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JAMES D. NOLAN
(RETIRED-2005)

August 22, 2013

Circuit Court for Montgomery County
Montgomery County Judicial Center
Civil Clerks Office
50 Maryland Avenue
Rockville, Maryland 20850

VIA HAND DELIVERY

Re: *Kristen L. Sheely, et al. v. The National Collegiate Athletic Association, et al.*
New Civil Case Filing and Request for ASTAR Track Assignment

Dear Clerk:

Enclosed herein please find Plaintiffs' Complaint, Civil Non-Domestic Case Information Report and this firm's check no. 3219 in the amount of \$135.00 for filing as a new civil case. Pursuant to this Court's Civil Non-Domestic Differentiated Case Management Plan (revised July 2010), Plaintiffs request that this case be assigned to the Advanced Science and Technology Adjudication Resource (ASTAR) Standard Track. This case qualifies for ASTAR track assignment because it presents scientific and medical issues of a complex nature such that specialized treatment is likely to improve the administration of justice. A duplicate copy of the Complaint is enclosed.

Please date-stamp the extra copy of the Complaint and return it to my associate. Please mail me the writs of summons for private service. Thank you for your attention to this matter.

Very truly yours,



Stephen J. Nolan

SJN/ktc
Enclosures

C: Ms. Kristen L. Sheely, Individually and as
Personal Representative of the Estate of Derek Thomson Sheely
Mr. Kenneth B. Sheely
Ms. Keyton S. Sheely
John M. Klamann, Esquire
Paul D. Anderson, Esquire
Wm. Dirk Vandever, Esquire
Kenneth B. McClain, Esquire

RECEIVED

AUG 22 2013

Clerk of the Circuit Court
Montgomery County, Md.

KRISTEN L. SHEELY, Individually and as Personal Representative of the Estate of Derek Thomson Sheely, Deceased,
14001 Falconcrest Road
Germantown, Maryland 20874.

KENNETH B. SHEELY,
14001 Falconcrest Road
Germantown, Maryland 20874.

KEYTON S. SHEELY,
14001 Falconcrest Road
Germantown, Maryland 20874.

Plaintiffs

v.

THE NATIONAL COLLEGIATE ATHLETIC ASSOCIATION,
700 W. Washington Street
Indianapolis, Indiana 46206,
Serve On: Dr. Mark A. Emmert, President
700 W. Washington Street
Indianapolis, Indiana 46206,

JAMIE SCHUMACHER,
101 Midlothian Road
Frostburg, Maryland 21532,

THOMAS ROGISH,
101 Midlothian Road
Frostburg, Maryland 21532,

MICHAEL SWEITZER, JR.,
101 Midlothian Road
Frostburg, Maryland 21532,

KRANOS CORPORATION,
8 McFadden Road
Easton, Pennsylvania 18045.
Serve On: Resident Agent
Barry Smith
10230 Harvest Field Drive
Woodstock, Maryland 21163

Defendants.

* IN THE
* CIRCUIT COURT
* FOR
* MONTGOMERY COUNTY
* CASE NO. 380 Se9V
*
*
*
**COMPLAINT AND
DEMAND FOR
JURY TRIAL**

RECEIVED

AUG 22 2013

Clerk of the Circuit Court
Montgomery County, Md.

COMPLAINT AND DEMAND FOR JURY TRIAL

The Plaintiffs, Kristen L. Sheely, in her individual capacity and in her capacity as Personal Representative of the Estate of her son, Derek Thomson Sheely, and Kenneth B. and Keyton S. Sheely, by and through counsel, sue the Defendants on the following survival and wrongful death causes of actions. Pursuant to Md. Code Ann., Cts. & Jud. Proc. §§3-901 *et seq.* and Maryland Rule 15-1001, the Individual Plaintiffs are entitled to maintain the wrongful death claims set forth in Counts XII through XXII below.

PARTIES

1. Plaintiff Kristen L. Sheely brings this action in her individual capacity and in her capacity as Personal Representative of the Estate of her son, Derek Thomson Sheely (sometimes the “Decedent” or “Derek”). At all times relevant hereto, Kristen was the mother of Derek, who died on August 22, 2011. She resides at 14001 Falconcrest Road, Germantown, Maryland 20874.

2. Plaintiff Kenneth B. Sheely was, and at all times relevant hereto has been, the father of Decedent. He resides at 14001 Falconcrest Road, Germantown, Maryland 20874.

3. Plaintiff Keyton S. Sheely was, and at all times relevant hereto has been, the sister of Decedent. She resides at 14001 Falconcrest Road, Germantown, Maryland 20874.

4. Pursuant to Maryland Rule 15-1001(c), Plaintiffs have conducted a good faith and reasonably diligent effort to identify, locate and name as use Plaintiffs all individuals who might qualify as use Plaintiffs.

5. Defendant Jamie Schumacher is employed as an Assistant Football Coach by Frostburg State University. At all relevant times referenced herein, Defendant Schumacher was a

graduate student and not a state personnel of Frostburg State University. He is a resident of the City of Frostburg, County of Allegany, State of Maryland.

6. Defendant Thomas Rogish is, and at all relevant times referenced herein was, employed as the Head Football Coach by Frostburg State University. He is a resident of the City of Bedford, County of Bedford, State of Pennsylvania.

7. Defendant Michael Sweitzer, Jr., is, and at all relevant times referenced herein was, employed as an Assistant Athletic Trainer by Frostburg State University. He is a resident of the City of Frostburg, County of Allegany, State of Maryland.

8. Defendant The National Collegiate Athletic Association (hereinafter "NCAA") is an unincorporated association of private and public colleges and universities which governs intercollegiate athletics. Its principal place of business is located in Indianapolis, Indiana. As an unincorporated association it is a citizen of each state its member is a citizen, including the State of Maryland.

9. Defendant Kranos Corporation, doing business as Schutt Sports (hereinafter, "Schutt Sports"), is a Delaware corporation, with its principal place of business in Easton, Pennsylvania, which manufacturers, sells and distributes its products all over the United States. By placing its products in the stream of commerce and having multiple sales throughout Maryland, Schutt Sports carries on regular business in Montgomery County.

JURISDICTION AND VENUE

10. Jurisdiction is proper in this Court as the amount in controversy exceeds the jurisdictional limit.

11. Venue is proper in this district pursuant to 6-201(b) because there is more than one defendant, and there is no single venue applicable to all defendants. Therefore, pursuant to

Cts. & Jud. Proc. §6-201(a) all may be sued in Montgomery County in which any one of them could be sued. Additionally, pursuant to §6-202(3), venue is proper because the Plaintiffs reside in Montgomery County and Schutt Sports has no principal place of business in Maryland.

FACTUAL ALLEGATIONS

A Preventable Tragedy

12. Utter incompetence, egregious misconduct, false hope and a reckless disregard for player health and safety led to the tragic death of Derek Sheely.

13. Derek was a 22-year old, two-time Academic, All-Conference Senior at Frostburg State University (hereinafter “Frostburg”) in Maryland. He was a talented athlete with a kindred spirit, jovial attitude and had aspirations to work for the Central Intelligence Agency.

14. In August 2011, he began his final year of collegiate football as the starting fullback for Frostburg’s Division III football team.

15. Concussion has been defined as “a complex pathophysiological process affecting the brain, induced by traumatic biomechanical forces.”¹ Although concussion most commonly occurs after a direct blow to the head, it can occur after a blow elsewhere that is transmitted to the head. *Id.* Concussion occurs when the brain slams back and forth against the skull, called a coup and countercoup. Rotational forces cause the brain to twist, which leads to the sheering of long, slender axons of brain cells.

16. The classic symptoms of concussion, as identified by Defendant NCAA, include:

- Amnesia
- Confusion
- Nausea
- Loss of consciousness

¹Expert report of Dr. Robert Cantu (July 19, 2013), *Adrian Arrington, et al. v. NCAA*, Case No. 11-cv-06356 (N.D. Ill), opining that Defendant NCAA failed to, *inter alia*, protect the student athletes and thereby violated its duty of care.

- Balance problem or dizziness
- Double or fuzzy vision
- Sensitivity to light or noise
- Headache
- Feeling sluggish, foggy or groggy
- Concentration or memory problems
- Slowed reaction time
- Headache or “pressure” in head
- Nausea or vomiting
- Does not “feel right”
- Pleas for Help

17. The appropriate standard of care in which coaches are required to abide is also identified by Defendant NCAA:

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PREVENTION AND PREPARATION

As a coach, you play a key role in preventing concussions and responding to them properly when they occur. Here are some steps you can take to ensure the best outcome for your student-athletes:

- Educate student-athletes and coaching staff about concussion. Explain your concerns about concussion and your expectations of safe play to student-athletes, athletics staff and assistant coaches. Create an environment that supports reporting, access to proper evaluation and conservative return-to-play.
- Review and practice your emergency action plan for your facility.
- Know when you will have sideline medical care and when you will not, both at home and away.
- Emphasize that protective equipment should fit properly, be well maintained, and be worn consistently and correctly.
- Review the Concussion Fact Sheet for Student-Athletes with your team to help them recognize the signs of a concussion.
- Review with your athletics staff the NCAA Sports Medicine Handbook guideline Concussion or Mild Traumatic Brain Injury (mTBI) in the Athlete.
- Insist that safety comes first.
- Teach student-athletes safe-play techniques and encourage them to follow the rules of play.
- Encourage student-athletes to practice good sportsmanship at all times.
- Encourage student-athletes to immediately report symptoms of concussion.
- Prevent long-term problems. A repeat concussion that occurs before the brain recovers from the previous one (hours, days or weeks) can slow recovery or increase the likelihood of having long-term problems. In rare cases, repeat concussions can result in brain swelling, permanent brain damage and even death.

IF YOU THINK YOUR STUDENT-ATHLETE HAS SUSTAINED A CONCUSSION:

Take him/her out of play immediately and allow adequate time for evaluation by a health care professional experienced in evaluating for concussion.

An athlete who exhibits signs, symptoms or behaviors consistent with a concussion, either at rest or during exertion, should be removed immediately from practice or competition and should not return to play until cleared by an appropriate health care professional. Sports have injury timeouts and player substitutions so that student-athletes can get checked out.



IF A CONCUSSION IS SUSPECTED:

1. Remove the student-athlete from play. Look for the signs and symptoms of concussion if your student-athlete has experienced a blow to the head. Do not allow the student-athlete to just "shake it off." Each individual athlete will respond to concussions differently.
2. Ensure that the student-athlete is evaluated right away by an appropriate health care professional. Do not try to judge the severity of the injury yourself. Immediately refer the student-athlete to the appropriate athletics medical staff, such as a certified athletic trainer, team physician or health care professional experienced in concussion evaluation and management.
3. Allow the student-athlete to return to play only with permission from a health care professional with experience in evaluating for concussion. Allow athletics medical staff to rely on their clinical skills and protocols in evaluating the athlete to establish the appropriate time to return to play. A return-to-play progression should occur in an individualized, step-wise fashion with gradual increments in physical exertion and risk of contact.
4. Develop a game plan. Student-athletes should not return to play until all symptoms have resolved, both at rest and during exertion. Many times, that means they will be out for the remainder of that day. In fact, as concussion management continues to evolve with new science, the care is becoming more conservative and return-to-play time frames are getting longer. Coaches should have a game plan that accounts for this change.

IT'S BETTER THEY MISS ONE GAME THAN THE WHOLE SEASON. WHEN IN DOUBT, SIT THEM OUT.

For more information and resources, visit www.NCAA.org/health-safety and www.CDC.gov/Concussion.



Reference to any commercial entity or product or service on this page should not be construed as an endorsement by the Government of the company or its products or services.

18. If a concussion is not treated properly—or recklessly ignored, as the Defendants did here—it can have deadly consequences.

19. Second-impact syndrome is a rare, but often-times fatal consequence that occurs when an individual sustains an initial concussion and then suffers a second head injury before the symptoms associated with the first impact have cleared.

20. For years, coaches and athletic trainers have been taught to be vigilant about the signs and symptoms of concussion. Obvious signs such as pleas for help from a player that his head hurts or continuous bleeding from the forehead should immediately raise a red flag that a concussion might be suspected.

21. In 2011, the Maryland General Assembly enacted a law that requires athletes suspected of having a concussion to be immediately removed from play. The athlete cannot return to practice, games or other activity until he is asymptomatic and cleared by a medical professional. Md. Code Ann., Educ. § 7-433.

