See E. Guttmann & C.E. Winterstein, *Disturbances of Consciousness After Head Injuries: Observations on Boxers*, 84 J. of Mental Sci. 347 (Mar. 1938); Harry L. Parker, *Traumatic Encephalopathy (‘Punch Drunk’) of Professional Pugilists*, 15 J. of Neurology & Psychopathology 20 (July 1934); C.E. Winterstein, *Head Injuries Attributable to Boxing*, 2 Lancet 719 (Sept. 1937).

57. In a 1940 article, Psychiatrists Karl M. Bowman and Abram Blau coined the term “chronic traumatic encephalopathy.” Their article explains the deterioration of a boxer’s mental state over time. See K.M. Bowman & A. Blau, *Psychotic States Following Head and Brain Injury in Adults and Children*, Injuries of the Skull, Brain and Spinal Cord: Neuropsychiatric, Surgical, and Medico-Legal Aspects 309 (S. Brock, ed. 1940).

58. In a 1952 article in the *New England Journal of Medicine*, doctors recommended a three-strike rule for concussions in football, which called for players to cease to play football permanently after receiving their third concussion. See A. Thorndike, MD, *The Trauma of Athletics*, N Eng J Med (Feb. 1952).

59. By the 1960s, researchers were utilizing electroencephalograms (“EEGs”), via telemetry from sensors mounted in football players’ helmets, to examine the severity of head

impacts and affected brain activity. *See, e.g.,* J.A. Tarkington and T.E. Healion, *Radio Telemetry in the Study of Head Impacts in Football*, In Proceedings in the Fifth National Conference on the Medical Aspects of Sports, American Medical Association (1964).

60. In 1975, the Chief Medical Officer of the British Boxing Board of Control suggested boxers and others in contact sports were vulnerable to long-term brain injury, stating, “irreversible brain damage caused by regular excessive punching can cause a boxer to become punch drunk, a condition known euphemistically in medical terms as [Chronic] Traumatic Encephalopathy. The condition can be caused by other hazards of contact sports—taking too many falls while hunting or steep chasing or the continual use of brute force rather than skill in the rugby field or heading a football incessantly over many years. Anything which entails intermittent trauma to the head can cause it.” *See* J.W. Graham, *Eight, Nine, Out! Fifty Years as Boxer’s Doctor*, 56 (1975).

61. Before Darrin Trieb’s college play, study after study in distinguished, peer-reviewed medical journals including the *Journal of the American Medical Association*, the *New England Journal of Medicine*, and *Lancet* warned of the dangers of single concussions, multiple concussions, and/or the risks of returning to play too soon after a head impact.

62. Despite the overwhelming amount of medical evidence prior to the late 1980s (the start of Darrin’s play), only a fraction of which is aforementioned, the NCAA continued to choose not to implement and impose any rules to warn and/or protect student-athlete football players against concussions and repetitive head trauma. For the NCAA, the continued operation and expansion of college football was too profitable to put at risk.

THE SYMPTOMS OF A CONCUSSION UNDERMINE THE ABILITY TO SELF-DIAGNOSE

63. When a student-athlete experiences an impact to the head, he may experience concussion-related symptoms, including:
- “seeing stars” and feeling dazed, dizzy, or lightheaded;
 - nausea or vomiting;
 - blurred vision and sensitivity to light;
 - slurred speech;
 - difficulty concentrating or decision-making;
 - feeling anxious or irritable for no apparent reason; or
 - memory loss, such as trouble remembering things that happened right before and after the impact.

64. Given that this cluster of symptoms renders the student-athlete disoriented, that student-athlete may not recognize his own signs or symptoms, preventing meaningful self-diagnosis.

65. Because the student-athlete may not recognize his own brain injury, it is imperative that others on the sideline evaluate the student-athlete and make informed decisions on his behalf.

THE NCAA WAS PUT ON NOTICE FROM WITHIN ITS OWN ORGANIZATION

66. For decades, the NCAA has been aware—through its own institutional knowledge, medical science, medical journals, and articles about former football players—that severe head impacts can lead to long-term brain injury.

67. In 1933, as aforementioned, the NCAA was warned even from within, by the Safeguards Committee within its own organization about the serious nature of concussions and the need for appropriate concussion-management and return-to-play protocols.

68. In 1968, the Safeguards Committee within the NCAA authored another article concerning the dangers of returning to play after a head injury, stating as follows:

[T]hose individuals who have been rendered unconscious, even momentarily, in a given game should never be allowed to play again in the same game and not allowed to return to contact until all symptoms have cleared up entirely and he has been checked by a competent medical authority. In the area of the head and neck being super cautious is the only route to follow.

It would be hoped that this type of situation would never occur, but often, due to pressure from enthusiastic players, parents, coaches, alumni, and even enthusiastic and well-meaning physicians, boys who should not be playing are allowed to play. Needless to say, we all want the athlete to compete as safely as possible and it is in this interest which prompted the Committee to call attention to this very important aspect of health care.

See "Dangers of Grid Head Injuries Cited by Safeguards Committee," NCAA News (Sept. 1968).

69. In addition to the notice provided in 1933, the above quote indicates that the NCAA was put on notice in 1968 that its member football programs were not self-imposing concussion-management and return-to-play protocols.

70. Despite the fact that the Safeguards Committee within the NCAA organization raised red flags time and again, the NCAA still chose not to enact and impose concussion-management and return-to-play protocols.

71. These omissions were in direct contravention to the NCAA's own mandate, i.e., to safeguard student-athletes' well-being on and off the field.

72. In addition, despite the NCAA's knowledge that the proper evaluation of whether a student-athlete could safely return to play required that player's previous baseline neurological information, the NCAA chose not to institute pre-season baseline testing for student-athletes.

