



**ONTARIO
SUPERIOR COURT OF JUSTICE**

KOREY BANKS AND ERIC ALLEN

Plaintiffs

-and-

MARK STEVEN COHON, THE CANADIAN FOOTBALL LEAGUE, 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 c.o.b. as OTTAWA REDBLACKS FOOTBALL CLUB, CAPITAL GRIDIRON GP INC., THE GENERAL PARTNER OF CAPITAL GRIDIRON LIMITED PARTNERSHIP, OTTAWA RENEGADES FOOTBALL CLUB INC., CHARLES H. TATOR, AND KREMBIL NEUROSCIENCE CENTRE

Defendants

PROCEEDING UNDER THE CLASS PROCEEDINGS ACT, 1992, S.O. 1992, c.6

STATEMENT OF CLAIM

TO THE DEFENDANTS

A LEGAL PROCEEDING HAS BEEN COMMENCED AGAINST YOU by the plaintiffs. The claim made against you is set out in the following pages.

IF YOU WISH TO DEFEND THIS PROCEEDING, you or an Ontario lawyer acting for you must prepare a statement of defence in Form 18A prescribed by the Rules of Civil Procedure, serve it on the plaintiffs' lawyer or, where the plaintiffs do not have a lawyer, serve it on the plaintiffs, and file it, with proof of service in this court office, **WITHIN TWENTY DAYS** after this statement of claim is served on you, if you are served in Ontario.

If you are served in another province or territory of Canada or in the United States of America, the period for serving and filing your statement of defence is forty days. If you are served outside Canada and the United States of America, the period is sixty days.

Instead of serving and filing a statement of defence, you may serve and file a notice of intent to defend in Form 18B prescribed by the Rules of Civil Procedure. This will entitle you to ten more days within which to serve and file your statement of defence.

IF YOU FAIL TO DEFEND THIS PROCEEDING, JUDGMENT MAY BE GIVEN AGAINST YOU IN YOUR ABSENCE AND WITHOUT FURTHER NOTICE TO YOU.

If you wish to defend this proceeding but are unable to pay legal fees, legal aid may be available to you by contacting a local legal aid office.

Date: May 29, 2015

Issued by: 

Local Registrar
80 Dundas Street
London, ON, N6A 6A3

TO: Mark Steven Cohon
3rd Floor - 50 Wellington Street East
Toronto, Ontario

AND TO: The Canadian Football League
50 Wellington Street East – 3rd Floor
Toronto, Ontario

AND TO: B.C. Lions Football Club Inc.
1500 - 1055 West Georgia Street
Vancouver, British Columbia

AND TO: Edmonton Eskimo Football Club
2900, 10180 – 101 Street
Edmonton, Alberta

AND TO: Calgary Stampeders 2012 Inc.
2400, 525 – 8 Avenue SW
Calgary, Alberta

AND TO: Saskatchewan Roughrider Football Club Inc.
1463 Albert Street
Regina, Saskatchewan

AND TO: Winnipeg Blue Bombers
315 Chancellor Matheson Road
Winnipeg, Manitoba

AND TO: The Hamilton Tiger-Cat Football Club
Roger Y. Achetti,
154 Main Street East 100
Hamilton, Ontario

AND TO: Toronto Argonauts Football Club Inc.
Robert Nicholson,
212 King Street West, Suite #501
Toronto, Ontario

- AND TO:** Compagnie Club de Football des Alouettes de Montréal
1260, Rue University, 1er etage
Montreal, Quebec
- AND TO:** Capital Gridiron Limited Partnership, c.o.b. as Ottawa Redblacks Football Club
700 Industrial Avenue, Suite #220
Ottawa, Ontario
- AND TO:** Capital Gridiron GP Inc.,
the general partner of Capital Gridiron Limited Partnership
700 Industrial Avenue, Suite # 220
Ottawa, Ontario
- AND TO:** Ottawa Renegades Football Club Inc.
Suite #200 - 15 Allstate Parkway
Markham, Ontario
- AND TO:** Charles H. Tator
Primary LAB
Toronto Western Hospital
Krembil Discovery Tower
7KD 406, 60 Leonard Avenue
Toronto, Ontario
- AND TO:** Krembil Neuroscience Centre
R. Fraser Elliott Building
1st Floor - 190 Elizabeth Street
Toronto, Ontario