22. The Defendants, unfortunately, played by their own rules and disregarded laws and the fundamental tenants of coaching. Instead of placing the athletes' health and well being above all else, they created an environment where players would be punished if they disclosed their injuries. Indeed, players that were injured, including those that were diagnosed with a concussion, were required to clean the field after practice and ridiculed for being “gripers.”²

23. In fact, the coaches marginalized injuries, punished players for disclosing them and challenged players to play through pain. Frostburg’s Team Policies, which were, on information and belief, drafted by Defendant Rogish, stated as much:³

² 2011 Frostburg’s Team Policies.

³ *Id.*

We must distinguish between pain and injury...In the rare event you are injured, remember the following:....

5. If one cannot practice on Wednesday, he CANNOT START ON SATURDAY.

6. If one cannot practice on a Thursday, he probably will not dress....

8. Great champions can distinguish between pain and injury. (emphasis in the original).

24. What is more, the word “concussion” is not stated a single time in Frostburg’s Team Policies. Thus, the coaches treated all injuries—brain injuries and ankle sprains—the same: you were expected to play through them.

A Sense of False Hope

25. Because the brain is freely flowing within the cerebrospinal fluid, no helmet can prevent, definitively protect and/or reduce, concussions; especially the lower forces that include a component of rotational acceleration, which are believed to cause most concussions.

26. Despite scientific evidence to the contrary, Virginia Tech, led by Stefan Duma, performed a study that purported to rank various helmets based on their ability to reduce concussions (hereinafter the “STAR System”). The study was flawed from the beginning.

27. In May 2011, Virginia Tech published its findings and ranked the Schutt Sports DNA Pro Plus helmet (hereinafter “subject helmet”) as a leading helmet in its ability to “protect[] against concussions.”

28. Relying upon this methodologically flawed study, Frostburg purchased the new helmets for the Frostburg football team. A Frostburg official spokeswoman, Elizabeth Douglas, told ESPN that Frostburg selected the DNA Pro Plus helmet “based on the results of a Virginia Tech Study of the *concussion protection*....”⁴

⁴ http://espn.go.com/college-football/story/_/id/6965977/helmet-helmet-hit-caused-frostburg-state-player-derek-sheely-death

29. In 2012, Dr. Albert King aptly attacked Virginia Tech's study stating, “[t]he STAR system is scientifically unsound and is not predictive of a helmet's ability to reduce concussion. It can mislead consumers in the market for a new helmet by giving them a false sense of security or safety.” The National Operating Committee on Standards in Athletic Equipment (NOCSAE) also shared these concerns and suggested caution when relying on the STAR System, “the potential exists for players, parents, coaches and administrators to overemphasize the role of the helmet in protecting against concussions.”⁵

30. In the 1970s, the National Institutes of Health also warned that “existing helmets are not protecting the brain adequately” because their *design* was based on a paradigm that *ignored data* on rotational forces. Revising the existing standards was deemed an ‘urgent task.’⁶ Similarly, a 2012 report from the International Olympic Committee World Conference on Prevention of Injury and Illness in Sport shared the same sentiment regarding helmet manufacturers’ stagnant movement in research and development: “Little has changed in helmet-safety design during the past 30 years.”⁷

A Complete Loss of Institutional Control: Gross Incompetence and a Reckless Disregard for Safety

31. Preseason football practice started on August 13, 2011. The first day of practice consisted of helmet fitting. On information and belief, a representative and agent for Schutt Sports improperly fitted Derek with the subject helmet. Derek chose the subject helmet after the representative told the team, “Schutt’s new technology can prevent head injuries.” This representation is factually false.

⁵ July 3, 2013, NOCSAE press release. “Statement from the National Operating Committee on Standards for Athletic Equipment Regarding 2013 Virginia Tech STAR Rating System.

⁶ Bruce Barcott, *Senseless*, Bicycling, Vol. 54 No. 5, June 2013.

⁷ *Id.*

32. Like many of his other teammates that day, Derek relied upon, and was deceived by Schutt Sports. Strapped with a new sense of false security, Derek reasonably believed that his new armor could prevent head injuries.

33. On August 19, 2011, Derek and his teammates started two-a-day practices. Preseason practices at Frostburg served more as a gladiatorial thrill for the coaches than learning sessions for the players. Practice involved virtually unlimited, full-contact, helmet-to-helmet collisions. One of Derek's teammates described the demeanor of the practices leading up to Derek's fatal injury as completely "out of control." Within a three-and-a-half-day period, Derek and his teammates were exposed to more than 13 hours of full-contact drills – significantly increasing the risk of concussions and repetitive head trauma.

34. On the morning of August 19, 2011, Defendant Schumacher instructed the fullbacks and tailbacks to engage in a drill that has been criticized by certain National Football League teams and other leagues as extremely dangerous, intolerable and meaningless.

35. The drill is similar to the so-called "Oklahoma Drill" – but even more dangerous. The fullback and tailback line up behind the quarterback. A linebacker stands approximately sixteen yards away from the fullback. The linebacker is not allowed to defend himself; instead he is required to stand upright and "act like a dummy." The quarterback hands the ball off to the tailback, and the fullback and the linebacker are required to smash into each other at full speed (the "Drill"). If the linebacker attempts to defend himself, or the fullback does not run full speed into the linebacker, Defendant Schumacher would require the players to repeat the drill.

36. The Drill continues for approximately fifteen minutes with very little, and at times, no rest. During the course of the Drill, each player takes approximately 30-40 sub-concussive, or concussive, blows to the head.

37. The Drill had a reputation among the players as being “ridiculously dangerous.”

Players warned each other about the Drill, and, in fact, players quit the team due to its propensity to cause injuries.

38. Prior to the 2011 season, the coaches knew that the drill increased the risks of concussions. At least one player during the 2010 season suffered a concussion while performing the Drill.

39. What is more, a few days before Derek’s fatal blow, two of Derek’s teammates suffered concussions during the Drill. Despite the significant damage and excessive amount of blows the players were taking, the Defendants, including the NCAA, coaches and athletic trainers allowed, condoned and/or demanded that the Drill continue without modification. To this day, one of the Derek’s teammates still has significant cognitive impairment as a result of the Drill.

40. Dr. Kevin Guskiewicz, a leading scientist on sports concussion, has analogized the violent forces at play during football practice to a car crash. “If you drove your car into a wall at twenty-five miles per hour and you weren’t wearing your seat belt, the force of your head hitting the windshield would be around 100 Gs: in effect, the player had two car accidents that morning.” In effect, Derek and his teammates were forced to endure multiple car-like collisions, until one ultimately led to an avoidable death.

41. Significantly increasing the risks of football, Defendant Schumacher demanded that the players “lead with your head” and use your “hat first.” If a player did not perform the Drill as Defendant Schumacher ordered, the players, including Derek, would be berated and cursed at by Defendant Schumacher.

42. For more than 40 years, coaches around the country have known that a player should not lead with their head. In fact, in 1967 the American Medical Association Committee on Medical Aspects of Sports declared that coaches should not teach players to lead with their head. By 1976, the NCAA and the National Federation of State High School Associations (NFHS) passed a rule prohibiting initial contact with the head.

43. Despite this elementary rule, Defendant Schumacher ordered the players to tackle and/or lead with their head. One of Derek's teammates said he was "shocked" when he heard Defendant Schumacher's order, but he said you were required to obey his orders otherwise he would lash out and call players a "b****."

44. The first full day of practice involved more than four hours of full-contact, which significantly increased the risk of concussions and repetitive head trauma.

45. On the following day, August 20, 2011, Defendant Schumacher ordered the tailbacks and fullbacks, including Derek, to engage in the aforesaid dangerous Drill.

46. During the course of the Drill, Derek's forehead began bleeding profusely. Pursuant to NCAA Rule 3, "Whenever a participant...is bleeding...the player...shall...be given appropriate medical treatment. *He may not return to the game [or practice] without approval of medical personnel.*"⁸ The Defendants violated and failed to enforce this rule on multiple occasions.

47. On information and belief, Derek was examined by Defendant Michael Sweitzer, Jr., a Certified Athletic Trainer. Defendant Sweitzer was the team's primary athletic trainer and

⁸ 2011 and 2012 NCAA Rules and Interpretations, § 3, Art. 5(a)(4)

was responsible for overseeing the care provided to Derek. On information and belief, Defendant Sweitzer supervised three to four graduate assistant athletic trainers (hereinafter the “staff”).

48. Instead of investigating whether Derek was suffering from a concussion, Defendant Sweitzer and his staff merely bandaged Derek’s forehead and allowed him to return to play. On information and belief, Defendant Sweitzer and his staff did not perform a concussion evaluation or identify whether Derek’s helmet was fitted improperly.

49. Athletic trainers are required to be knowledgeable in proper helmet fitting. According to a textbook used in introductory athletic training courses, “[t]he ability to properly fit a football helmet is an essential skill for the certified athletic trainer.”⁹

50. Defendant Sweitzer and his staff also knew that Derek was susceptible to concussions. Athletic trainers are expected to know a player’s history of prior concussions and associated recovery patterns. During the prior season, on information and belief, Derek suffered a concussion during practice, which was diagnosed by Defendant Sweitzer and his staff. It is commonly known that individuals who suffer their first concussion are increasingly susceptible to suffer additional concussions.

51. After the morning practice concluded, the players broke for lunch and then had several hours of team meetings. Despite exhibiting a significant bruise on his forehead, at no time did any of the coaches and/or athletic trainers inquire about Derek’s bruise. Though Derek would get a red spot on his forehead during prior preseasons, his teammates said they had never seen his forehead bleed profusely or exhibit such a large, protruding and discolored bruise as they observed in the days leading up to his fatal injury.

⁹ *Athletic Training Student Primer: A Foundation for Success*

52. On Sunday, August 21, 2011, the team had another set of full contact, two-a-day practices. Defendant Schumacher ordered the tailbacks and fullbacks to engage in the Drill. At this point, the Drill had become so excessive, one of Derek's teammates said he "felt bad for the fullbacks" because they were repeatedly exposed to head trauma.

53. During the Drill, Derek's head began bleeding, again. For the second time, on information and belief, Derek was examined by Defendant Sweitzer and his staff. Defendant Sweitzer and his staff did not perform a concussion evaluation, examine the fitting of Derek's helmet or investigate why his forehead continued to bleed. On information and belief, Defendant Sweitzer bandaged Derek's forehead and, again, allowed him to return to full-contact practice.

54. At lunch, Derek's teammates observed a noticeable difference in his behavior. Instead of being social and jovial, Derek appeared to "not be himself."

55. Shortly following lunch, Defendant Schumacher ordered the players to perform the Drill. Derek's forehead began bleeding, again. Derek sought help from Defendant Sweitzer and his staff.

56. On information and belief, Defendant Sweitzer and his staff, once again, did not perform a concussion evaluation, investigate the cause of Derek's persistent bleeding, or determine if his helmet was fitted properly.

57. Willfully ignoring an obvious problem with the helmet and a suspected concussion, Defendant Sweitzer and his staff attempted to cure Derek's head injury with a band-aid. Defendant Sweitzer and his staff bandaged Derek's head and allowed him to return to play.

58. Derek and his teammates continued full-contact practice for an additional two hours. After practice and dinner, Derek and his teammates had team meetings.

59. Despite manifesting obvious concussion symptoms, neither the coaches nor the athletic trainers followed up with Derek, investigated his bruise or performed a concussion evaluation.

The Last Clear Chance to Avert the Consequences of Defendants' Gross Negligence

60. On the morning of August 22, 2011, Derek had breakfast at or around 7 a.m. with his teammates. His teammates remember observing the obvious bruise on his forehead; at that time, Derek did not have a band-aid on his head.

61. Despite knowing that the Drill was extremely dangerous and seeing two other players suffer concussions during that week, the coaches and athletic trainers willfully allowed and condoned Defendant Schumacher to continue the Drill.

62. Defendant Schumacher ordered the players to perform the Drill. Derek's forehead began bleeding, again. For the fourth time, on information and belief, Derek was examined by Defendant Sweitzer. Defendant Sweitzer and his staff did not perform a concussion evaluation, examine the fitting of Derek's helmet or investigate why his forehead continued to bleed.

63. Having the last clear chance to remove Derek from play, Defendant Sweitzer and his staff willfully disregarded the obvious head injury, placed a bandage on Derek's forehead and allowed him to resume the Drill.

64. During the offensive and defensive "inside-run drill," in which all coaches were around and full-speed contact was required, Derek was involved in a significant amount of contact. Shortly after one play, Derek walked back to the huddle and explicitly informed Defendant Schumacher that he "didn't feel right" and that he had a "headache."