73. Prior to Darrin's play, the NCAA was aware that the solution to this concussion problem was for the NCAA, the rule-maker for college football, to enact and universally impose preventative measures on its member schools.

74. The NCAA did not do so.

FACTS SPECIFIC TO DARRIN TRIEB

DURING COLLEGE

75. After graduating from Weber High School on the west side of Chicago, Darrin Trieb played NCAA football from 1987 to 1991.

76. Darrin played at Iowa State for his first year and then at Purdue University for his remaining college years.

77. Darrin was an outstanding inside linebacker.

78. He played on an NCAA athletic scholarship.

79. There were no concussion-management or return-to-play protocols in place when he played.

80. Darrin was known for his crushing tackles, and was lauded for his raw, physical talent.

81. Darrin was nicknamed "Cro-Magnon" by his Purdue teammates, because in practices and games, his forehead routinely became red and irritated under his helmet from an overwhelming amount of head impacts, such that he would go to the sidelines and get his forehead wrapped in gauze under his helmet, and return to play.

82. Darrin earned numerous awards for his play at linebacker in college. Most notably, coming into his junior year at Purdue University, Darrin was named one of fifteen All-American prospects throughout the nation at the position of inside linebacker.

83. All-American prospects who were co-honored with this same recognition that year at linebacker positions include Junior Seau (deceased, positive for CTE) and Scott Ross (deceased, suspected of CTE).

84. During his college football career, Darrin Trieb was subjected to repeated concussive and sub-concussive impacts in practices and games.

85. Darrin was routinely returned to play immediately after experiencing concussive impacts, subjecting his already concussed and highly vulnerable brain to second, third, fourth and more impacts that same day.

THE DECADE AFTER FOOTBALL

86. Darrin did not appear to have any cognitive deficits, behavioral dysfunction or similar symptoms during his 20s.

87. At age 28, Darrin got married to Lynn DiCanio. They had 2 children. They settled into a home in the Northwest suburbs of Chicago.

88. Darrin became employed with AT&T, working in sales.

89. Darrin had the typical, residual body aches and pains not unexpected of a Big Ten linebacker.

90. He was an otherwise healthy male in his twenties, albeit with old neck, shoulder and other orthopedic injuries.

THE PROGRESSION OF CTE AND THE NEUROCOGNITIVE DECLINE

91. It wasn't until much later, long after he ceased playing football, that Darrin began to experience the onset of the grave consequences from the long-ago repetitive head trauma.

92. At some time prior to his death, the CTE disease process began: the irregular hyperphosphorylated tau protein was accumulating, along with its associated neurofibrillary

tangles, and they began to reach critical mass in his brain. These brain abnormalities would now begin to influence his cognition, mood and behavior.

93. In the beginning of his downward spiral, Darrin began experiencing unexplained mood swings. Mundane tasks that would normally not faze him now caused abrupt, aggressive and uncontrollable outbursts. Some of these outbursts were misdirected at Lynn, and sometimes in front of his young boys. He would always apologize for his outbursts after the fact, but he never could explain why they occurred. He grew progressively anxious about these unexplained changes in his mood.

94. His behavior grew increasingly erratic. His mind raced. To quiet his mind, he would sometimes isolate, preferring to be alone in a dark room.

95. Due in part to no one, including himself, knowing that he was experiencing an underlying brain disease, the increasingly erratic behavior witnessed by his loved ones strained those relationships. His wife and kids did not know when the next outburst would happen. They walked on eggshells around him. Relations with Lynn became more and more estranged.

96. Darrin was no longer in control of his emotions. He had major depression. He experienced uncontrollable, sudden, daily bouts of crying that came upon him with little to no warning. Darrin was embarrassed and afraid. He would leave work early to avoid being seen in this state.

97. He eventually lost his job at AT&T.

98. His mental functioning began sharply deteriorating. He had increasing difficulty communicating with others. He would get lost while driving on routes he'd been on 100s of times. At times he would wander off with no explanation. At times he would forget conversations he just had.

99. His doctors did not have concrete answers for him. The only diagnosis that was conveyed to him with any confidence was that his symptoms were consistent with frontal lobe dementia.

100. As his self-control declined, Darrin no longer trusted himself. He expressed concerns that he didn't want his young boys witnessing him in this state. He also expressed concerns that he didn't want to be a burden on his loved ones.

101. Darrin's day-to-day existence progressively declined to the point where it had become a daily struggle to exert control over his own thoughts and behavior. At times, Darrin saw no way out. At times, he expressed thoughts of suicide to his loved ones.

102. Darrin was deemed legally disabled and started receiving social security disability benefits.

103. Ultimately, Darrin moved into his mother's basement, preferring isolation over human contact. He told his close friends that he didn't think he would live much longer.

104. On May 7th, 2017, Darrin Trieb, at the age of 49, was found dead in his bed.

105. His death certificate indicated that he died of hypertension, obstructive sleep apnea, and CTE.

106. Darrin's remains were donated to the VA-BU-CLF Brain Bank at Boston University, a repository focused on evaluating traumatic brain injury and CTE. His family and friends sought answers.

107. On April 11, 2018, Boston University provided Darrin's family a post-mortem diagnosis. Darrin Trieb was diagnosed with Stage II and III CTE.

COUNT I: WRONGFUL DEATH - NEGLIGENCE

108. Plaintiff incorporates, by reference, the foregoing allegations.

109. At all relevant times, there was in full force and effect the Illinois Wrongful Death Act, 740 ILCS 180/1 *et seq.*, under which Lynn DiCanio Trieb, as Independent Administrator of the Estate of Darrin Trieb, deceased, is entitled to recover for Darrin Trieb's death, and is bringing the instant action.