THE RELIEF CLAIMED

1. Korey Banks and Eric Allen, on their own behalf, and on behalf of the class members (as defined in paragraph 9 below), claim:
 - (a) an order certifying this proceeding as a class proceeding and appointing Korey Banks and Eric Allen as the representative plaintiffs for the class and any appropriate subclass thereof;
 - (b) special damages, pecuniary damages, non-pecuniary damages, general damages, aggravated damages, exemplary damages, and punitive damages in the amount \$200,000,000 or such other sum as this Honourable Court finds appropriate;
 - (c) general and special damages "in trust" for the family members of the class members for expenses incurred, allowances for care and services provided as well as compensation for the loss of care, guidance and companionship pursuant to the *Family Law Act*, R.S.O. 1990, c. F.3 and other similarly applicable legislation;
 - (d) a reference or such other directions as may be necessary to determine issues not determined at the trial of the common issues;
 - (e) An equitable rate of interest on all sums found due and owing to the plaintiffs and the class members, or, in the alternative, pre-judgment and post-judgment interest pursuant to the *Courts of Justice Act*, R.S.O. 1990, Chapter C.43;
 - (f) the costs of administering a plan of distribution of the recovery in this action, and the costs of this action pursuant to the *Class Proceedings Act*, 1992, S.O. 1992, c. 6 plus applicable taxes thereon on a solicitor and client scale; and
 - (g) such further and other relief as to this Honourable Court may seem just.

THE PARTIES

The Proposed Representative Plaintiffs

2. The proposed representative plaintiff, Korey Banks, is a resident of Atlanta, Georgia. He is a retired professional football player who was active in the CFL from 2004 to 2014. Mr. Banks played for the Ottawa Renegades, the BC Lions and the Winnipeg Blue Bombers.
3. The proposed representative plaintiff, Eric Allen, is a resident of Georgetown, South Carolina, and a retired CFL professional football player who played for the Toronto Argonauts from 1972 to 1975.

The Defendants

4. The defendant, The Canadian Football League (the "CFL"), is an unincorporated association consisting of separately owned and independently-operated professional football teams (collectively the "Teams") which operate out of ten different cities in Canada and are owned by the following entities:
 - (a) The defendant, B.C. Lions Football Club Inc. (the "BC Lions"), is a company incorporated under the laws of British Columbia, with its registered office in Vancouver, British Columbia;
 - (b) The defendant, Edmonton Eskimo Football Club (the "Edmonton Eskimos"), is a company incorporated under the laws of Alberta, with its registered office in Edmonton, Alberta;
 - (c) The defendant, Calgary Stampeders 2012 Inc. (the "Calgary Stampeders"), is a company incorporated under the laws of Alberta, with its registered office in Calgary, Alberta;

- (d) The defendant, Saskatchewan Roughrider Football Club Inc. (the "Saskatchewan Roughriders"), is a company incorporated under the laws of Saskatchewan, with its registered office in Regina, Saskatchewan;
- (e) The defendant, the Ottawa Renegades Football Club Inc. (the "Ottawa Renegades") is a company incorporated under the laws of Ontario with its registered office in Markham, Ontario;
- (f) The defendant, Winnipeg Blue Bombers (the "Winnipeg Blue Bombers"), is a company incorporated under the laws of Manitoba, with its registered office in Winnipeg, Manitoba;
- (g) The defendant, The Hamilton Tiger-Cat Football Club (the "Hamilton Tiger-Cats"), is a company incorporated under the laws of Ontario, with a head office address in Hamilton, Ontario;
- (h) The defendant, Toronto Argonauts Football Club Inc. (the "Toronto Argonauts"), is a company incorporated under the laws of Ontario, with its registered office in Toronto, Ontario;
- (i) The defendant, Compagnie Club de Football des Alouettes de Montréal (the "Montréal Alouettes"), is a company incorporated under the laws of Quebec, with an address in Montreal, Quebec;
- (j) The defendant, Capital Gridiron Limited Partnership, carrying on business as Ottawa Redblacks Football Club (the "Ottawa Redblacks"), is a limited partnership registered under the laws of Ontario, with its registered office in Ottawa, Ontario; and,

(k) 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 in Ottawa, Ontario.