65. With Defendant Rogish, and on information and belief other members of the coaching staff, standing right next to Defendant Schumacher and thus clearly hearing Derek's

disclosure, Defendant Schumacher yelled, “Stop your bitching and moaning and quit acting like a pussy and get back out there Sheely!”

66. Having the last clear chance to remove Derek from play, the coaches willfully ignored and recklessly disregarded Derek’s plea for help and forced him to return to play.

67. Derek resumed contact and the players began the 7-on-7 drill. This is basically a game-like situation where players engage in all-out, full contact. After completing a series of plays, Derek was involved in a collision with a defensive back. Though the collision was relatively unremarkable, it was of sufficient force to trigger second-impact syndrome.

68. Derek walked back to the sidelines in a lucid state, and within a few minutes following the collision, Derek collapsed and never regained consciousness.

69. Derek’s final collision caused brain herniation, an acute subdural hematoma, and massive vascular engorgement.

70. Derek was airlifted to the hospital where the doctors performed an emergency craniectomy. Though Derek remained comatose for six days, he continued to suffer from conscious pain. Despite all medical efforts, Derek died on August 28, 2011, due to complications from massive brain swelling caused by second-impact syndrome.

71. Acknowledging their keen awareness, yet reckless disregard, of the significant dangers imposed by the Drill and that their conduct was a gross deviation from the standard of care, the coaches, immediately following Derek’s fatal injury, armed the linebacker with a blocking shield for protection during the Drill.

Factual Allegations Against the NCAA¹⁰

The NCAA Had A Duty to Protect and Safeguard Derek

72. Since its inception, the NCAA shouldered a legal duty to protect student-athletes, including Derek. According to its website, the NCAA was founded “*to protect* young people from the dangerous and exploitative athletic practices of the time.”

73. The NCAA holds itself out as the supervisory force over conduct at intercollegiate events and practices throughout the country.

74. At the turn of the 20th Century an alarming rate of deaths due to head injuries were occurring in college football. President Theodore Roosevelt convened a group of Ivy League Presidents and coaches to discuss how the game could be made safer. As a result of several subsequent meetings of colleges, the Intercollegiate Athletic Association of the United States was formed (IAAUS). In 1910, the IAAUS changed its name to the National Collegiate Athletic Association.

75. The NCAA’s founding purpose to protect student-athletes has been repeated often, and as far back as 1909 at the annual convention of member institutions. There, Chancellor James Roscoe Day of Syracuse University stated:

The lives of the students must not be sacrificed to a sport. Athletic sports must be selected with strict regard to the safety of those practicing them. It must be remembered that the sport is not the end. It is incidental to another end far more important. We lose sight of both the purpose and the proportion when we sacrifice the student to the sport.

¹⁰ Pending in the Northern District of Illinois is a putative class action, *Adrian Arrington et al., v. NCAA*, Case No. 11-cv-06356. The parties in that case have engaged in more than a year-and-a-half of discovery. Many of the facts alleged below arise from the pleadings and documents that have been filed during the course of that case. At times, Plaintiffs will cite to documents which have been produced and Bates Numbered (e.g. NCAA00003843).

76. Today, those words ring hollow. In fact, the opposite is now true: The NCAA and its member institutions have lost sight of its founding principles, and Derek's life *was sacrificed* to a sport. Instead of making player safety a priority above all else, the NCAA has attempted to shirk its legal duty.

77. Try as it might to disclaim, the NCAA owed a legal duty—through its historical actions and repeated representations and affirmations—to Derek.

78. The NCAA purports to be a nonprofit association that is committed to providing opportunities for college athletes. The NCAA has neglected the central purpose for which it was established—to protect student-athletes—and now its primary purpose is to generate revenue for its conferences and members.

79. In 2012, the NCAA's total revenues eclipsed \$838,000,000. In 2010, the NCAA entered into an exclusive television and media rights contract with CBS and Turner Broadcasting. Over the 14-year term contract, the NCAA is to receive \$10.8 billion. Similarly, in 2011, the NCAA entered into a multi-media agreement with ESPN, which is to provide for payments totaling \$500,000,000 over the life of the 14-year contract.

80. College athletics at NCAA member institutions are tightly regulated by the NCAA Constitution, Operating Bylaws and Administrative Bylaws, which comprise over 400 pages of detailed rules that govern in great detail all matters relating to athletic events, including: player well-being and safety, playing time and practice rules for each sport, contest rules, amateurism, recruiting, eligibility, and scholarships.

81. The NCAA Constitution, Bylaws, and other legislative policies are contained within the NCAA Manual, which is updated at an annual conference and published annually for

member schools. The NCAA promulgates sport-specific standards through its Playing-Rules Committees.

82. The NCAA also publishes a Sports Medicine Handbook (the “Handbook”), which includes policies and guidelines for the treatment and prevention of injury, as well as return-to-play instruction. The Handbook is also produced annually and sent directly to head athletic trainers, as well as various individuals at NCAA member institutions. The Handbook expressly recognizes that “student-athletes rightfully assume that those who sponsor intercollegiate athletics have taken reasonable precautions to minimize the risks of injury from athletics participation.”

83. The NCAA Constitution clearly defines the NCAA’s purpose and fundamental policies to include maintaining control over and responsibility for intercollegiate sports and student-athletes. The NCAA Constitution states in pertinent part:

The purposes of this Association are:

- (a) To initiate, stimulate and improve intercollegiate athletics programs for student athletes....;
- (b) To uphold the principal of *institutional control* of, and responsibility for, all intercollegiate sports in conformity with the constitution and bylaws of this associations;....

NCAA Const., Art. 1, § 1.2(a)(b). The NCAA Constitution also defines one of its “Fundamental Policies” as the requirement that “Member institutions shall be obligated to apply and enforce this legislation, and the enforcement procedures of the Association shall be applied to an institution when it fails to fulfill this obligation.” NCAA Const., Art. 1, § 1.3.2.

84. Despite the multiple rule violations that caused Derek’s death, as set forth above, the NCAA never investigated and/or enforced its “procedures” against Frostburg and its coaches when it failed to fulfill its obligations owed to Derek.

85. Article 2.2 of the NCAA Constitution specifically governs the “Principle of Student-Athlete Well-Being,” and provides in pertinent part:

2.2. The Principle of Student-Athlete Well-Being

Intercollegiate athletics programs shall be conducted in a manner designed to protect and enhance the physical and educational well-being of student athletes. (Revised: 11/21/05.)

* * * * *

2.2.3 Health and Safety. It is the responsibility of each member institution to protect the health of, and provide a safe environment for, each of its participating student athletes. (Adopted: 1/10/95.)

86. In fact, the NCAA Constitution mandates that “each member institution must 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.” NCAA Const., Art. 2, § 2.2.1 (Adopted: 1/10/95).

87. To aid member institutions with the tools that they need to comply with NCAA legislation, the NCAA Constitution promises that “[t]he Association shall assist the institution in its efforts to achieve full compliance with all rules and regulations....”

88. Not only has the NCAA promised to protect student-athletes through its governing documents, but it also has publicly acknowledged its duty to protect the health and safety of student-athletes, including Derek.

89. The NCAA has consistently recognized its duty to provide a safe environment for student-athletes. For example, the NCAA’s website states: “Part of the NCAA’s core mission is to provide student-athletes with a competitive environment that is *safe* and ensures fair play. While each school is responsible for the welfare of its student-athletes, the NCAA provides leadership by establishing safety guidelines, playing rules, equipments standards, drug testing procedures and research in the cause of injuries to assist decision making. By taking proactive

steps to student-athletes' health and safety, we can help them enjoy a vibrant and fulfilling career." To the contrary, the NCAA has wholly failed in its "leadership."

90. The NCAA also maintains The Committee on Safeguards and Medical Aspects of Sports, which is publicly touted by the NCAA as "serv[ing] to provide expertise and leadership to the NCAA in order to provide a healthy and safe environment for student-athletes through research, education, collaboration and policy development."

91. The NCAA has further promised its athletes a safe environment, which is proudly proclaimed on its website:

The NCAA takes appropriate steps to modify safety guidelines, playing rules and standards to minimize those risks and provide student athletes with the best opportunity to enjoy a healthy career. The injury surveillance program collects, analyzes, interprets and disseminates data in injuries in each sport, providing a wealth of information through which we can provide athletes with a safe competitive environment.

92. One of the NCAA's "core concepts and priorities" was to use its knowledge to promote health and safety:

The NCAA has been conducting injury surveillance for more than 20 years. Over time, the underlying principle of the program has remained unchanged – to promote and support student-athlete health and safety.

93. In fact, the NCAA explains on its website how it promises to use the injury surveillance data it collects:

How does [the injury surveillance data] help prevent sports injuries?

Once we know how they occur we can take the necessary steps to reduce student-athlete's exposure to situations that cause injuries. For instance, we can make adjustments to rules – such as *eliminating tackling techniques in football* or high-sticking in ice hockey – to reduce situation that expose student-athletes to high risks of injury. Or we can adjust equipment requirements and standards to increase safety.

94. Moreover, in January 2010, David Klossner, the Director of Health and Safety for the NCAA, testified to Congress that the “core purpose[] of the Association is a commitment to govern athletics in a manner designed to protect the health and safety of all student-athletes.” Mr. Klossner also admitted that “student-athletes rightfully assume that those who sponsor intercollegiate athletics have taken reasonable precautions to minimize the risks of injury from athletics participation.”

95. Mr. Klossner represented to Congress that the Committee on Competitive Safeguards and Medical Aspect of Sports “determined that a common player rule is necessary to provide an emphasis on the significance of head injuries....” Mr. Klossner went on to say that the “proposed playing rule...would mandate removing from competition and practice a student-athlete ‘who exhibits signs, symptoms or behaviors consistent with a concussion.’” Finally, Mr. Klossner said the NCAA would “explore emerging trends in medical management of concussions” such as “possible limitations on head contact during practice....”

96. In reinforcing its legal duty owed to Derek and all student-athletes, the NCAA affirmatively acted, in part, by passing a rule that has, according to the NCAA’s Director of Health and Safety, *never been enforced* despite systematic and blatant violations. The NCAA also delivered an empty promise and failed to mandate a limit on “head contact during practice.”

97. In the months leading up to the implementation of the NCAA Concussion Management Plan (the “Plan”), NCAA executives debated its merits and some even mocked the idea. Ty Halpin, the Director of the Playing Rules Administration, and Nicole Bracken, Associate Director of Research, expressed their incredulous attitude toward protecting student-athletes:

Halpin: “Dave [Klossner] is hot/heavy on the concussion stuff. He’s been trying to force our rules committees to put in rules that are not good - - I think I’ve finally convinced him to calm down.”¹¹

Bracken: “He [Klossner] reminds me of a cartoon character.”¹²

Halpin: “HA! I think you’re right about that!”¹³

98. Long overdue, in August 2010, the Plan went into effect; merely mandating toothless guidelines that member institutions have a piece of paper on file. Rule 3.2.4.17.

99. The Plan has four basic requirements:

1. An educational component;
2. Evaluation of students-athletes who show signs of a concussion;
3. A policy preventing student-athletes diagnosed with concussions from return to play the same day; and
4. A policy preventing student-athletes diagnosed with concussion from returning until they have been cleared by a physician or a designee.

100. Just two months after the Plan took effect, the NCAA made a coldly-calculated decision to rip the enforcement measure out of the Plan. In response to a foreseeable scenario posed by Mr. Klossner regarding what the penalty would be if a school—just like Frostburg did here—failed to follow the Plan, the Director of Enforcement, Chris Strobel, replied:¹⁴

Isolated incidents of the concussion policy will be dealt with as secondary violations. The enforcement staff will treat violations as secondary unless the institution has a pattern of not following the policy and/or *blatant disregard for the policy*.

Penalties will depend on the circumstances of the violation. *For example, if a coach requires a student-athlete to compete after being informed the student-athlete has been diagnosed with a concussion, we would require a significant penalty (e.g., that the coach be suspended from coaching activities for one or two contests).... (emphasis added).*

¹¹ NCAA10029172-75, at NCAA10029172.

¹² Id.

¹³ Id.