110. The NCAA assumed a duty to protect the health and safety of all student-athletes at member institutions, including Darrin Trieb.

111. The NCAA assumed a duty of care by voluntarily taking steps to protect and promote the health and safety of its student-athletes, including authoring safety handbooks. That duty included an obligation to supervise, regulate, and monitor the rules of its governed sports, and to enact and impose appropriate and up-to-date rules to minimize the risk of injury to student-athletes, including Darrin Trieb.

112. Defendant NCAA had a duty to advise its member institutions and student-athletes including Darrin Trieb on the proper method to evaluate and treat head trauma, including repetitive sub-concussive and concussive injury.

113. Defendant had a continuing duty to warn student-athletes including Darrin Trieb of the dangers of the later-in-life effects of sub-concussive and concussive injuries occurring in its college football. This duty to warn existed before, during, and after student-athletes and Darrin attended college, and as additional information came to light.

114. Defendant had a duty to enact and impose on its member schools known safety and preventative measures, such as return-to-play and concussion-management protocols.

115. Defendant also had a duty not to conceal and/or withhold material information from its member football programs and its student athletes, including Darrin.

116. Defendant negligently and carelessly breached its duties to Darrin by failing to enact rules regarding the evaluation of head trauma and failing to provide treatment for the latent effects of repetitive head trauma. These failings include, but are not limited to, the following:

- a. negligently and carelessly failing to recognize and monitor concussive and sub-concussive injury during football practices and games;
- b. negligently and carelessly failing to inform the student-athletes, including Darrin Trieb, of the special risks of long-term dangers of concussive and sub-concussive injuries that were known and occurring in college football;
- c. negligently and carelessly failing to enact and impose return-to-play and concussion-management protocols for student-athletes, including Darrin Trieb, who sustained concussive and/or sub-concussive injuries;
- d. negligently and carelessly failing to enact and impose procedures to monitor the health of football student-athletes including Darrin Trieb who sustained concussive and/or sub-concussive injuries;
- e. negligently and carelessly failing to inform the football student-athletes, including Darrin's, families of concussive and/or sub-concussive injuries the student-athletes had sustained; and
- f. negligently and carelessly failing to provide notification, warning and treatment for latent neuro-cognitive and neuro-behavioral effects of concussive and sub-concussive injuries, after the time Darrin left Purdue University.

117. The concealment and/or withholding of material facts was such that Darrin Trieb would have acted differently if he had been aware of the material facts known to Defendant.

118. Had Darrin known these facts in Defendant's possession, he would (i) not have returned to play after a head injury, (ii) would have taken additional time to allow his brain to heal before returning to play, (iii) would have sought a doctor's opinion on when to return to play, (iv) would have altered his tackling techniques, (v) would have taken additional precautions while playing football, and/or (vi) would not have continued to play college football at all if return-to-play and concussion protocols were not established.

119. As a direct and proximate result, the NCAA's negligent and careless acts and omissions caused Darrin Trieb to experience repetitive sub-concussive and concussive brain impacts during his college football career that increased his risk, and later in his life did in fact cause, a neurodegenerative brain disease that would ultimately cause his untimely, premature death.

120. Lynn DiCanio Trieb was appointed Independent Administrator of the Estate of Darrin Trieb.

121. Darrin Trieb is survived by next-of-kin, which are his two children. His two children are his sole beneficiaries.

122. As a direct and proximate result of Darrin Trieb's death, decedent's beneficiaries have suffered and will continue to suffer pecuniary injuries, sorrow, grief, mental anguish, loss of decedent's society, companionship, care, benefits, assistance, protection, advice, guidance, counsel, instruction, training and education.

WHEREFORE, the Plaintiff, by and through her attorneys, prays for judgment against Defendant in an amount above the jurisdictional limits of this Court and for the full measure of damages allowed under applicable law, including but not limited to interest, reasonable attorneys' fees, expenses, and costs to the extent allowable.

COUNT II: NEGLIGENCE - SURVIVAL

123. Plaintiff incorporates, by reference, the foregoing allegations.

124. This count is brought pursuant to the common law and the Illinois Survival Act, 755 ILCS 5/27-6, which was in full force and effect at all relevant times.

125. Defendant owed each and every duty to Darrin Trieb alleged in Count I above.

126. Defendant negligently and carelessly breached each and every duty owed to Darrin Trieb alleged in Count I above.

127. As a direct and proximate result, said breaches caused Darrin Trieb to suffer later-in-life brain disease, years of conscious pain and suffering, profound emotional distress and mental anguish, loss of enjoyment of life, job loss and unemployability, and other economic and noneconomic damages up to the time of his death.

WHEREFORE, the Plaintiff, by and through her attorneys, prays for judgment against Defendant in an amount above the jurisdictional limits of this Court and for the full measure of damages allowed under applicable law, including but not limited to interest, reasonable attorneys' fees, expenses, and costs to the extent allowable.

**COUNT III: WRONGFUL DEATH - WILFUL, WANTON CONDUCT TOTALLY
OUTSIDE THE ORDINARY**

128. Plaintiff incorporates, by reference, the foregoing allegations.

129. At all relevant times, there was in full force and effect the Illinois Wrongful Death Act, 740 ILCS 180/1 *et seq.*, under which Lynn DiCanio Trieb, as Independent Administrator of the Estate of Darrin Trieb, deceased, is entitled to recover for Darrin Trieb's death, and is bringing the instant action.