5. The defendant, Mark Steven Cohon ("Commissioner Cohon"), was the Commissioner of the CFL from 2007 to the end of the 2014 season.
6. The Teams are jointly and severally liable as principals, partners or joint venturers, for the acts and omissions of the CFL and its officers, employees and agents including the defendant, Commissioner Cohon.
7. 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.
8. The defendant, Krembil Neuroscience Centre ("KNC"), is a healthcare facility specializing in treating patients with diseases and injuries to the brain, spinal cord, and eyes, with an administrative office in Toronto, Ontario. The KNC is jointly and severally liable for the acts and omissions of the defendant, Dr. Tator and the Canadian Sports Concussion Project.

The Class

9. This action is brought on behalf of all retired CFL players and their estates, including the plaintiffs, who between 1952 and the present (the "Class Period") participated in pre-season, in-season and post-season drills, conditioning sessions, walk-throughs, practices and games (the "Class") or such other class definition as the Court may ultimately decide on the motion for certification.

FACTUAL BACKGROUND

The Relationship between the Class and the CFL

10. The CFL, the Canadian Football League Players Association (the "CFLPA"), and the Canadian Football League Player Relations Committee (the "CFLPRC") have, from time to time, entered into collective bargaining agreements that relate to the operations of the CFL (the "CBAs"). The essential character of this claim does not arise from the interpretation, application, administration, or violation of the CBAs. This claim is founded on causes of action in tort which the plaintiffs and other class members have against the defendants which arise independently of the CBAs.

Obligations to Injured Players

11. Players enter into individual contracts with the Teams. The contracts between the players and the Teams are called Standard Players' Contracts ("SPCs").
12. CFL players who were injured and unfit to play were terminated one year from the date of the injury if they remained unfit to play.
13. If a veteran CFL player was injured and unfit to play "skilled football" during the current football season, the Team was only obligated to pay salary and benefits to the injured player until the first day of training camp for the season following the current playing season.
14. If a veteran CFL player was unfit to play "skilled football", the Team was entitled to terminate the veteran player because of his injuries on the first day of training camp for the season following the current playing season.

Medical Benefits Available to Injured CFL Players

15. If a non-veteran CFL player was terminated or injured and could not return to play, the player's medical benefits were terminated immediately, subject to a brief extension in the event of a medical emergency.
16. If a veteran CFL player was injured or terminated from a member club during the season, his medical benefits survived only until the start of the first regular season game of the following season.
17. There were no medical benefits available to an injured veteran CFL player once the first regular season game of the following season began.

No Alternative Sources for Medical Benefits

18. Professional athletes, including CFL players, are excluded from claiming workers' compensation benefits.
19. Many members of the Class are not residents of Canada and were not eligible for provincial medical benefits.

No Obligations for Health and Safety pursuant to the Collective Bargaining Agreements

20. The CBAs do not provide that the CFL has any responsibility for long-term health benefits of CFL players such as the plaintiffs and the other class members.
21. The 2010 and 2014 CBAs established the Joint Committee on Players' Safety and Welfare (the "JCPSW"). However, the JCPSW have no power to commit or bind the CFLPA, the CFLPRC, or the CFL on any issue.

Individual Player Contracts

22. CFL players each enter into individual SPCs with the Teams which are separate and apart from the CBAs. These SPCs cover player compensation and are negotiated separately from the CBAs. Players are permitted to negotiate their SPCs with the assistance of the player's agent(s) who must be a CFLPA registered contract advisors.