¹⁴ NCAA10015557

101. Just two hours later, the NCAA fatally backtracked and ripped the teeth from its enforcement. The Director of Enforcement changed his position and said that the NCAA would only require schools to have the Plan in place, but would “not suspend or otherwise penalize a coach pursuant to the current legislation even if the student-athlete was required to participate after having been diagnosed with a concussion.”¹⁵

I have been corrected. I apologize, but my previous e-mail to you was premature in how enforcement would handle 3.2.4.16 issues. Enforcement will only process violations involving (1) an institution not having the concussion management plan in place (secondary violation), and (2) systematic or blatant disregard for the plan that would indicate a lack of institutional control (most likely major)...

102. Despite a systematic and blatant disregard for the Plan that indicated a clear lack of institutional control, as set forth in Paragraph 1 through 71 above, the NCAA, on information and belief, never investigated or sought to enforce the Plan.

103. Even worse than the NCAA’s ineffective and affirmative actions, or a lack thereof, in carrying out the Plan, the Plan puts the onus of concussion management on the student-athlete by requiring that they “sign a statement in which they accept the responsibility for reporting their injuries and illnesses to the institutional medical staff, including signs and symptoms of concussions.”

104. Yet, it is universally accepted that player’s cannot make that decision for themselves because “a concussion may cloud [a student-athlete’s] judgment on whether or not [they] are functioning normally.”¹⁶

105. Distilled to its essence, the Plan rejects any measure of responsibility for the NCAA, its member schools, and the coaching staff. Instead, the burden falls squarely on the head

¹⁵ NCAA10015556

¹⁶ NCAA10054372

of student-athletes – the same student-athletes who have just sustained significant cognitive impairment – to seek out medical attention.

106. While Derek's and other student-athletes' brains were being damaged due to repeated violations of the Plan, the NCAA decided to spend its time generating revenue and investigating and enforcing the legal fiction of amateurism.¹⁷

The NCAA's Systematic Failure to Address Concussions Caused Derek's Death

107. Despite being in a superior position to address the foreseeable dangers of concussion, the NCAA repeatedly failed to act in, but not limited to, the following ways: by thwarting its charge of leadership, by failing to mandate a continuing education program, by failing to mandate a certification program for coaches, and by failing to adopt and implement rule changes.

108. Concussion education is a cornerstone for protecting student-athletes, yet when it came to delivering this necessary resource the NCAA punted.

109. In 2005, Preston Plevretes' was rendered permanently disabled after he suffered second-impact syndrome while playing for La Salle University. His experts concluded that the defendants' conduct was a "reckless and gross deviation from the standard of care." Dr. Michael W. Collins, Ph.D., Assistant Professor in the Department of Orthopedic Surgery and Neurological Surgery at the University of Pittsburgh, opined:¹⁸

The lack of institutional involvement in assuring appropriate care of their student athletes and also not having any written protocols for appropriate management of injury is a reckless and gross deviation from the standard

¹⁷ The examples are legion, but one should suffice. In 2000, the NCAA investigated and enforced a purported violation by the University of Nebraska. The violation? Eric Crouch ate a \$4 ham sandwich.

¹⁸ http://sportsillustrated.cnn.com/football/college/news/2000/06/07/crouch_sandwich_ap/

of care. As such, *the lack of institutional support* was also responsible for Preston's mismanagement and catastrophic outcome.

110. Similarly, Scott L. Bruce, MS, ATC, a certified athletic trainer and lecturer and approved clinical instructor in the Graduate Athletic training Program at the University of Tennessee at Chattanooga opined that the school, and more directly the NCAA, failed "to educate team members, including Preston Plevretes, on the signs and symptoms of concussion and the risks of catastrophic injury associated with playing while symptomatic."¹⁹

111. The NCAA did not meet its obligation to educate student-athletes regarding the risks of catastrophic injury in football. The NCAA did not take any steps to ensure student-athletes, including Derek, understood and appreciated the risks. Cognizant of these facts, Mr. Klossner identified several "NCAA Issues,"²⁰ chief among them was, "College age athletes often minimize symptoms and/or under-report their injuries; they often feel immortal, and may not understand the consequences of playing with injury."²¹ In addition, Mr. Klossner acknowledged that student-athletes, including Derek, were also being pressured by their coaches' "win at all-cost" mentality.²²

112. Having actual knowledge of the multiple failures and simple remedial measures at its disposal to ensure a tragedy like Preston's never occurred again, the NCAA turned a blind eye and delivered a stiff arm to its membership.

113. When a school inquired whether the NCAA was "going to sell or offer the concussion flyers for both the student-athlete and coach...[to be used in an] enhanced concussion

¹⁹ NCAAPLS000611

²⁰ NCAA10140278

²¹ *Id.*

²² NCAA10056397

education program,”²³ or how a school could “go about obtaining 900 Concussion Fact Sheets for Student-Athletes,”²⁴ the NCAA responded that “[w]e will not be sending out any more flyer [sic] or printing them.”²⁵

114. More warning signs were brought to the NCAA’s attention. On April 6, 2008, Dr. Frederick Mueller sent Mr. Klossner the “Catastrophic Head Injuries in High School and College Football Players (1977-2008)” and noted that “[n]umbers are going up” and that “[a]lmost all are NCAA players.”²⁶ The study found that “[t]hese numbers are not acceptable and an all-out effort must be made to reduce them.”²⁷ The study recommended that the football rules prohibiting spearing (helmet-to-helmet contact) should be enforced and that the head should not be used as a weapon and states that “[i]f more of these penalties are called there is no doubt that both players and coaches will get the message and discontinue this type of play.”²⁸ The study reiterated that a student-athlete should not be returned to play if they show signs of head trauma and that “[d]uring the 2008 football season there was the possibility of eight second impact syndrome injuries.”²⁹

115. Confirming these daunting numbers, in April 2008, Rickey Hamilton Jr., a Division III football player, sent an email to Mr. Klossner, eerily foreshadowing Derek’s plea for help.³⁰

There are multiple players on my team who have suffered injuries and have not had the correct treatment for them. We are trying to see what we

²³ NCAA10015560-61, at NCAA10015560

²⁴ NCAA10012557-58, at NCAA10012557

²⁵ NCAA10015560

²⁶ NCAA00003842-73, at NCAA00003843

²⁷ *Id.*

²⁸ *Id.* at NCAA00003852

²⁹ *Id.*

³⁰ NCAA10023686

can do about this because this is not fair to the student athletes who put their all into something and can't even get the proper treatment needed.

116. Then, again in 2009, Dean Crowell, an assistant football athletic trainer at the University of Georgia, was also witnessing this potential death sentence first hand, "I personally have seen an athlete knocked unconscious and return in the same quarter in recent years."³¹

117. Warning signs and calls for leadership were also coming from member institutions and conferences. In 2010, during the NCAA Concussion Working Group, Joni Comstock, the NCAA's Senior Vice President of Championships, recorded in the minutes that "[t]here was continued agreement that the membership was looking to the national office for guidance...."³² In 2011, Chuck Mitrano, President of the DIII Commissioner's Association, reached out to Mr. Klossner, requesting a seat at the table and the "critical" need of education and leadership from the NCAA, which Mr. Mitrano acknowledged was wholly lacking:³³

By having a direct link to this initiative it allows DIII to be part of the process and to keenly raise awareness within our membership. *To be frank, this emphasis is largely absent.*

118. SEC Commissioner Mike Slive recently confirmed the NCAA's ongoing failures:

There is much work to be done, and while the Conference has a role to play, prevention and treatment of concussion injuries is a national concern that needs and deserves a coordinated national effort. For this reason, the Presidents and Chancellors will make a *formal request that the NCAA take the lead in organizing and spearheading a national research effort and examining possible revisions to playing rules in football and other sports....I hope and expect that the NCAA will take the lead in further development of standards and practices to protect the health and safety of our student athletes.*

119. The NCAA decided to ignore not only the student-athletes' pleas for help, but also its charge of leadership. Fed up with the NCAA's repeated failures to protect student-

³¹ NCAA10011982

³² NCAA10028800

³³ NCAA10035002

athletes, members of Congress recently proposed a bill entitled, the “National Collegiate Athletics Accountability Act,” which would, *inter alia*, mandate baseline concussion testing.

Empty Promises and Misfeasance Led to Derek’s Death

120. In the midst of a “concussion crisis,” leagues -- including the NFL, Arizona Interscholastic Association,³⁴ the Ivy League, the Pac-12 and Pop Warner -- have made policy changes aimed at reducing head trauma in football.

121. It is estimated that college football players are exposed to 1,000 to 2,500 hits to the head each season. Scientific evidence, common sense and simple logic suggest that mandating a limit on contact practices, banning two-a-days and dangerous drills, like the one that led to Derek’s death, would significantly decrease the risk of brain damage.

122. Despite clear and convincing evidence, the NCAA has sat idly by—manufacturing doubt—about the efficacy of limiting contact practices. While reporting on the Ivy League’s decision to implement the policy, the NCAA stated on its website, “The exact benefit of the practice modifications is not yet known.”

123. The Ivy League, on the other hand, chose not to wait. In 2010, the Ivy League implemented a conference-wide practice regimen that limited full-contact practices to a maximum of two per week. In addition, for preseason, they limited to one the number of days that pads can be worn during the preseason and also called for “greater time and attention devoted to the teaching of and emphasis on proper techniques for avoiding helmet hits.”³⁵

124. If the NCAA would have mandated a similar policy, actually enforced the Plan and carried out its promises, Derek would still be alive today. Likewise, countless other student-

³⁴ Even the powerhouse of high school football, Texas, is on the verge of implementing contact limits to 90 minutes per week.

³⁵ NCAA00013981, See also, Dr. Cantu’s report at 62

athletes would not have been exposed to the excessive amount of head trauma the Defendants caused Derek and his teammates to suffer.

125. Despite the action by multiple other leagues, the NCAA continues to ignore the repeated warnings and long-term effects of concussions. This systematic failure proximately caused Derek's death.

126. Defendants' acts and/or omissions were the direct and proximate cause of Decedent's injuries.

127. Following the fatal blow that triggered second-impact syndrome on August 22, 2011, Decedent lived for an additional six days. Throughout this time, Decedent suffered from conscious pain.

128. Pursuant to Md. Code, Cts. & Jud. Proc., §6-401, the Decedent's rights of action for gross negligence, negligence, negligent misrepresentation, negligent hiring, violations of the Maryland Consumer Protection Act, failure to warn, strict liability, and fraudulent misrepresentation, against Defendants survive in favor of Kristen Sheely, the Personal Representative of Derek's Estate, and she brings the survival claims detailed in Counts I through XI below on behalf of her son's Estate.

129. Defendants are liable to the Plaintiff Personal Representative for such damages as might have been recovered by Decedent himself had he survived the injury and brought this action for the physical and emotional pain and suffering, mental anguish, economic loss and fear caused by Defendants' unlawful actions under the common law of Maryland as described herein.

Count I – Gross Negligence
(Survival Action v. Defendants Schumacher, Rogish and Sweitzer)

130. Plaintiff Personal Representative incorporates as if fully stated herein the allegations set forth in Paragraphs 1 through 129.

131. Defendants, and each of them, owed duties of care to Decedent, based on their relationship to him as a student, athlete, patient, and general member of the public.

132. Defendants, and each of them, owed duties of care to Decedent to refrain from creating new risks that are not inherent in football.

133. Defendants, and each of them, owed duties of care to Decedent to refrain from increasing certain risks that may be inherent in football.

134. The acts and omissions of Defendants constituted an intentional failure to perform a manifest duty in reckless disregard of the consequences affecting the life of Decedent. Said acts and omissions by Defendants were so utterly indifferent to the rights of Decedent that they amounted to wanton recklessness and gross negligence, which each is individually liable for the injuries that Decedent suffered, and Defendants are not entitled to immunity under State law.

135. Defendants, and each of them, breached said duties of care by their conduct (whether act or omission) as alleged in paragraphs 1 - 71 of this Complaint.

136. Defendants, and each of them, deliberately violated Md. Code Ann., Educ. § 7-433, by their conduct (whether act or omission) as alleged in paragraphs 1- 71 herein, which constitutes gross negligence *per se*.

137. As a direct and proximate result of the wantonly recklessness and grossly negligent acts and omission of Defendants, Decedent was killed and Plaintiffs suffered losses as set forth in Maryland's Wrongful Death and Survival Statute.

138. The wanton recklessness and gross negligence of Defendants was a direct and proximate cause of Decedent's painful injuries, death and the injuries and damages sustained by the Plaintiffs. As a direct and proximate result of the wanton recklessness and gross negligence of Defendants, Derek's Estate is entitled to recover for his injuries and pain and suffering, as

well as for the funeral expenses incurred by his Estate. All of the injuries, damages and losses described above were caused by the Defendants, without any contributory negligence on Derek's part.