130. Defendant owed each and every duty to Darrin Trieb alleged in Count I above.

131. Defendant negligently and carelessly breached each and every duty owed to Darrin Trieb alleged in Count I above.

132. In addition to its negligent and careless breaches, Defendant's breaches also amounted to wilful and wanton conduct, demonstrating a conscious disregard for the safety of student-athletes, and for Darrin, and amounted to conduct totally outside the range of ordinary

activity involved with safeguarding the well-being of student-athletes in the sport of college football, as more fully described below.

133. The NCAA is the governing authority that makes the rules for college football.

134. The sport of NCAA-sanctioned college football is unique in that its student-athletes are transitioning from minors to adults, and often transitioning from living with their parent(s) to living on their own.

135. The fact that the governing authority has assumed the duty of safeguarding the well-being of student-athletes is ordinary, usual and expected, given that these young men at this transitional time in their lives have left behind the immediate guidance they get from family. This was Darrin Trieb's experience in college.

136. However, when the governing authority that proclaims it safeguards student-athletes' well-being is the same governing authority that chooses not to enact and impose fundamental safety rules—e.g., return-to-play and concussion-management protocols—even in the face of an overwhelming amount of cautions to specifically adopt such rules from the medical community, and further, internally from its own Safeguards Committee, these acts and omissions are wilful and wanton, and demonstrate reckless and conscious disregard for the safety of student-athletes.

137. Such acts and omissions are antithetical to the NCAA's founding principle.

138. This conduct falls far outside the bounds expected from the governing authority in college football.

139. Student-athletes and their families expect the NCAA to act in accord with their mission statement, i.e., to safeguard the well-being of student athletes on and off the field.

140. The NCAA's wilful and wanton acts and omissions amounted to conduct totally

outside the range of ordinary activity involved with safeguarding the well-being of student-athletes in the sport of college football.

141. The enactment of return-to-play and concussion-management protocols would have been consistent with the NCAA's founding principle. These are protocols, founded in medicine, safety, and common sense, that when executed on the sidelines, serve to prevent grave, future harm to the student-athlete.

142. The enactment of such rules must originate from the principal governing authority, namely, the NCAA, and in its boardroom and by its executives, and then imposed system-wide on all member institutions.

143. As a direct and proximate result, the NCAA's reckless, conscious disregard and conduct totally outside the range of ordinary activity involved with safeguarding the well-being of student-athletes in the sport of college football caused Darrin to repeatedly return to play from the sidelines with an already concussed brain and endure second, third, fourth and so on, impacts to the head such that later in life he would develop a devastating degenerative brain disease that would forever alter, and prematurely take, his life.

144. At all relevant times, each time the NCAA board members convened, it consciously disregarded the safety and well-being of student athletes including Darrin by not enacting return-to-play and concussion-management protocols.

145. At all times relevant, Defendant remained wilfully blind to the overwhelming medical evidence and its warnings.

146. Lynn DiCanio Trieb was appointed Independent Administrator of the Estate of Darrin Trieb.

147. Darrin Trieb is survived by next-of-kin, which are his two children. His two children are his sole beneficiaries.

148. As a direct and proximate result of Darrin Trieb's death, decedent's beneficiaries have suffered and will continue to suffer pecuniary injuries, sorrow, grief, mental anguish, loss of decedent's society, companionship, care, benefits, assistance, protection, advice, guidance, counsel, instruction, training and education.

WHEREFORE, the Plaintiff, by and through her attorneys, prays for judgment against Defendant in an amount above the jurisdictional limits of this Court and for the full measure of damages allowed under applicable law, including but not limited to interest, reasonable attorneys' fees, expenses, and costs to the extent allowable.

COUNT IV: WILFUL, WANTON CONDUCT TOTALLY OUTSIDE THE ORDINARY – SURVIVAL

149. Plaintiff incorporates, by reference, the foregoing allegations.

150. This count is brought pursuant to the common law and the Illinois Survival Act, 755 ILCS 5/27-6, which was in full force and effect at all relevant times.

151. Defendant owed each and every duty to Darrin Trieb alleged in Count I above.

152. Defendant negligently and carelessly breached each and every duty owed to Darrin Trieb alleged in Count I above.

153. In addition to its negligent and careless breaches, Defendant's breaches also amounted to wilful and wanton conduct, demonstrating a conscious disregard for the safety of student-athletes, and for Darrin Trieb, and amounted to conduct totally outside the range of ordinary activity involved with safeguarding the well-being of student-athletes in the sport of college football, as described in Count III above.

154. As a direct and proximate result, the NCAA's reckless, conscious disregard and conduct totally outside the range of ordinary activity involved with safeguarding the well-being of student-athletes in the sport of college football, caused Darrin Trieb to repeatedly return to play from the sidelines with an already concussed brain and endure second, third, fourth and so on, impacts to the head such that later in life he would develop a devastating brain disease that would forever alter his life.

155. As a direct and proximate result, said breaches caused Darrin Trieb to suffer later-in-life degenerative brain disease, years of conscious pain and suffering, profound emotional distress and mental anguish, loss of enjoyment of life, job loss and unemployability, and other economic and noneconomic damages up to the time of his death.

WHEREFORE, the Plaintiff, by and through her attorneys, prays for judgment against Defendant in an amount above the jurisdictional limits of this Court and allowed under applicable law, including but not limited to interest, reasonable attorneys' fees, expenses, and costs to the extent allowable.

COUNT V: FRAUDULENT MISREPRESENTATION AND CONCEALMENT

156. Plaintiff incorporates, by reference, the foregoing allegations.

157. At all relevant times, the NCAA possessed superior knowledge on the safety of its football, and on the disastrous consequences of repetitive head trauma that can occur in its football.

158. At all relevant times, the NCAA possessed superior knowledge on the what, how, when, where and why to enact and impose safety rules in college football.