What the Defendants Knew or Ought to have Known about Head Injuries

23. At all material times, the defendants and their agents knew or ought to have known that multiple sub-concussive and concussive blows to the head lead to long-term brain injury, including but not limited to: memory loss, dementia, depression, and Chronic Traumatic Encephalopathy ("CTE") and its related symptoms.
24. In particular, the defendants and their agents knew that:
- (a) repetitive head trauma in contact sports, including football, has dangerous long-term effects on brain function;
 - (b) football players should cease to play football after receiving their third concussion, *"three strikes and you're out"*.
 - (c) encephalopathy (dementia pugilistica) is caused by repeated sub-concussive and concussive blows to the head;
 - (d) acceleration and rapid deceleration of the head that results in brief loss of consciousness results in brain injury;
 - (e) 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;
 - (f) immediate retrograde memory issues occur following concussions;

- (g) mild head injury requires recovery time without risk of subjection to further injury;
- (h) head trauma increases the risk of dementia;
- (i) a football player who suffers a concussion requires significant rest before being subjected to further contact; and,
- (j) repeated sub-concussive 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.

25. At all material times, the defendants and their agents knew that playing football in the CFL gave players including the plaintiffs and other class members a high likelihood of suffering from brain injury including, but not limited to, CTE, 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.

26. At all material times, the defendants and their agents knew that the symptoms of permanent brain injury including CTE include the following:

- (a) disorientation;
- (b) slurred speech and problems with language;
- (c) attention deficit;
- (d) headaches;
- (e) poor information processing;
- (f) memory impairment;

- (g) behaviour 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;
 - (l) dementia; and
 - (m) problems with executive function.
27. At all material times, the defendants and their agents knew that it was a fundamental imperative for player safety that the incidence of brain injury, including CTE, be reduced or eliminated in the CFL by decreasing the number of concussions suffered by players. Essential to that imperative is the requirement to establish and implement appropriate rules, policies, procedures and protocols and to disseminate full and fair warnings of the risks of concussions and repeated sub-lethal brain trauma to the class members.

The Acts and Omissions of the CFL and Commissioner Cohon

28. During the Class Period, the CFL oversaw Canada's only professional football league, acting as an association for the benefit of the Teams.
29. From 2007 to January of 2015, Commissioner Cohon acted as, among other things, an agent, employee, and spokesperson of the CFL and further, is personally liable for his own acts and omissions in respect of his conduct as chief executive officer of the CFL.

30. The CFL generates revenue through marketing, sponsorship, licensing, merchandise, and by selling national broadcasting rights to the games. The Teams share a percentage of the CFL's overall revenue.
31. The CFL has enormous influence over the Canadian game of football at all levels of the game because of its financial strength, monopoly status, and high visibility.
32. The CFL has governed and promoted the game of Canadian football, by acting as the governing body, establishing the rules related to player health and safety, league policies and team ownership.
33. At least as early as 1952, the CFL possessed specific knowledge of the long-term harmful effects of multiple concussions and sub-concussions on the plaintiffs' and other class members' brains and systematically failed to disclose and/or concealed these facts from the plaintiffs and the other class members. Further, the CFL failed to implement rules, policies, procedures and protocols or to make the necessary changes to its existing rules and policies to protect CFL players including the plaintiffs and the other class members from concussions and other head injuries.
34. Since at least 2007, Commissioner Cohon knew of the long term harmful effects of multiple sub-concussions and concussions on the plaintiffs' and other class members' brains. In spite of that knowledge, Commissioner Cohon actively concealed and/or systematically failed to disseminate those facts to the plaintiffs and the other class members. Commissioner Cohon further failed to establish and implement appropriate rules, policies, procedures and protocols in order to adequately protect the class members from brain injury including concussions and multiple sub-concussions.

35. The CFL and Commissioner Cohon publicly supported and funded the research of the defendants, Dr. Tator and the Sports Concussion Project at Krembil Neuroscience Centre, knowing that their work was against the weight of scientific evidence in brain injury research and was based on biased data collection techniques.
36. Despite its acknowledgment that multiple sub-concussive and concussive blows to the head can lead to long-term brain injury including as set out in paragraphs 23-26 above, in 2011 Commissioner Cohon made the following representations to the plaintiffs and the other class members in concert with the CFL and the Teams:
 - (a) circulated concussion flyers and posters to players and coaches claiming all of the "important information" about concussions was included in "6 simple to follow steps" before returning to play; omitting from the concussion flyers and posters a warning to the players and coaches that a player should retire from the sport of football if an athlete suffered multiple sub-concussive and concussive blows to the head;
 - (b) claimed to have a cooperative and working relationship with the National Football League (the "NFL") and Boston University's Center for the Study of Traumatic Encephalopathy while funding and circulating educational materials and studies to players and coaches contrary to the research conducted by the NFL and Boston University's Center for the Study of Traumatic Encephalopathy;
 - (c) claimed that unreported concussions were "far less of a problem in the CFL" despite knowing that long-term brain injury is caused by sub-concussive blows to the head that are often symptomless and therefore impossible to report;