WHEREFORE, Plaintiff Personal Representative demands judgment against the Defendants, jointly and severally, for compensatory and punitive damages in amounts in excess of Seventy-five Thousand Dollars (\$75,000.00), plus interest and costs.

**Count II – Professional Gross Negligence in the Practice of Athletic Training
(Survival Action v. Defendant Sweitzer)**

139. Plaintiff Personal Representative incorporates as if fully stated herein the allegations set forth in Paragraphs 1 through 129, and further alleges as follows:

140. Upon information and belief, Defendant Sweitzer is a "licensed athletic trainer" within the meaning of the Maryland Athletic Trainers Act (MATA). Md. Code Ann., Health Occ. § 14-5D-01.

141. The MATA requires licensed athletic trainers to be professionally competent, lest they will have their license revoked.

142. Defendant Sweitzer undertook a duty to provide athletic training and professional services to Decedent. Defendant Sweitzer was also responsible for supervising the care that was provided to Decedent.

143. In performing such professional services, Defendant Sweitzer owed a duty to use such professional skill, prudence and diligence as other members of the Athletic Training profession commonly possess and exercise.

144. Defendant Sweitzer failed to exercise reasonable care in evaluating, monitoring, detecting and treating Decedent's injuries.

145. Defendant Sweitzer failed to exercise reasonable care in making return-to-play determinations for Decedent.

146. The failure of the Defendant Sweitzer to exercise such care increased the risk of harm suffered by Decedent, including the unknown risk of death triggered by second-impact syndrome.

147. As a student-athlete, Decedent relied upon the undertaking of the Defendant Sweitzer to provide athletic-training services, including testing, evaluating, and monitoring of concussive and sub-concussive injuries, as well as return-to-play decisions, testing and determinations.

148. The conduct of Defendant Sweitzer was in violation of the MATA.

149. Decedent's reliance on the Defendant Sweitzer, and his intentional failure to perform a manifest duty in reckless disregard of the consequences was a direct and proximate cause of Decedent's death and the injuries and damages suffered by him. As a direct and proximate result of the conduct of Defendant Sweitzer, Derek's Estate is entitled to recover for his injuries and pain and suffering, as well as for the funeral expenses incurred by his Estate. All of the injuries, damages and losses described above were caused by the Defendant, without any contributory negligence on Derek's part.

WHEREFORE Plaintiff Personal Representative demands judgment against Defendant Sweitzer for compensatory and punitive damages in amounts in excess of Seventy-five Thousand Dollars (\$75,000.00), plus interest and costs.

ACTIONS AGAINST SCHUTT SPORTS

Count III – Negligent Misrepresentation **(Survival Action v. Schutt Sports)**

150. Plaintiff Personal Representative incorporates as if fully stated herein the allegations set forth in Paragraphs 1 through 129, and further alleges as follows:

151. At all material times, Defendant and its agents had a duty to use reasonable care in the manner in which it designed, manufactured, assembled, distributed, marketed, represented and sold the subject helmet.

152. Defendant and its agents, owing the Decedent said duty of care, negligently misrepresented a material fact, as described in Paragraph 31 above. Defendant's agent, while acting in the course and scope of employment, proclaimed that Defendant's "new technology can prevent head injuries."

153. The Defendant and its agents intended that Decedent would act in reliance upon said misrepresentation.

154. The Defendant and its agents knew the Decedent probably would rely on the misrepresentation, which were material and factually false and caused damages to Decedent and Plaintiffs.

155. The Decedent justifiably acted in reliance on the misrepresentation.

156. The Decedent suffered painful, fatal injuries as a direct and proximate result of his reliance on the misrepresentation of Defendant Schutt Sports. As a direct and proximate result of the misrepresentation and wrongful conduct of Defendant Schutt Sports, Derek's Estate is entitled to recover for his injuries and pain and suffering, as well as for the funeral expenses incurred by his Estate. All of the injuries, damages and losses described above were caused by the Defendant, without any contributory negligence on Derek's part.

WHEREFORE, Plaintiff Personal Representative demands judgment against the Defendants, jointly and severally, for compensatory and punitive damages in amounts in excess of Seventy-five Thousand Dollars (\$75,000.00), plus interest and costs.

Count IV – Negligent Hiring and/or Retention
(Survival Action v. Schutt Sports)

157. Plaintiff Personal Representative incorporates as if fully stated herein the allegations set forth in Paragraphs 1 through 129, and further alleges as follows:

158. Defendant employed John Doe as its agents, and on information and belief, as a salesperson and/or helmet fitter.

159. Defendant had a duty not to employ any person who poses an unreasonable risk to other persons who would foreseeably come into contact with that employee.

160. It was foreseeable that said employee would come into contact with Decedent, and other persons, when Defendant directed employee to act as a salesperson and/or perform helmet fitting for Frostburg.

161. Defendant's employee was incompetent in the marketing, fitting, sizing and/or instructing on the proper use, and limitations, of the subject helmet, thereby creating an unreasonable risk to Decedent and others.

162. Defendant's employee improperly fitted Decedent's helmet and falsely represented that said helmet could prevent head injuries. This incompetence posed an unreasonable threat to members of the public as would foreseeably come into contact with the employee, including Decedent and his teammates.

163. Defendant had actual or constructive knowledge of employee's incompetence.

164. Defendant's employee's acts, omissions and misrepresentations caused Decedent's death and Plaintiffs' damages.

165. Defendant's negligence in hiring and/or retaining said employee was the direct and proximate cause of Decedent's painful injuries and ultimate death. As a direct and proximate result of the negligence of Defendant Schutt Sports, Derek's Estate is entitled to recover for his injuries and pain and suffering, as well as for the funeral expenses incurred by his Estate. All of the injuries, damages and losses described above were caused by the Defendant, without any contributory negligence on Derek's part.

WHEREFORE, Plaintiff Personal Representative demands judgment against the Defendants, jointly and severally, for compensatory and punitive damages in amounts in excess of Seventy-five Thousand Dollars (\$75,000.00), plus interest and costs.

Count V – Violation of the Maryland Consumer Protection Act
(Survival Action v. Schutt Sports)

166. Plaintiff Personal Representative incorporates as if fully stated herein the allegations set forth in Paragraphs 1 through 129, and further alleges as follows:

167. The Maryland Consumer Protection Act (MCPA) protects the "actual or prospective purchaser, lessee or *recipient of consumer goods....*" Decedent was a "recipient of consumer goods."

168. Defendant Schutt Sports, by and through its agent, violated the MCPA in the following ways:

- i. By making false or misleading oral representations which had the capacity, tendency, or effect of deceiving or misleading Decedent;
- ii. By representing that the consumer good (i.e. subject helmet) had a characteristic, use and benefit which it did not have;
- iii. By representing that the consumer good (i.e. subject helmet) had a particular standard, quality, grade, style, which it did not have; and

iv. By failing to state a material fact (i.e. that the subject helmet CANNOT prevent head injuries, including concussion and second-impact syndrome) which said failure deceived Decedent.

169. The aforesaid unfair and deceptive trade practices by Defendant Schutt Sports, by and through its agent, induced Decedent's reliance to use the subject helmet, and convinced Decedent that the subject helmet could in fact prevent head injuries.

170. Decedent's reliance upon Defendant Schutt Sports' unfair and deceptive trade practices directly and proximately caused Decedent's painful and severe injuries and death. As a direct and proximate result of the negligence of Defendant Schutt Sports, Derek's Estate is entitled to recover for his injuries and pain and suffering, as well as for the funeral expenses incurred by his Estate. All of the injuries, damages and losses described above were caused by the Defendant, without any contributory negligence on Derek's part.

WHEREFORE, Plaintiff Personal Representative demands judgment against the each Defendants, jointly and severally, for compensatory and punitive damages in amounts in excess of Seventy-five Thousand Dollars (\$75,000.00), plus interest and costs.

Count VI – Strict Liability for Design Defect
(Survival Action v. Schutt Sports)

171. Plaintiff Personal Representative incorporates as if fully stated herein the allegations set forth in Paragraphs 1 through 129, and further alleges as follows:

172. At the time the subject helmet was designed, manufactured, sold and distributed by Defendant, the subject helmet was defective in design, unreasonably dangerous, and unsafe for its intended purpose because it did not provide adequate protection against the foreseeable risk of brain injury. The design defect includes, but is not limited to the following:

- i. Failing to design the subject helmet with a safe means of attenuating and absorbing the foreseeable forces of impact in order to minimize and/or reduce the forces and energy directed to Decedent's head;
- ii. Failing to design the subject helmet with a shock attenuation system which was not safely configured;
- iii. Failing to properly and adequately test the helmet model;
- iv. Failing to warn Decedent that the subject helmet would not protect against second-impact syndrome, and any such warning that may have been made was rendered ineffective by the representations made by and through Defendant's agent; and
- v. Other acts that may be discovered during the course of this case.

173. The defective design and unreasonably dangerous condition were a proximate and contributing cause of the injuries suffered by Decedent.

174. At all material times, the subject helmet was being used for the purpose for which it was intended.

175. Defendant is strictly liable for designing a defective and unreasonably dangerous product and for failing to warn which were the proximate and contributing causes of the painful and fatal injuries suffered by Decedent. A safer alternative design was economically and technologically feasible at the time the product left control of Defendant. As a direct and proximate result of the actions and failures of Defendant Schutt Sports, Derek's Estate is entitled to recover for his injuries, pain and suffering, as well as for the funeral expenses incurred by his Estate. All of the injuries, damages and losses described above were caused by the Defendant, without any contributory negligence on Derek's part.

WHEREFORE, Plaintiff Personal Representative demands judgment against Defendant Schutt Sports and its agents, jointly and severally, for compensatory and punitive damages in amounts in excess of Seventy-five Thousand Dollars (\$75,000.00), plus interest and costs.

Count VII – Strict Liability for Manufacturing Defect
(Survival Action v. Schutt Sports)

176. Plaintiff Personal Representative incorporates as if fully stated herein the allegations set forth in Paragraphs 1 through 129, and further alleges as follows:

177. At the time the subject helmet was designed, manufactured, sold and distributed by Defendant, the subject helmet was defective in its manufacturing, unreasonably dangerous, and unsafe for its intended purpose because it did not provide adequate protection against the foreseeable risk of brain injury.

178. Defendant's failure to design the subject helmet to design and manufacturing specifications result in, among other things, the following:

- i. Failing to manufacture the subject helmet with a safe means of attenuating and absorbing the foreseeable forces of impact in order to minimize and/or reduce the forces and energy directed to Decedent's head;
- ii. Failing to manufacture the subject helmet with a shock attenuation system which was not safely configured;
- iii. Failing to properly and adequately test the helmet model;
- iv. Failing to warn Decedent that the subject helmet would not protect against second-impact syndrome, and any such warning that may have been made was rendered ineffective by the representations made by and through Defendant's agent; and

v. Other acts and failures that may be discovered during the course of this case.

179. The manufacturing defect was a proximate and contributing cause of the injuries suffered by Decedent.

180. Defendant is strictly liable for manufacturing and placing in the stream of commerce a defective and unreasonably dangerous product which was a proximate and contributing cause of Decedent's injuries. A safe alternative design was economically and technologically feasible at the time the product left the control of Defendant. As a direct and proximate result of the actions and failures of Defendant Schutt Sports, Derek's Estate is entitled to recover for his injuries and pain and suffering, as well as for the funeral expenses incurred by his Estate. All of the injuries, damages and losses described above were caused by the Defendant, without any contributory negligence on Derek's part.

WHEREFORE, Plaintiff Personal Representative demands judgment against Defendant Schutt Sports and its agents, jointly and severally, for compensatory and punitive damages in amounts in excess of Seventy-five Thousand Dollars (\$75,000.00), plus interest and costs.

Count VIII -- Strict Liability – Failure to Warn
(Survival Action v. Schutt Sports)

181. Plaintiff Personal Representative incorporates as if fully stated herein the allegations set forth in Paragraphs 1 through 129, and further alleges as follows:

182. At all material times, Defendant had a duty to use reasonable care in the manner in which it designed, manufactured, assembled, distributed, marketed, represented and sold the subject helmet so as to avoid misleading and/or creating a false sense of security for its users.

183. At all materials times, Defendant knew that no helmet could prevent head injuries, including second-impact syndrome, nor could it reduce the rotational forces that primarily cause concussions.

184. Defendant knew or should have known of the substantial dangers involved in the reasonably foreseeable use of the subject helmets.