159. At all relevant times, the NCAA was aware of and understood the significance of the medical literature described in the preceding paragraphs of this Complaint, which detail the

serious risk of long-term, later-in-life brain disease associated with repetitive impacts to the head to which NCAA football student-athletes, including Darrin Trieb, were exposed.

160. At all relevant times, the NCAA held itself out as the governing authority founded to safeguard the well-being of college football student-athletes on and off the field.

161. At all relevant times, the NCAA was the principal rule-maker for college football.

162. At all relevant times, the NCAA was in a position of influence over student-athletes who played in NCAA-sanctioned football, requiring them to, among other things, abide by NCAA rules.

163. At all relevant times, the NCAA had a duty not to make fraudulent misrepresentations to its student-athletes, including Darrin Trieb.

164. In the late 1980s and early 90s when Darrin played, the NCAA made continuing, untrue material statements that it safeguards the well-being of student-athletes, when simultaneously, the NCAA buried or suppressed directly contradictory and material facts, namely, that it is unsafe and detrimental to student-athletes' well-being to play football in an environment devoid of return-to-play and concussion-management protocols and similar safety rules.

165. Accordingly, the NCAA made statements it believed to be untrue.

166. These untrue statements were false statements of material fact and fraudulent misrepresentations.

167. At all relevant times, the NCAA had a duty to disclose to, and not conceal from, student-athletes, including Darrin Trieb, the material facts in its possession concerning safety, harm and preventative measures, and similar safety rules.

168. The NCAA breached its duty to disclose when it wrongfully concealed from student-athletes and Darrin Trieb that repetitive head impacts in football games and practices created a grave risk of later-in-life harm.

169. Each time the NCAA convened its executives in its boardrooms, as the principal rule-maker for college football, it breached its duty to disclose when it chose to fraudulently conceal, bury or wilfully ignore the evidence that repetitive head impacts in football can cause disastrous, later-in-life consequences.

170. In the absence of revealing this material information on the dangers, the NCAA likewise breached its duty by fraudulently concealing the existence of the preventative measures to those dangers that the NCAA could have employed, namely, return-to-play-protocols and concussion-management protocols, and similar safety rules.

171. By wilfully ignoring or fraudulently concealing these material facts, the NCAA created a misleading, non-factual environment within which it could choose not to implement preventative protocols, and unwitting teenage student-athletes and their families would not be so informed to object.

172. The NCAA's knowledge of the consequences of repetitive head trauma existed for over 50 years prior to Darrin's college play.

173. The NCAA's knowledge of the preventative measures for repetitive head trauma existed for over 50 years prior to Darrin's college play.

174. Through concealment of material facts, the NCAA intended to induce a false belief, under circumstances creating an opportunity and duty to speak. Defendant intended to induce a false belief that it was safe for Darrin Trieb to continue to play football and should not

be prevented from returning to play after concussive and sub-concussive impacts, when in fact his concussed brain required that he not be returned to play.

175. The NCAA intended to induce Darrin to act on this false belief, namely, to continue playing while having a concussed brain.

176. Darrin placed trust and confidence in the NCAA that it would prioritize the safety of him and all other student-athletes over competing priorities.

177. One competing priority was to maintain the traditional appeal of the game to its fans.

178. Darrin had a right to rely on statements made by the NCAA, and had a right to rely on the NCAA's silence, and did in fact rely on the NCAA's statements and silence.

179. Darrin Trieb was under the supervision, care and treatment of Defendant and justifiably relied on its silence as representing facts that did not exist.

180. Given Defendant's superior and unique vantage point, Darrin Trieb reasonably looked to Defendant for guidance on head injuries and concussions.

181. Darrin Trieb did not know and could not have reasonably been expected to know or discover the truth about the consequences of sub-concussive or concussive head impacts, and he was prevented and misled from obtaining or investigating such truthful information, given that Darrin had no reason not to believe that the NCAA, as the authority who safeguards student-athlete well-being, was already doing so on his behalf.

182. The concealed information was such that Darrin Trieb would have acted differently if he had been aware of the material facts known to, and concealed by, Defendant. Had Darrin Trieb known the full facts in Defendant's possession, he (i) would not have returned to play after a head injury, (ii) would have taken additional time to allow his brain to heal before

returning to play, (iii) would have sought a doctor's opinion on when to return to play, (iv) would have altered his tackling techniques, (v) would have taken additional precautions while playing football, and/or (vi) would not have continued to play college football at all if return-to-play and concussion-management protocols were not established.

183. Despite Defendant's knowledge, it chose not to establish return-to-play and concussion protocols and similar safety rules.

184. The Defendant's inaction and concealment increased the risk of long-term injury and illness in their student-athletes and in Darrin Trieb.

185. As a direct and proximate result, both Defendant's affirmative representations and its fraudulent concealment and/or wilful blindness caused Darrin Trieb to return to play with a concussed brain and experience repetitive sub-concussive and concussive impacts in those same practices and games during his college football career. This repetitive head trauma significantly increased his risk of developing, and eventually did in fact cause, degenerative brain disease, loss of enjoyment of life, emotional distress, pain and suffering, neurological disorders, income loss and unemployability, dementia, CTE, and other economic and non-economic damages.

WHEREFORE, the Plaintiff, by and through her attorneys, prays for judgment against Defendant in an amount above the jurisdictional limits of this Court and allowed under applicable law, including but not limited to interest, reasonable attorneys' fees, expenses, and costs to the extent allowable.

COUNT VI: ILLINOIS CONSUMER FRAUD

186. Plaintiff incorporates, by reference, the foregoing allegations.

187. This count is brought pursuant to 815 ILCS 505/1 *et seq.*, known as the Illinois Consumer Fraud Act.

188. At all relevant times, the NCAA held itself out as the governing authority that safeguards the well-being of student-athletes.