- (d) made assurances that the CFL would keep accurate records on concussions by using leading computerized technology, but did not require or make widely known to players and coaches that Head Impact Telemetry Systems could record and deliver the number and severity of the impacts, which are otherwise impossible to report, received during a game or practice to a pager and a lap top;
 - (e) claimed a clear delineation between football people and medical staff in the treatment and reporting of concussions, while refusing to allow independent medical personnel to monitor and assess player safety; and,
 - (f) marketed, promoted and glorified the brutality and ferocity of CFL football, while claiming a pronounced change in the culture of the sport through rule changes and “believing” and “trusting” that every concussion is being reported to CFL medical staff.
37. The CFL, Commissioner Cohon and the Teams made the representations at paragraph 36 when they knew or ought to have known since 1952 that the *New England Journal of Medicine* had identified the dangers of single concussions, multiple concussions, and/or football-related head trauma from multiple concussions. Further, the subject matter of the representations in paragraph 36 reflect the lack of adequate rules, policies, procedures and protocols for the protection of players.

The Canadian Sports Concussion Project and Dr. Charles Tator

38. The Canadian Sports Concussion Project is based at the Krembil Neuroscience Centre at the University Health Network's Toronto Western Hospital (“The Canadian Sports Concussion Project”).

39. The Canadian Sports Concussion Project is a Canadian study focused on examining the correlation between repeated concussions, neurological symptoms, neuropsychological performance and imaging of the brain.
40. Having regard to the concern 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 plaintiffs and the other class members were harmed by The Canadian Sports Concussion Project and Dr. Tator's negligent failure to warn and negligent misrepresentations.
41. Beginning in 2007 and continuing to the present, the CFL supports and funds the research conducted by Dr. Tator and the Canadian Sports Concussion Project. As a result, Dr. Tator and the Canadian Sports Concussion Project had specific knowledge that their research would be incorporated into the CFL's player safety strategy and that their conclusions would be disseminated to the plaintiffs and the other class members.
42. Dr. Tator and the Canadian Sports Concussion Project owed 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 plaintiffs and the other class members.
43. Dr. Tator and the Canadian Sports Concussion Project owed a duty to accurately develop, publish and share publicly their findings with the CFL, the plaintiffs and the other class members.
44. At all material times, Dr. Tator and the Canadian Sports Concussion Project knew or ought to have known that from at least as early as 1952, numerous studies were published in medical journals including the *Journal of the American Medical Association*, *Neurology*,

the New England Journal of Medicine, and *The 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 football, has dangerous long-term effects on brain function;
- (b) football players should cease to play football after receiving their third concussion, "three strikes and you're out";
- (c) encephalopathy (dementia pugilistica) is caused by repeated sub-concussive and concussive blows to the head;
- (d) acceleration and rapid deceleration of the head that results in brief loss of consciousness results in brain injury;
- (e) 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;
- (f) immediate retrograde memory issues occur following concussions;
- (g) mild head injury requires recovery time without risk of subjection to further injury;
- (h) head trauma increases the risk of dementia;
- (i) a football player who suffers a concussion requires significant rest before being subjected to further contact; and
- (j) repeated sub-concussive 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.