185. Defendant failed to provide necessary and adequate safety and instructional materials and warnings of the risk of second-impact syndrome.

186. Any such warning and/or safety instructional material that may have been provided and/or attached to the subject helmet was nullified and rendered ineffective by contrary representations made by Schutt Sports by and through its agent.

187. Defendant knew that the substantial dangers were not readily recognizable to an ordinary consumer or user and that such person would use these products without inspection for defects.

188. Decedent neither knew, nor had reason to know the existence of the aforementioned defects, or increased risks of harm.

189. Decedent used the subject helmet in a reasonably foreseeable manner at all times.

190. Decedent's injuries were the legal and proximate result of the actions of Defendant who owed a duty to warn Decedent of the risks of substantial harm associated with the foreseeable use of Defendant's product.

191. Defendant's failure to warn caused Decedent's painful and severe injuries and death. As a direct and proximate result of Defendant Schutt Sports' failure to warn, Derek's Estate is entitled to recover for his injuries and pain and suffering, as well as for the funeral expenses incurred by his Estate. All of the injuries, damages and losses described above were caused by the Defendant, without any contributory negligence on Derek's part.

WHEREFORE, Plaintiff Personal Representative demands judgment against Defendant Schutt Sports and its agent, jointly and severally, for compensatory and punitive damages in amounts in excess of Seventy-five Thousand Dollars (\$75,000.00), plus interest and costs.

Count IX – Fraudulent Misrepresentation
(Survival Action v. Schutt Sports)

192. Plaintiff Personal Representative incorporates as if fully stated herein the allegations set forth in Paragraphs 1 through 129, and further alleges as follows:

193. Defendant Schutt Sports, by and through its agent, made a false representation of a material fact when it expressed to Decedent and others that the subject helmet's "new technology can prevent head injuries."

194. Defendant Schutt Sports, by and through its agent, knew of the falsity and/or made it with such reckless indifference to the truth that it would be reasonable to charge Defendant with knowledge of its falsity.

195. Defendant Schutt Sports, by and through its agent, intended that Decedent would act in reliance on such statements.

196. Decedent, and others, did justifiably rely on the representations of Defendant Schutt Sports, which were made by and through its agent.

197. As a result of that reliance, Decedent suffered severe and painful injuries and death. As a direct and proximate result of the fraudulent misrepresentation of Defendant Schutt Sports, Derek's Estate is entitled to recover for his injuries and pain and suffering, as well as for the funeral expenses incurred by his Estate. All of the injuries, damages and losses described above were caused by the Defendant, without any contributory negligence on Derek's part.

WHEREFORE, Plaintiff Personal Representative demands judgment against Defendant Schutt Sports and its agent, jointly and severally, for compensatory and punitive damages in amounts in excess of Seventy-five Thousand Dollars (\$75,000.00), plus interest and costs.

ACTIONS AGAINST THE NCAA

Count X - Negligence
(Survival Action v. the NCAA)

198. Plaintiff Personal Representative incorporates as if fully stated herein the allegations set forth in Paragraphs 1 through 129, and further alleges as follows:

199. Since its inception and at all relevant times herein, the NCAA assumed a duty to protect student athletes and Decedent from brain injuries. This duty has been repeated by the NCAA on numerous occasions, including to Decedent, Congress and the members of the public. The NCAA reaffirmed its duty to protect Decedent and student athletes from head injuries when it undertook a duty to implement concussion guidelines in 2010.

200. Decedent relied on the NCAA's superior knowledge and expertise, as well as the NCAA's representations that it was looking out for his health and safety.

201. The NCAA acted carelessly and negligently in its positions as the regulatory body for college teams, including Frostburg State University, and Decedent. The NCAA knew or should have known that its actions and/or inactions in light of the rate of concussive and sub-concussive injuries made known to the NCAA would cause harm to Decedent.

202. The NCAA was careless and negligent by breaching the duty of care it assumed for the benefit of Decedent, both generally and in the following particular respects:

- i. Failing to implement hit limits during practices;
- ii. Failing to limit full-contact practices;
- iii. Failing to ban two-a-day practices;

- iv. Failing to ban certain drills, including the Drill, the Machine-Gun Drill, the Oklahoma Drill, and other similarly dangerous drills;
- v. Failing to enforce the NCAA Constitution, By-laws and the Handbook;
- vi. Failing to ensure that the coaches, athletic trainers and graduate assistants were educated about the signs, symptoms and risks of concussions and second-impact syndrome;
- vii. Failing to educate student-athletes about the fatal risks of second-impact syndrome;
- viii. Failing to enforce the Plan;
- ix. Failing to investigate the events surrounding Decedent's death;
- x. Failing to provide Decedent and his teammates with a safe environment;
- xi. Failing to protect and enhance the physical and educational well-being of Decedent and other student athletes;
- xii. Failing to maintain institutional control over Frostburg, the coaches, athletic trainers, and the athletic director;
- xiii. Failing to levy violations against Frostburg, the coaches, athletic trainers and the athletic director;
- xiv. Other acts of negligence or carelessness that may materialize during the pendency of this action

203. As a direct and proximate result of the foregoing, the Decedent suffered severe and painful injuries and death. As a direct and proximate result of the negligent acts and failures of Defendant NCAA, Derek's Estate is entitled to recover for his injuries and pain and suffering, as well as for the funeral expenses incurred by his Estate. All of the injuries, damages and losses

described above were caused by the Defendant, without any contributory negligence on Derek's part.

WHEREFORE, Plaintiff Personal Representative demands judgment against Defendant NCAA, jointly and severally, for compensatory and punitive damages in amounts in excess of Seventy-five Thousand Dollars (\$75,000.00), plus interest and costs.

COUNT XI -- INTENTIONAL INFILCTION OF EMOTIONAL DISTRESS
(Survival Action v. All Defendants)

204. Plaintiff Personal Representative incorporates as if fully stated herein the allegations set forth in Paragraphs 1 through 129, and further alleges as follows:

205. Defendants conduct as alleged in paragraphs 1 through 129 above was intentional and/or reckless.

206. Defendants conduct as alleged in paragraphs 1 through 129 was extreme and outrageous.

207. The Defendants' wrongful conduct as alleged in paragraphs 1 through 129 caused Derek to suffer severe bodily injuries, including, but not only, injuries to his entire body, nervous system and severe pain, suffering, and unbearable mental anguish, all of which injuries proved to be fatal. As a direct and proximate result of Defendants' wrongful conduct, Derek's Estate is entitled to recover for his injuries and pain and suffering, as well as for the funeral expenses incurred by his Estate. All of the injuries, damages and losses described above were caused by the Defendants, and each of them, without any contributory negligence on Derek's part.

WHEREFORE, Plaintiff Personal Representative demands judgment against all Defendants and their agents, jointly and severally, for compensatory and punitive damages in amounts in excess of Seventy-five Thousand Dollars (\$75,000.00), plus interest and costs.

COUNT XII- Gross Negligence
(Wrongful Death Action v. Defendants Schumacher, Rogish and Sweitzer)

208. Plaintiffs Kristen L. Sheely, Kenneth B. Sheely and Keyton S. Sheely, as Derek's surviving parents and sister, incorporate as if fully stated herein the allegations set forth in Paragraphs 1 through 129, and further allege as follows:

209. Plaintiffs, as primary beneficiaries of the Decedent, sue the Defendants under Md. Code Ann., Cts. And Jud. Proc. Art. 3-901 et seq.

210. This Complaint is timely filed within three years of Decedent's death pursuant to 3-904(g) of the Courts and Judicial Proceedings Article of the Annotated Code of Maryland.

211. Decedent died as a direct and proximate result of the acts and omissions of each Defendant as set forth herein and as may subsequently be discovered.

212. As a direct and proximate result of the acts or omissions as set forth in paragraphs 1 through 71 above, by intent, malice, recklessness, gross negligence and/or negligence of each Defendant in causing Derek's death, Plaintiffs have sustained and will continue to suffer separate and distinct pecuniary loss, mental anguish, emotional pain and suffering, loss of society, loss of companionship, loss of comfort, loss of protection, loss of filial care, loss of attention, loss of advice, loss of counsel, loss of training, loss of guidance, loss of education, loss of services and support which Derek could have and would have afforded and rendered had he continued to live, all without any negligence on the part of Decedent thereunto contributing. The Plaintiffs have endured and they will continue to endure an unbearable amount of emotional pain each time they walk past Derek's empty bedroom, touch his clothing or a photograph or paper which relates to Derek, watch a football game, see a commercial produced by the NCAA, see the NCAA's insignia, see the number "40", among multiple other pain-staking moments.

WHEREFORE, Plaintiffs demand judgment against the Defendants, jointly and severally, for compensatory and punitive damages in amounts in excess of Seventy-five Thousand Dollars (\$75,000.00), to be apportioned pursuant to Maryland Rule 15-1001 and 3-904(c) of the Courts and Judicial Proceedings Article of the Annotated Code of Maryland, plus interests and costs.

**Count XIII – Professional Gross Negligence in the Practice of Athletic Training
(Wrongful Death Action v. Defendant Sweitzer)**

213. Plaintiffs Kristen L. Sheely, Kenneth B. Sheely and Keyton S. Sheely, as Derek's surviving parents and sister, incorporate as if fully stated herein the allegations set forth in Paragraphs 1 through 129, and further allege as follows:

214. Upon information and belief, Defendant Sweitzer is a "licensed athletic trainer" within the meaning of the Maryland Athletic Trainers Act (MATA). Md. Code Ann., Health Occ. § 14-5D-01.

215. The MATA requires licensed athletic trainers to be professionally competent, lest they will have their license revoked.

216. Defendant Sweitzer undertook a duty to provide athletic training and professional services to Decedent. Defendant Sweitzer was also responsible for supervising the care that was provided to Decedent.

217. In performing such professional services, Defendant Sweitzer owed a duty to use such professional skill, prudence and diligence as other members of the Athletic Training profession commonly possess and exercise.

218. Defendant Sweitzer failed to exercise reasonable care in evaluating, monitoring, detecting and treating Decedent's injuries.

219. Defendant Sweitzer failed to exercise reasonable care in making return-to-play determinations for Decedent.

220. The failure of the Defendant Sweitzer to exercise such care increased the risk of harm suffered by Decedent, including the unknown risk of death triggered by second-impact syndrome.

221. As a student-athlete, Decedent relied upon the undertaking of the Defendant Sweitzer to provide athletic-training services, including testing, evaluating, and monitoring of concussive and sub-concussive injuries, as well as return-to-play decisions, testing and determinations.

222. The conduct of Defendant Sweitzer was in violation of the MATA.

223. Decedent's reliance on the Defendant Sweitzer, and his intentional failure to perform a manifest duty in reckless disregard of the consequences was a direct and proximate cause of Decedent's death and the injuries and damages suffered by Plaintiffs, including but not limited to the pain, losses and damages described in paragraph 212 above.

WHEREFORE Plaintiffs demand judgment against Defendant Sweitzer for compensatory and punitive damages in amounts in excess of Seventy-five Thousand Dollars (\$75,000.00), to be apportioned pursuant to Maryland Rule 15-1001 and § 3-904(c) of the Courts and Judicial Proceedings Article of the Annotated Code of Maryland, plus interest and costs.

ACTIONS AGAINST SCHUTT SPORTS

Count XIV – Negligent Misrepresentation
(Wrongful Death Action v. Schutt Sports)

224. Plaintiffs Kristen L. Sheely, Kenneth B. Sheely and Keyton S. Sheely, as Derek's surviving parents and sister, incorporate as if fully stated herein the allegations set forth in Paragraphs 1 through 129, and further allege as follows:

225. At all material times, Defendant Schutt Sports and its agents had a duty to use reasonable care in the manner in which it designed, manufactured, assembled, distributed, marketed, represented and sold the subject helmet.

226. Defendant and its agents, owing the Decedent said duty of care, negligently misrepresented a material fact, as described in Paragraph 31 above. Defendant's agent, while acting in the course and scope of employment, proclaimed that Defendant's "new technology can prevent head injuries."

227. The Defendant and its agents intended that Decedent would act in reliance upon said misrepresentation.

228. The Defendant and its agents knew the Decedent probably would rely on the misrepresentation, which were material and factually false and caused damages to Decedent and Plaintiffs.

229. The Decedent justifiably acted in reliance on the misrepresentation.

230. The Decedent and Plaintiffs suffered damages as a direct and proximate result of the reliance on the Defendant's misrepresentation, including but not limited to the pain, losses and damages described in paragraph 212 above.