189. The NCAA held itself out as the principal rule-maker for NCAA-sanctioned sports.

190. The NCAA offered athletic scholarships to encourage young high school athletes in Illinois to play in NCAA-sponsored sports.

191. These NCAA athletic scholarships held significant monetary value.

192. Darrin Trieb was an Illinois high school athlete who was offered an NCAA athletic scholarship to play football for the NCAA and its member schools.

193. Defendant NCAA's practice to promote itself to high school football athletes and their families, and to college student-athletes, that the NCAA exists to safeguard student-athletes' well-being, was a deceptive act. It was a deceptive act because the NCAA simultaneously possessed and concealed material facts that indicated the opposite, i.e., that the NCAA was not safeguarding student-athletes' well-being, it was choosing not to disclose or warn about the disastrous consequences of repetitive head trauma in college football, and it was choosing to not enact rules to prevent same.

194. NCAA scholarships are proffered in the course of trade and commerce. The NCAA holds a thing of monetary value, and offers to give it to a student-athlete, in exchange for the student-athlete's commitment to, and continuing play in, an NCAA-sanctioned sport. Likewise, the student-athlete's play is a thing of monetary value to the NCAA, as fans pay to view and networks pay to broadcast the athlete's play in games. Here, the NCAA provided a monetary incentive and benefit in its athletic scholarship given to Darrin Trieb, whereby said

scholarship was predicated upon, and maintained by, Darrin Trieb's continuing play and adherence to the NCAA rules.

195. The NCAA intended student-athletes and their families, including Darrin Trieb and his family, to rely on the NCAA's deceptive statement, so it could recruit Darrin and continue to recruit and expand its college football operation.

196. The NCAA benefitted when student-athletes relied on the deception; it benefitted by maintaining the appeal to its fans of a game, where student-athletes were encouraged to, and did in fact so, shake off pain, ignore head impacts, and return to play in the game, "leaving it all on the field."

197. Darrin relied on the deceptive statement about NCAA's highest concern for student-athlete safety, and having no reason to doubt it, accepted the scholarship, committed to play NCAA football, and played and adhered to NCAA rules.

198. As a direct and proximate result, this deceptive practice caused Darrin to unwittingly return to play and to practice, on countless occasions after sustaining a concussive hit, and he did so without following a return-to-play and concussion protocol.

199. As a direct and proximate result, this deceptive practice caused Darrin to endure repeated impacts to his brain while it was in a highly vulnerable state.

200. As a direct and proximate result, this deceptive practice caused Darrin to suffer disastrous, life-altering cognitive and behavioral dysfunction later in his life.

WHEREFORE, the Plaintiff, by and through her attorneys, prays for judgment against Defendant in an amount above the jurisdictional limits of this Court and for the full measure of damages allowed under applicable law, including but not limited to economic and non-economic damages, interest, reasonable attorneys' fees, expenses, and costs to the extent allowable.

COUNT VII: NEGLIGENT MISREPRESENTATION

201. Plaintiff incorporates, by reference, the foregoing allegations.

202. At all relevant times, as an association that governs and enacts rules for institutions of higher learning, the NCAA was in the business of furnishing information to its member institutions and their student-athletes.

203. The NCAA possessed knowledge of the medical literature described in the preceding paragraphs of this Complaint, which detail the serious risk of long-term, subsequent brain injury associated with repetitive impacts to the head to which football student-athletes, including Darrin Trieb, were exposed.

204. At all relevant times, on account of NCAA's position of influence over student-athletes, its superior knowledge on safety practices in the game of football, its role as principal rule-maker for college football, and that it held itself out as the entity founded to safeguard student-athlete well-being, the NCAA had a duty to convey material facts in its possession, namely about safety, harm and preventative measures, to its member schools, their football programs, and to student athletes, including Darrin Trieb.

205. The NCAA also had a duty to make these representations accurately, and non-negligently, about the above-mentioned material facts.

206. The NCAA breached its duty when it carelessly withheld vital and material information concerning repetitive head trauma—both its harm and its prevention—from student-athletes, including Darrin Trieb.

207. The NCAA breached its duty to make accurate representations to student-athletes and Darrin Trieb when it carelessly stated it exists to safeguard student-athletes' well-being.

208. The NCAA's knowledge of the disastrous consequences of repetitive head trauma in football existed for over 50 years prior to Darrin Trieb's college play.

209. Through negligent non-disclosure of material facts, and through negligent misrepresentations, the NCAA induced a false belief, under circumstances creating a duty to speak. The NCAA induced a false belief that it was safe for Darrin Trieb to continue to play football and should not be prevented from returning to play after concussive and sub-concussive impacts, when in fact his concussed brain required that he not be returned to play.

210. Darrin placed trust and confidence in the NCAA that it would prioritize the safety of him and all other student-athletes over other priorities related to maintaining the appeal of the game to its fans.

211. Given Defendant's superior and unique vantage point, Darrin Trieb reasonably looked to Defendant for guidance on head injuries and concussions.

212. Darrin Trieb was under the supervision, care and treatment of Defendant and reasonably and justifiably relied on its inaccurate representations and silence as representing facts that did not exist.

213. Darrin Trieb did not know and could not have reasonably been expected to know or discover the truth about the later-in-life effects of sub-concussive or concussive impacts, and was negligently prevented from obtaining and investigating such truthful information, given that Darrin had no reason not to rely on the NCAA's position and statements that it exists to safeguard the well-being of the student-athlete.