45. The Canadian Sports Concussion Project and Dr. Tator knew or ought to have known that in 2008, six years after Dr. Bennett Omalu had found the first physical evidence of CTE, The Center for the Study of Traumatic Encephalopathy had comprehensively analysed 85 donors and found evidence of CTE in over 80% of them.
46. Despite their knowledge that multiple sub-concussive and concussive blows to the head can lead to long-term brain injury including as set out in paragraphs 23-26 and 44-45 above, Dr. Tator and The Canadian Sports Concussion Project:
 - (a) failed to disseminate and/or actively concealed the long-term harmful effects of multiple sub-concussions and concussions on the plaintiffs' and other class members' brains and actively concealed these facts from the plaintiffs and the other class members;
 - (b) failed to disseminate and/or actively concealed 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 plaintiffs' rights by unnecessarily endangering the plaintiffs' and the other class members' lives;
 - (c) knowingly titled a study using the term "absence" despite knowing that their sample size was inadequate and was contrary to the research of independent world renowned scientists studying brain injuries;

- (d) publicized and promoted research based on biased data collection techniques and findings that were against the weight of the scientific evidence regarding brain injuries; and

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

47. Despite their knowledge that multiple sub-concussive and concussive blows to the head can lead to long-term brain injury including as set out in paragraphs 23-26 and 44-45 above, the Canadian Sports Concussion Project and Dr. Tator:

- (a) approved, supported, and endorsed the dissemination of concussion flyers and posters claiming that it was safe for football players to return to play if they followed six simple steps before returning to play; failing to warn players and coaches that a player should retire from the sport of football if the athlete suffered multiple sub-concussive and concussive blows to the head;

- (b) on December 21, 2012, Dr. Tator and his co-authors submitted to the *Frontiers in Human Neuroscience* an article titled: *Absence of Chronic Traumatic Encephalopathy in retired football players with multiple concussions and neurological symptomology* (the "Article");

- (c) despite finding three out of six donors had post-mortem neuropathological findings consistent with CTE, entitled the Article as Absence of Chronic Traumatic Encephalopathy in retired football players with multiple concussions and neurological symptomology (underlining added); and

(d) represented that:

- (i) the connection between repeated concussions and CTE type neurodegeneration had “recently been proposed” but the causal relationship had not yet been firmly established; and
- (ii) the prevalence of CTE among athletes with multiple concussions was “unknown”.

CAUSES OF ACTION

NEGLIGENCE

Negligence of the CFL and Commissioner Cohon

- 48. The CFL owed a duty to protect their players including the plaintiffs and the other class members, to inform them of safety concerns and to impose rules to protect them from brain injuries.
- 49. The CFL and its agents including Commissioner Cohon failed to warn the plaintiffs and the other class members of the risks and dangers of head injuries and further, they failed to take reasonable measures to protect the plaintiffs and the other class members from head injuries through the establishment and implementation of appropriate rules, policies, procedures and protocols.
- 50. The CFL’s and Commissioner Cohon’s systemic negligence caused the plaintiffs and other class members to suffer brain injuries as follows:
 - (a) if the CFL and Commissioner Cohon had warned the plaintiffs and the other class members, they would have stopped playing before suffering multiple sub-concussive and concussive blows to the head and thereby avoided suffering long-term brain injuries;

- (b) if the CFL had taken reasonable steps to protect the plaintiffs and other class members through the establishment and implementation of league rules, policies, procedures and protocols, the plaintiffs and other class members would not have suffered multiple sub-concussive and concussive blows to the head and thereby avoided suffering long term brain injuries; and
- (c) if the CFL had not encouraged players to make dangerous hits, the plaintiffs and other class members would not have suffered multiple sub-concussive and concussive blows to the head and thereby avoided suffering long-term brain injuries.

Negligence of Dr. Tator and the Canadian Sports Concussion Project

- 51. Dr. Tator and the Canadian Sports Concussion Project owed a duty to CFL players including the plaintiffs and the other class members to warn them of safety concerns resulting from concussions and other head injuries associated with football.
- 52. Dr. Tator and the Canadian Sports Concussion Project failed to warn the plaintiffs and the other class members of the risks and dangers of concussions and head injuries associated with football.
- 53. If Dr. Tator and the Canadian Sports Concussion Project had warned the plaintiffs and the other class members of the risks and dangers of football, they would have stopped playing CFL Football before suffering multiple sub-concussive and concussive blows to the head and thereby avoided suffering long-term brain injuries.