WHEREFORE, Plaintiffs demand judgment against Defendant Schutt Sports and its agents, jointly and severally, for compensatory and punitive damages in amounts in excess of Seventy-five Thousand Dollars (\$75,000.00), to be apportioned pursuant to Maryland Rule 15-1001 and § 3-904(c) of the Courts and Judicial Proceedings Article of the Annotated Code of Maryland, plus interest and costs.

Count XV – Negligent Hiring and/or Retention
(Wrongful Death Action v. Schutt Sports)

231. Plaintiffs Kristen L. Sheely, Kenneth B. Sheely and Keyton S. Sheely, as Derek's surviving parents and sister, incorporate as if fully stated herein the allegations set forth in Paragraphs 1 through 129 and further allege as follows:

232. Defendant Schutt Sports employed John Doe as its agents, and upon information and belief, as a salesperson and/or helmet fitter.

233. Defendant had a duty not to employ any person who poses an unreasonable risk to other persons who would foreseeably come into contact with that employee.

234. It was foreseeable that said employee would come into contact with Decedent, and other persons, when Defendant directed employee to act as a salesperson and/or perform helmet fitting for Frostburg.

235. Defendant's employee was incompetent in the marketing, fitting, sizing and/or instructing on the proper use, and limitations, of the subject helmet, thereby creating an unreasonable risk to Decedent and others.

236. Defendant's employee improperly fitted Decedent's helmet and falsely represented that said helmet could prevent head injuries. This incompetence posed an unreasonable threat to members of the public as would foreseeably come into contact with the employee, including Decedent and his teammates.

237. Defendant had actual or constructive knowledge of employee's incompetence.

238. Defendant's employee's acts, omissions and misrepresentations caused Decedent's death and Plaintiffs' damages.

239. Defendant's negligence in hiring and/or retaining said employee was the direct and proximate cause of Decedent's death and Plaintiffs' damages, including but not limited to the pain, losses and damages described in paragraph 212 above.

WHEREFORE, Plaintiffs demand judgment against Defendant Schutt Sports and its agents, jointly and severally, for compensatory and punitive damages in amounts in excess of Seventy-five Thousand Dollars (\$75,000.00), to be apportioned pursuant to Maryland Rule 15-1001 and § 3-904(c) of the Courts and Judicial Proceedings Article of the Annotated Code of Maryland, plus interest and costs.

Count XVI – Violation of the Maryland Consumer Protection Act
(Wrongful Death Action v. Schutt Sports)

240. Plaintiffs Kristen L. Sheely, Kenneth B. Sheely and Keyton S. Sheely, as Derek's surviving parents and sister, incorporate as if fully stated herein the allegations set forth in Paragraphs 1 through 129, and further allege as follows:

241. The Maryland Consumer Protection Act (MCPA) protects the "actual or prospective purchaser, lessee or *recipient of consumer goods....*" Decedent was a "recipient of consumer goods."

242. Defendant Schutt Sports, by and through its agents, violated the MCPA in the following ways:

- i. By making false or misleading oral representations which had the capacity, tendency, or effect of deceiving or misleading Decedent;
- ii. By representing that the consumer good (i.e. subject helmet) had a characteristic, use and benefit which it did not have;
- iii. By representing that the consumer good (i.e. subject helmet) had a particular standard, quality, grade, style, which it did not have; and

iv. By failing to state a material fact (i.e. that the subject helmet CANNOT prevent head injuries, including concussion and second-impact syndrome) which said failure deceived Decedent.

243. The aforesaid unfair and deceptive trade practices by Defendant Schutt Sports, by and through its agent, induced Decedent's reliance to use the subject helmet, and convinced Decedent that the subject helmet could in fact prevent head injuries.

244. Decedent's reliance upon Defendant Schutt Sports' unfair and deceptive trade practices directly and proximately caused Decedent's death and Plaintiffs' damages, including but not limited to the pain, losses and damages described in paragraph 212 above.

WHEREFORE, Plaintiffs demand judgment against Defendant Schutt Sports and its agents, jointly and severally, for compensatory and punitive damages in amounts in excess of Seventy-five Thousand Dollars (\$75,000.00), to be apportioned pursuant to Maryland Rule 15-1001 and § 3-904(c) of the Courts and Judicial Proceedings Article of the Annotated Code of Maryland, plus reasonable attorneys' fees, interest and costs.

Count XVII – Strict Liability for Design Defect
(Wrongful Death Action v. Schutt Sports)

245. Plaintiffs Kristen L. Sheely, Kenneth B. Sheely and Keyton S. Sheely, as Derek's surviving parents and sister, incorporate as if fully stated herein the allegations set forth in Paragraphs 1 through 129, and further allege as follows:

246. At the time the subject helmet was designed, manufactured, sold and distributed by Defendant, the subject helmet was defective in design, unreasonably dangerous, and unsafe for its intended purpose because it did not provide adequate protection against the foreseeable risk of brain injury. The design defect includes, but is not limited to the following:

- i. Failing to design the subject helmet with a safe means of attenuating and absorbing the foreseeable forces of impact in order to minimize and/or reduce the forces and energy directed to Decedent's head;
- ii. Failing to design the subject helmet with a shock attenuation system which was not safely configured;
- iii. Failing to properly and adequately test the helmet model;
- iv. Failing to warn Decedent that the subject helmet would not protect against second-impact syndrome, and any such warning that may have been made was rendered ineffective by the representations made by and through Defendant's agent; and
- v. Other acts that may be discovered during the course of this case.

247. The defective design and unreasonably dangerous condition were a proximate and contributing cause of the injuries suffered by Decedent.

248. At all material times, the subject helmet was being used for the purpose for which it was intended.

249. Defendant is strictly liable for designing a defective and unreasonably dangerous product and for failing to warn which were the proximate and contributing causes of the injuries suffered by Decedent. A safer alternative design was economically and technologically feasible at the time the product left control of Defendant. As a result of its acts and failures, Defendant Schutt Sports directly and proximately caused Decedent's death and Plaintiffs' damages, including but not limited to the pain, losses and damages described in paragraph 212 above.

WHEREFORE, Plaintiffs demand judgment against Defendant Schutt Sports and its agents, jointly and severally, for compensatory and punitive damages in amounts in excess of

Seventy-five Thousand Dollars (\$75,000.00), to be apportioned pursuant to Maryland Rule 15-1001 and § 3-904(c) of the Courts and Judicial Proceedings Article of the Annotated Code of Maryland, plus interest and costs.

Count XVIII – Strict Liability for Manufacturing Defect
(Wrongful Death Action v. Schutt Sports)

250. Plaintiffs Kristen L. Sheely, Kenneth B. Sheely and Keyton S. Sheely, as Derek's surviving parents and sister, incorporate as if fully stated herein the allegations set forth in Paragraphs 1 through 129, and further allege as follows:

251. At the time the subject helmet was designed, manufactured, sold and distributed by Defendant, the subject helmet was defective in its manufacturing, unreasonably dangerous, and unsafe for its intended purpose because it did not provide adequate protection against the foreseeable risk of brain injury.

252. Defendant's failure to design the subject helmet to design and manufacturing specifications result in, among other things, the following:

- i. Failing to manufacture the subject helmet with a safe means of attenuating and absorbing the foreseeable forces of impact in order to minimize and/or reduce the forces and energy directed to Decedent's head;
- ii. Failing to manufacture the subject helmet with a shock attenuation system which was not safely configured;
- iii. Failing to properly and adequately test the helmet model;
- iv. Failing to warn Decedent that the subject helmet would not protect against second-impact syndrome, and any such warning that may have been made was rendered ineffective by the representations made by and through Defendant's agent; and

v. Other acts and failures that may be discovered during the course of this case.

253. The manufacturing defect was a proximate and contributing cause of the injuries suffered by Decedent.

254. Defendant is strictly liable for manufacturing and placing in the stream of commerce a defective and unreasonably dangerous product which was a proximate and contributing cause of Decedent's injuries. A safe alternative design was economically and technologically feasible at the time the product left the control of Defendant. As a result of its acts and failures, Defendant Schutt Sports directly and proximately caused Decedent's death and Plaintiffs' damages, including but not limited to the pain, losses and damages described in paragraph 212 above.

WHEREFORE, Plaintiffs demand judgment against Defendant Schutt Sports and its agents, jointly and severally, for compensatory and punitive damages in amounts in excess of Seventy-five Thousand Dollars (\$75,000.00), to be apportioned pursuant to Maryland Rule 15-1001 and § 3-904(c) of the Courts and Judicial Proceedings Article of the Annotated Code of Maryland, plus interest and costs.

Count XIX-- Strict Liability – Failure to Warn
(Wrongful Death Action v. Schutt Sports)

255. Plaintiffs Kristen L. Sheely, Kenneth B. Sheely and Keyton S. Sheely, as Derek's surviving parents and sister, incorporate as if fully stated herein the allegations set forth in Paragraphs 1 through 129, and further allege as follows:

256. At all material times, Defendant had a duty to use reasonable care in the manner in which it designed, manufactured, assembled, distributed, marketed, represented and sold the subject helmet so as to avoid misleading and/or creating a false sense of security for its users.

257. At all materials times, Defendant knew that no helmet could prevent head injuries, including second-impact syndrome, nor could it reduce the rotational forces that primarily cause concussions.

258. Defendant knew or should have known of the substantial dangers involved in the reasonably foreseeable use of the subject helmets.

259. Defendant failed to provide necessary and adequate safety and instructional materials and warnings of the risk of second-impact syndrome.

260. Any such warning and/or safety instructional material that may have been provided and/or attached to the subject helmet was nullified and rendered ineffective by contrary representations made by Schutt Sports by and through its agent.

261. Defendant knew that the substantial dangers were not readily recognizable to an ordinary consumer or user and that such person would use these products without inspection for defects.

262. Decedent neither knew, nor had reason to know the existence of the aforementioned defects, or increased risks of harm.

263. Decedent used the subject helmet in a reasonably foreseeable manner at all times.

264. Decedent's injuries were the legal and proximate result of the actions of Defendant who owed a duty to warn Decedent of the risks of substantial harm associated with the foreseeable use of Defendant's product.

265. Defendant's failure to warn caused Decedent's injuries and death. Furthermore, Defendant Schutt Sports directly and proximately caused Plaintiffs' damages, including but not limited to the pain, losses and damages described in paragraph 212 above.

WHEREFORE, Plaintiffs demand judgment against Defendant Schutt Sports and its agents, jointly and severally, for compensatory and punitive damages in amounts in excess of Seventy-five Thousand Dollars (\$75,000.00), to be apportioned pursuant to Maryland Rule 15-1001 and § 3-904(c) of the Courts and Judicial Proceedings Article of the Annotated Code of Maryland, plus interest and costs.

Count XX – Fraudulent Misrepresentation
(Wrongful Death Action v. Schutt Sports)

266. Plaintiffs Kristen L. Sheely, Kenneth B. Sheely and Keyton S. Sheely, as Derek's surviving parents and sister, incorporate as if fully stated herein the allegations set forth in Paragraphs 1 through 129, and further allege as follows:

267. Defendant Schutt Sports, by and through its agent, made a false representation of a material fact when it expressed to Decedent and others that the subject helmet's "new technology can prevent head injuries."

268. Defendant Schutt Sports, by and through its agent, knew of the falsity and/or made it with such reckless indifference to the truth that it would be reasonable to charge Defendant with knowledge of its falsity.

269. Defendant Schutt Sports, by and through its agent, intended that Decedent would act in reliance on such statements.

270. Decedent, and others, did justifiably rely on the representations of Defendant Schutt Sports, which were made by and through its agent.

271. Decedent suffered fatal injuries and was killed as a result of that reliance. Defendant Schutt Sports directly and proximately caused Decedent's death and Plaintiffs' damages, including but not limited to the pain, losses and damages described in paragraph 212 above.

WHEREFORE, Plaintiffs demand judgment against Defendant Schutt Sports and its agents, jointly and severally, for compensatory and punitive damages in amounts in excess of Seventy-five Thousand Dollars (\$75,000.00), to be apportioned pursuant to Maryland Rule 15-1001 and § 3-904(c) of the Courts and Judicial Proceedings Article of the Annotated Code of Maryland, plus interest and costs.