214. Had the vital and material information concerning the safety, harm and preventative measures been accurately conveyed to Darrin and not negligently withheld, Darrin Trieb would have acted differently. Had Darrin Trieb known the full facts in Defendant's

possession, he would (i) not have returned to play after a head injury, (ii) would have taken additional time to allow his brain injuries to heal before returning to play, (iii) would have sought a doctor's opinion on when to return to play, (iv) would have altered his tackling techniques, (v) would have taken additional precautions while playing football, and/or (vi) would not have continued to play college football at all if return-to-play and concussion protocols were not established.

215. As a direct and proximate result of Defendant's negligent withholding of material information, and as a direct and proximate result of Defendant's negligent representations, such inaccurate information caused Darrin Trieb to experience repetitive sub-concussive and concussive brain impacts during his college football career that significantly increased his risk of developing, and eventually did in fact cause, substantial subsequent brain disease, loss of enjoyment of life, emotional distress, pain and suffering, neurological disorders, job loss and unemployability, dementia, CTE, and other economic and non-economic damages.

WHEREFORE, the Plaintiff, by and through her attorneys, prays for judgment against Defendant in an amount above the jurisdictional limits of this Court and for the full measure of damages allowed under applicable law, including but not limited to economic and non-economic damages, interest, reasonable attorneys' fees, expenses, and costs to the extent allowable.

COUNT VIII: BREACH OF EXPRESS CONTRACT

216. Plaintiff incorporates, by reference, the foregoing allegations.

217. As a student-athlete football player at institutions governed and sanctioned by the NCAA (Iowa State and Purdue), Darrin Trieb was required to, and did, enter into a contract with the NCAA as a prerequisite to NCAA sports participation.

218. The NCAA offered that Darrin Trieb shall play for an NCAA-sanctioned football program and Darrin's tuition and other ancillary expenses shall be subsidized, by way of athletic scholarship.

219. Further, the NCAA promised to perform certain services and functions, including, among other things:

- a. conduct intercollegiate athletics in a manner designed to protect and enhance the physical and educational wellbeing of student-athletes;
- b. require that each member institution protect the health of, and provide a safe environment for, each of its participating student-athletes; and
- c. require that each member institution establish and maintain an environment in which a student-athlete's activities are conducted as an integral part of the student-athlete's educational experience.

220. Darrin accepted the offer, accepted the scholarship, and accepted to play NCAA sports in accordance with NCAA regulations and bylaws.

221. By agreeing to abide by NCAA rules and code of conduct, and thereafter participating in a NCAA-sanctioned sports program in accordance with such rules, Darrin Trieb performed and fulfilled his contractual obligations to the NCAA.

222. As described more fully in the foregoing allegations, the NCAA breached the parties' agreement by failing to provide and impose long-existing, fundamental safety rules to protect Darrin's safety, health and well-being.

223. The NCAA further breached the contract by concealing and/or withholding material facts and/or failing to properly educate and warn Darrin about the devastating, later-in-life consequences of repetitive head trauma.

224. As a direct and proximate result of Defendant's breach, Darrin Trieb experienced repetitive sub-concussive and concussive impacts to the brain during his college football career

that significantly increased his risk of developing, and eventually did in fact cause, subsequent substantial injuries, including job loss and unemployability, lost future earnings, medical expenses, other out of pocket expenses, emotional distress, pain and suffering, neurological disorders, dementia, CTE, and other economic and non-economic damages.

WHEREFORE, Plaintiff, by and through her attorneys, prays for judgment against Defendant in an amount above the jurisdictional limits of this Court and for the full measure of damages allowed under applicable law, including but not limited to interest, reasonable attorneys' fees, expenses, and costs to the extent allowable.

COUNT IX: BREACH OF IMPLIED CONTRACT

225. Plaintiff incorporates, by reference, the foregoing allegations.

226. To the extent that an express contract cannot be established among Darrin Trieb and Defendant, the facts set forth above, in combination with the allegations in this count, support the finding of an implied contract.

227. Under the implied contract, the NCAA indicated its offer by promising to subsidize Darrin's tuition and other ancillary expenses, by way of athletic scholarship.

228. The NCAA also indicated that it agreed to abide by the promises set forth in its own Constitution and Bylaws, as described above.

229. Darrin indicated acceptance by agreeing to be bound by NCAA rules and regulations and for his commitment to participate in an NCAA-controlled athletic program.

230. Darrin Trieb indicated his acceptance of the contract, and further, fully performed under the contract, by participating in an NCAA-sanctioned football program in accordance with NCAA rules and regulations.

231. Defendant breached its implied contractual duties by failing to abide by its promises set forth in its Constitution and Bylaws, most notably, failing to provide a safe environment that promotes health and well-being in students-athletes, in which Darrin could participate.

232. Defendant further breached its implied contract by concealing and/or withholding material facts concerning repetitive head trauma and/or failing to properly educate, warn and protect Darrin from the long-term risks of concussions and concussion-related traumatic injury.

233. As a direct and proximate result of Defendant's breach, Darrin Trieb experienced repetitive sub-concussive and concussive impacts to the brain during his college football career that significantly increased his risk of developing, and eventually did in fact cause, subsequent substantial injuries, including job loss and unemployability, lost time, lost future earnings, past medical expenses, other out of pocket expenses, emotional distress, pain and suffering, neurological disorders, dementia, CTE, and other economic and non-economic damages.

WHEREFORE, the Plaintiff, by and through her attorneys, prays for judgment against Defendant in an amount above the jurisdictional limits of this Court and for the full measure of damages allowed under applicable law, including but not limited to interest, reasonable attorneys' fees, expenses, and costs to the extent allowable.