NEGLIGENT MISREPRESENTATION

Negligent Misrepresentations of the CFL and Commissioner Cohon

54. The CFL and Commissioner Cohon made the representations at paragraph 36 above when they knew or ought to have known because of their superior position of knowledge that the plaintiffs and the other class members risked suffering significant damage, including serious personal injury, unnecessarily endangering their lives.
55. The CFL and Commissioner Cohon knew or ought to have known that their representations were false or misleading.
56. The CFL and Commissioner Cohon intended for the class members to rely on the representations and it was reasonable for the plaintiffs and the other class members to do so.
57. As a result of the representations, the plaintiffs and the other class members suffered personal injury and damages. But for the representations, the plaintiffs and other class members would have stopped playing CFL football before suffering multiple sub-concussive and concussive blows to the head and thereby avoided suffering long-term brain injuries.

Negligent Misrepresentations of Dr. Tator and the Canadian Sports Concussion Project

58. The Canadian Sports Concussion Project and Dr. Tator knew or ought to have known that their representations in the Article and otherwise were false or misleading.
59. The Canadian Sports Concussion Project and Dr. Tator intended for the class members to rely on their representations in the Article and it was reasonable for the plaintiffs and the other class members to do so.

60. The Canadian Sports Concussion Project and Dr. Tator caused the plaintiffs and other class members to suffer brain injuries as follows:

- (a) the plaintiffs and other class members relied on Dr. Tator and The Canadian Sports Concussion Project's representations including those in the Article when deciding to continue playing CFL football. But for the representations including those in the Article, the plaintiffs and other class members would have stopped playing before suffering multiple sub-concussive and concussive blows to the head, and thereby would have avoided suffering long term brain injuries; and,
- (b) if the Canadian Sports Concussion Project and Dr. Tator had not produced inaccurate and misleading scientific information including the Article, the plaintiffs and other class members would not have suffered multiple sub-concussive and concussive blows to the head and thereby would have avoided suffering long term brain injuries.

DAMAGES

61. The conduct of each defendant, as set out above, caused or contributed to the plaintiffs and other class members suffering the following:

- (a) brain injuries due to exposure to multiple sub-concussive and concussive blows to the head;
- (b) brain injuries that have and will continue to cause suffering, loss of enjoyment of life, permanent physical disability, loss of earning capacity, past and future, and loss of housekeeping capacity, past and future;
- (c) they are more susceptible to future injury and degenerative changes because of the brain injuries;

- (d) damages for the cost of medical treatment, including past and future costs of health care services to be; and
- (e) requiring medical care and treatment and continuing to sustain damages, particulars of which will be provided at the trial of this action.

Punitive and Aggravated Damages

62. The plaintiffs and the other class members rely on the following in support of their claim for punitive and aggravated damages against the CFL and Commissioner Cohon:

- (a) the CFL and Commissioner Cohon had specific knowledge of the long-term harmful effects of multiple sub-concussions and concussions on the plaintiffs' and other class members' brains and actively concealed these facts from them;
- (b) the CFL and Commissioner Cohon wilfully and knowingly failed to disseminate to the plaintiffs and the other class members 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 rights of the plaintiffs and the other class members by unnecessarily endangering their lives;
- (c) the CFL and Commissioner Cohon intentionally concealed information about the technology available to record and report the plaintiffs' and the other class members' ongoing and continuing head trauma, and intentionally mislead them 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 after the incident and prior to them returning to play professional football. The concealment was intentional, reprehensible and offended the

ordinary standards of decent conduct in the community and showed contempt for the general public and the plaintiffs' and other class members' rights by unnecessarily endangering the plaintiffs' and other class members' lives;

- (d) The CFL and Commissioner Cohon failed to establish and implement appropriate rules, policies, procedures and protocols in order to adequately protect the plaintiffs and the class members from brain injury;
- (e) the CFL and Commissioner Cohon publicly supported Dr. Tator and the Sports Concussion Project knowing that their findings contradicted the research of independent world renowned scientists studying brain injuries including, but not limited, to Dr. Bennett Omalu and Dr. Ann McKee;
- (f) the CFL and Commissioner Cohon publicly supported and funded the research of Dr. Tator and the Sports Concussion Project knowing that their work was based on biased data collection techniques and their findings went against the weight of the scientific evidence in brain injury research. The conduct of the CFL and Commissioner Cohon was reprehensible and offends the ordinary standards of decent conduct in the community and shows contempt for the general public and the plaintiffs' and the other class members' rights by unnecessarily endangering the plaintiffs' and the other class members' lives; and,
- (g) such further and other particulars as counsel may advise.