COUNT X: BREACH OF CONTRACT AS TO THIRD-PARTY BENEFICIARY

234. Plaintiff incorporates, by reference, the foregoing allegations.

235. To the extent that no express or implied contract is found to exist between Darrin Trieb and Defendant, an express contract existed between the NCAA and its member institutions, namely, Iowa State and Purdue University. Under the terms of these contracts, the member institutions agreed to abide by the applicable NCAA rules and regulations, including

those expressly set forth in the NCAA's Division Manuals, Constitution, and Bylaws in exchange for membership in the NCAA.

236. Under the terms of these contracts, as set forth in the NCAA Constitution and encompassed within the NCAA Division Manuals, these member institutions and the NCAA agreed to, among other things: (1) conduct intercollegiate athletic programs in a manner designed to protect and enhance the physical and educational well-being of student athletes; and (2) protect the health of, and provide a safe environment for, each of their participating student-athletes.

237. The terms of the agreements between the NCAA and its member institutions were directly intended to benefit a class of people, namely, student-athletes.

238. One of these intended benefits was that student-athletes' well-being in collegiate athletics would be safeguarded.

239. As a student-athlete participating in NCAA-sanctioned football programs at NCAA member institutions, Darrin Trieb was a member of the class described above and therefore was directly intended to benefit from these contracts.

240. Though Darrin Trieb was not identified individually in the contracts at the time those contracts were written, his name would be and eventually was known to the parties at the time performance of the contract was due, i.e., when he committed to playing NCAA football under scholarship.

241. Darrin was an intended third-party beneficiary of the contracts between the NCAA and Iowa State and Purdue, and he would have directly benefitted from such contract had the NCAA performed its obligations under the contract. Such an intention can be found in the

express language of the NCAA's rules and regulations, which serve to bind its member institutions, as well as the stated purpose and principles of the NCAA Organization.

242. The NCAA breached the contractual duties owed to Darrin Trieb under these contracts by failing to implement and impose return-to-play and concussion-management protocols to minimize or prevent the risk of concussions and concussion-related injuries and by failing to adequately inform and educate these member institutions and Darrin on the long-term, grave dangers of concussions and concussion-related injuries.

243. As a direct and proximate result of Defendant's breach, Darrin Trieb experienced repetitive sub-concussive and concussive impacts to the brain during his college football career that significantly increased his risk of developing, and eventually did in fact cause, subsequent substantial injuries, including job loss and unemployability, lost time, lost future earnings, past medical expenses, other out-of-pocket expenses, emotional distress, pain and suffering, neurological disorders, dementia, CTE, and other economic and non-economic damages.

244. WHEREFORE, the Plaintiff, by and through her attorneys, prays for judgment against Defendant in an amount above the jurisdictional limits of this Court and for the full measure of damages allowed under applicable law, including but not limited to interest, reasonable attorneys' fees, expenses, and costs to the extent allowable.

COUNT XI: UNJUST ENRICHMENT
(In the Alternative to Breach of Contract)

245. Plaintiff incorporates, by reference, the foregoing allegations, excluding paragraphs concerning breach of contract.

246. Defendant receives significant revenues from the collegiate football played by student-athletes. These revenues include, but are not limited to, contractual revenues from broadcasting, merchandising agreements, and ticket sales.

247. Defendant appreciates and has knowledge of such benefits.

248. Darrin Trieb expected to play in the environment that the NCAA described, i.e., an environment that promotes the safety and well-being of the student-athlete.

249. Unbeknownst to Darrin, the NCAA did not uphold its promise, as described more fully above, to provide a safe environment in which Darrin could play NCAA football.

250. By virtue of his continued play of collegiate football at member institutions, Darrin Trieb contributed to the NCAA revenues, but did so to his detriment, as his continued play in an unsafe environment with no return-to-play or concussion-management protocols ultimately resulted in devastating brain injury later in life.

251. Due to brain injury, Darrin lost his job and became unemployable.

252. Due to brain injury, he incurred a significant amount of medical expenses.

253. Due to brain injury, he suffered devastating cognitive and emotional dysfunction that would ultimately contribute to his premature death.

254. Under principles of justice, equity and good conscience, Defendant should not be permitted to retain the revenues it received on account of Darrin's collegiate play and at the expense of Darrin Trieb suffering from repetitive head impacts later in life, including job loss and unemployability, lost time, lost future earnings, past medical expenses, other out-of-pocket expenses, emotional distress, pain and suffering, neurological disorders, dementia, CTE, and other economic and non-economic damages.

WHEREFORE, the Plaintiff, by and through her attorneys, prays for judgment against Defendant in an amount above the jurisdictional limits of this Court and for the full measure of damages allowed under applicable law and equity, including but not limited to interest, reasonable attorneys' fees, expenses, and costs to the extent allowable, and restitution and/or

disgorgement of all monies Defendant has unjustly received as a result of its conduct alleged herein.

**COUNT XII: INDEPENDENT CAUSE OF ACTION BY ADMINISTRATOR FOR
MEDICAL AND FUNERAL EXPENSES**

255. Plaintiff incorporates, by reference, the foregoing allegations.

256. Defendant's wrongful acts and omissions caused Darrin's premature death.

257. At the time of his death, Darrin was an unmarried adult.

258. At the time of his death, Darrin incurred medical/coroner, funeral, and burial expenses.

259. Darrin's Estate, by and through its Independent Administrator and personal representative, here, the Plaintiff, seeks reimbursement for said expenses.

WHEREFORE, the Plaintiff, by and through her attorneys, prays for judgment against Defendant for the full reimbursement of medical/coroner, funeral, and burial expenses.

PRAYER FOR ADDITIONAL RELIEF

WHEREFORE, Plaintiffs request that the Court enter an Order awarding such other and further relief as the law, equity and justice may require.

JURY DEMAND

Plaintiff demands a trial by jury for all issues so triable.

Respectfully Submitted,

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