63. The plaintiffs and the other class members rely on the following in support of their claims for punitive and aggravated damages against Dr. Tator and The Canadian Sports Concussion Project:

- (a) Dr. Tator and The Canadian Sports Concussion Project knew of the long-term harmful effects of sub-concussions and multiple concussions on the plaintiffs' and other class members' brains and actively concealed these facts from them;
- (b) Dr. Tator and The Canadian Sports Concussion Project wilfully and knowingly failed to disseminate to the plaintiffs and the other class members 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, thereby showing contempt for the rights of the plaintiffs and the other class members by unnecessarily endangering their lives;
- (c) Dr. Tator and the Sports Concussion Project knowingly titled a study into head injuries using the term "absence" despite knowing that their sample size was inadequate and was contrary to the research of independent world renowned scientists in brain injury research including, but not limited, to Dr. Bennett Omalu and Dr. Ann McKee;
- (d) Dr. Tator and the Sports Concussion Project knowingly publicised and promoted research and information that was based on biased data collection techniques and was against the weight of related scientific evidence. The conduct of Dr. Tator and the Sports Concussion Project was reprehensible and offends the ordinary standards of decent conduct in the community and shows contempt for the general public and the plaintiffs' and the other class members' rights by unnecessarily endangering the plaintiffs' and other class members' lives; and,
- (e) such further and other particulars as counsel may advise.

Subrogated Damages

64. The Ontario Ministry of Health and Long-Term Care provide coverage for healthcare services to Ontario residents through OHIP. Similar programs are available in other provinces.
65. Korey Banks, Eric Allen, and other class members required hospitalization and other medical services as a result of the conduct of the defendants as set out above. These medical services were paid for by OHIP and other provincial health insurers.
66. OHIP and other provincial health insurers will continue to provide treatment in the future to class members resident in Canada.
67. The subrogated interest of OHIP and all other provincial health insurers includes the cost of all past and future insured services for the benefit of Korey Banks, Eric Allen, and all other class members.

THE RELEVANT STATUTES

68. The plaintiffs plead and rely upon the *Class Proceedings Act*, 1992, S.O. 1992, c.6 as amended, *The Negligence Act*, R.S.O. 1990, c.N.1 as amended, *The Family Law Act*, R.S.O. 1990, c. F.3 as amended and other similarly applicable legislation, and *The Courts of Justice Act*, R.S.O. 1990, c. C.43 as amended.

REAL AND SUBSTANTIAL CONNECTION WITH ONTARIO

69. There is a real and substantial connection between Ontario and the facts alleged in this proceeding because:
 - (a) many of the defendants maintain offices in Ontario;

- (b) the defendants derive substantial revenue from carrying on business in Ontario;
and
- (c) the alleged acts were directed toward residents of Ontario.

SERVICE OUTSIDE OF ONTARIO

70. This originating process may be served without court order outside Ontario because the claim is:

- (a) in respect of a tort committed in Ontario (rule 17.02(g);
- (b) in respect of damages sustained in Ontario arising from a tort or a breach of contract wherever committed (Rule 17.02 (h));
- (c) against a person outside Ontario who is a necessary and proper party to this proceeding properly brought against another person served in Ontario (Rule 17.02(o)); and,
- (d) in respect of a tort against a person ordinarily resident or carrying on business in Ontario (rule 17 .02(p).

THE PLAINTIFFS propose that this action be tried in the City of London, in the Province of Ontario.

May 29, 2015

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BANKS AND ALLEN v.
Plaintiffs

COHON et al.
Defendants

Court File No. 104615 CP

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