ACTIONS AGAINST THE NCAA

Count XXI - Negligence
(Wrongful Death Action v. the NCAA)

272. Plaintiffs Kristen L. Sheely, Kenneth B. Sheely and Keyton S. Sheely, as Derek's surviving parents and sister, incorporate as if fully stated herein the allegations set forth in Paragraphs 1 through 129 and further allege as follows:

273. Since its inception and at all relevant times herein, the NCAA assumed a duty to protect student athletes and Decedent from brain injuries. This duty has been repeated by the NCAA on numerous occasions, including to Decedent, Congress and the members of the public. The NCAA reaffirmed its duty to protect Decedent and student athletes from head injuries when it undertook a duty to implement concussion guidelines in 2010.

274. Decedent relied on the NCAA's superior knowledge and expertise, as well as the NCAA's representations that it was looking out for his health and safety.

275. The NCAA acted carelessly and negligently in its positions as the regulatory body for college teams, including Frostburg State University, and Decedent. The NCAA knew or should have known that its actions and/or inactions in light of the rate of concussive and sub-concussive injuries made known to the NCAA would cause harm to Decedent.

276. The NCAA was careless and negligent by breaching the duty of care it assumed for the benefit of Decedent, both generally and in the following particular respects:

- xv. Failing to implement hit limits during practices;
- xvi. Failing to limit full-contact practices;
- xvii. Failing to ban two-a-day practices;
- xviii. Failing to ban certain drills, including the Drill, the Machine-Gun Drill, the Oklahoma Drill, and other similarly dangerous drills;
- xix. Failing to enforce the NCAA Constitution, by-laws and the Handbook;
- xx. Failing to ensure that the coaches, athletic trainers and graduate assistants were educated about the signs, symptoms and risks of concussions and second-impact syndrome;
- xxi. Failing to educate student-athletes about the fatal risks of second-impact syndrome;
- xxii. Failing to enforce the Plan;
- xxiii. Failing to investigate the events surrounding Decedent's death;
- xxiv. Failing to provide Decedent and his teammates with a safe environment;
- xxv. Failing to protect and enhance the physical and educational well-being of Decedent and other student athletes;
- xxvi. Failing to maintain institutional control over Frostburg, the coaches, athletic trainers, and the athletic director;
- xxvii. Failing to levy violations against Frostburg, the coaches, athletic trainers and the athletic director;
- xxviii. Other acts of negligence or carelessness that may materialize during the pendency of this action

277. As a direct and proximate result of the foregoing, the Decedent died and Defendant NCAA caused the Plaintiffs to suffer the pain, losses and damages described in paragraph 212 above.

WHEREFORE, Plaintiffs demand judgment against Defendant NCAA and its agents, jointly and severally, for compensatory and punitive damages in amounts in excess of Seventy-five Thousand Dollars (\$75,000.00), to be apportioned pursuant to Maryland Rule 15-1001 and § 3-904(c) of the Courts and Judicial Proceedings Article of the Annotated Code of Maryland, plus interest and costs.

COUNT XXII – INTENTIONAL INFILCTION OF EMOTIONAL DISTRESS
(Wrongful Death Action v. All Defendants)

278. Plaintiffs Kristen L. Sheely, Kenneth B. Sheely and Keyton S. Sheely, as Derek's surviving parents and sister, incorporate as if fully stated herein the allegations set forth in Paragraphs 1 through 129 and further allege as follows:

279. Defendants conduct as alleged in paragraphs 1 through 129 above was intentional and/or reckless.

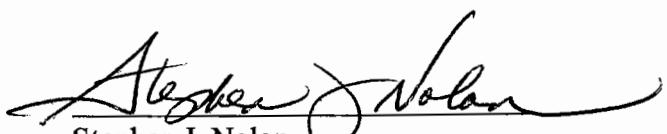
280. Defendants conduct as alleged in paragraphs 1 through 129 was extreme and outrageous.

281. The Defendants wrongful conduct as alleged in paragraphs 1 through 129 caused Plaintiffs' emotional distress, which is so acute that no reasonable person could be expected to endure it. The Plaintiffs' endure an unbearable amount of emotional pain each time they walk past Decedent's empty bedroom, touch his clothing or a photograph or paper which relates to Derek, watch a football game, see a commercial produced by the NCAA, see the NCAA's insignia, see the number "40", among multiple other pain-staking moments.

282. The Plaintiffs' emotional pain due to the loss of their only son and brother is severe. All of the damages and losses suffered by the Plaintiffs have been caused by the wrongful conduct of each of the Defendants.

WHEREFORE, Plaintiffs demand judgment against all Defendants and their agents, jointly and severally, for compensatory and punitive damages in amounts in excess of Seventy-five Thousand Dollars (\$75,000.00), to be apportioned pursuant to Maryland Rule 15-1001 and § 3-904(c) of the Courts and Judicial Proceedings Article of the Annotated Code of Maryland, plus interest and costs.

Filed: August 22, 2013



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³⁶ Motions to Admit in accordance with the Maryland Rules have been or will be filed for each attorney.

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DEMAND FOR JURY TRIAL

The Plaintiffs elect to have their case tried before a jury.



Stephen J. Nolan
Attorney for Plaintiffs

Circuit Court for Montgomery County

City or County

CIVIL - NON-DOMESTIC CASE INFORMATION REPORT**DIRECTIONS:**

Plaintiff: This Information Report must be completed and attached to the complaint filed with the Clerk of Court unless your case is exempted from the requirement by the Chief Judge of the Court of Appeals pursuant to Rule 2-111(a). A copy must be included for each defendant to be served.

Defendant: You must file an Information Report as required by Rule 2-323(h).

THIS INFORMATION REPORT CANNOT BE ACCEPTED AS AN ANSWER OR RESPONSE.

FORM FILED BY: <input checked="" type="checkbox"/> PLAINTIFF <input type="checkbox"/> DEFENDANT	CASE NUMBER _____ (Clerk to insert)
CASE NAME: Kristen L. Sheeley, et al Plaintiff	vs. The National Collegiate Athletic Association Defendant
JURY DEMAND: <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No	Anticipated length of trial: _____ hours or <u>10-12</u> days
RELATED CASE PENDING? <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No	If yes, Case #(s), if known: _____
Special Requirements? <input type="checkbox"/> Interpreter (Please attach Form CC-DC 41) <input type="checkbox"/> ADA accommodation (Please attach Form CC-DC 49)	

NATURE OF ACTION (CHECK ONE BOX)		DAMAGES/RELIEF	
TORTS	<input type="checkbox"/> Motor Tort	A. TORTS	
	<input type="checkbox"/> Premises Liability	<input type="checkbox"/> Workers' Comp.	<input type="checkbox"/> Medical Bills
	<input type="checkbox"/> Assault & Battery	<input type="checkbox"/> Wrongful Discharge	<input type="checkbox"/> \$ _____
	<input type="checkbox"/> Product Liability	<input type="checkbox"/> EEO	<input type="checkbox"/> Property Damages
	<input type="checkbox"/> Professional Malpractice	<input type="checkbox"/> Other _____	<input type="checkbox"/> \$ _____
	<input checked="" type="checkbox"/> Wrongful Death	B. CONTRACTS	
	<input type="checkbox"/> Business & Commercial	<input type="checkbox"/> Insurance	<input type="checkbox"/> Wage Loss
	<input type="checkbox"/> Libel & Slander	<input type="checkbox"/> Confessed Judgment	<input type="checkbox"/> \$ _____
	<input type="checkbox"/> False Arrest/Imprisonment	<input type="checkbox"/> Other _____	
	<input type="checkbox"/> Nuisance	C. NONMONETARY	
	<input type="checkbox"/> Toxic Torts	<input type="checkbox"/> REAL PROPERTY	<input type="checkbox"/> Declaratory Judgment
	<input type="checkbox"/> Fraud	<input type="checkbox"/> Judicial Sale	<input type="checkbox"/> Injunction
	<input type="checkbox"/> Malicious Prosecution	<input type="checkbox"/> Condemnation	<input type="checkbox"/> Other _____
	<input type="checkbox"/> Lead Paint	<input type="checkbox"/> Landlord Tenant	
	<input type="checkbox"/> Asbestos	<input type="checkbox"/> Other _____	
	<input type="checkbox"/> Other _____	D. OTHER	
		<input type="checkbox"/> Civil Rights	<input type="checkbox"/> ADA
		<input type="checkbox"/> Environmental	<input type="checkbox"/> Other _____
	<input type="checkbox"/> ADA		
	<input type="checkbox"/> Other _____		

ALTERNATIVE DISPUTE RESOLUTION INFORMATION

Is this case appropriate for referral to an ADR process under Md. Rule 17-101? (Check all that apply)

A. Mediation Yes No
B. Arbitration Yes No

C. Settlement Conference Yes No
D. Neutral Evaluation Yes No

TRACK REQUEST

With the exception of Baltimore County and Baltimore City, please fill in the estimated LENGTH OF TRIAL.

THIS CASE WILL THEN BE TRACKED ACCORDINGLY.

- 1/2 day of trial or less 3 days of trial time
 1 day of trial time More than 3 days of trial time
 2 days of trial time

PLEASE SEE PAGE TWO OF THIS FORM FOR INSTRUCTIONS PERTAINING TO THE BUSINESS AND TECHNOLOGY CASE MANAGEMENT PROGRAM AND COMPLEX SCIENCE AND/OR MEDICAL CASE MANAGEMENT PROGRAM (ASTAR), AS WELL AS ADDITIONAL INSTRUCTIONS IF YOU ARE FILING YOUR COMPLAINT IN BALTIMORE CITY, PRINCE GEORGE'S COUNTY, OR BALTIMORE COUNTY.

Date August 22, 2013 Signature *Stephen J. Nolan*

RECEIVED
AUG 22 2013

Clerk of the Circuit Court
Montgomery County, Md.

BUSINESS AND TECHNOLOGY CASE MANAGEMENT PROGRAM

For all jurisdictions, if Business and Technology track designation under Md. Rule 16-205 is requested, attach a duplicate copy of complaint and check one of the tracks below.

Expedited

Trial within 7 months
of Filing

Standard

Trial within 18 months
of Filing

EMERGENCY RELIEF REQUESTED _____

Signature _____

Date _____

COMPLEX SCIENCE AND/OR MEDICAL CASE MANAGEMENT PROGRAM (ASTAR)

FOR PURPOSES OF POSSIBLE SPECIAL ASSIGNMENT TO AN ASTAR RESOURCE JUDGE under Md. Rule 16-202.

Please check the applicable box below and attach a duplicate copy of your complaint.

Expedited - Trial within 7 months of Filing

Standard - Trial within 18 months of Filing

**IF YOU ARE FILING YOUR COMPLAINT IN BALTIMORE CITY, PRINCE GEORGE'S COUNTY, OR BALTIMORE
COUNTY PLEASE FILL OUT THE APPROPRIATE BOX BELOW.**

CIRCUIT COURT FOR BALTIMORE CITY (CHECK ONLY ONE)

- Expedited Trial 60 to 120 days from notice. Non-jury matters.
- Standard-Short Trial 210 days.
- Standard Trial 360 days.
- Lead Paint Fill in: Birth Date of youngest plaintiff _____.
- Asbestos Events and deadlines set by individual judge.
- Protracted Cases Complex cases designated by the Administrative Judge.

CIRCUIT COURT FOR PRINCE GEORGE'S COUNTY

To assist the Court in determining the appropriate Track for this case, check one of the boxes below. This information is not an admission and may not be used for any purpose other than Track Assignment.

- Liability is conceded.
- Liability is not conceded, but is not seriously in dispute.
- Liability is seriously in dispute.

CIRCUIT COURT FOR BALTIMORE COUNTY

- | | |
|---------------------------------------------------------------------|-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| <input type="checkbox"/> Expedited
(Trial Date-90 days) | Attachment Before Judgment, Declaratory Judgment (Simple), Administrative Appeals, District Court Appeals and Jury Trial Prayers, Guardianship, Injunction, Mandamus. |
| <input type="checkbox"/> Standard
(Trial Date-240 days) | Condemnation, Confessed Judgments (Vacated), Contract, Employment Related Cases, Fraud and Misrepresentation, International Tort, Motor Tort, Other Personal Injury, Workers' Compensation Cases. |
| <input type="checkbox"/> Extended Standard
(Trial Date-345 days) | Asbestos, Lender Liability, Professional Malpractice, Serious Motor Tort or Personal Injury Cases (medical expenses and wage loss of \$100,000, expert and out-of-state witnesses (parties), and trial of five or more days), State Insolvency. |
| <input type="checkbox"/> Complex
(Trial Date-450 days) | Class Actions, Designated Toxic Tort, Major Construction Contracts, Major Product Liabilities, Other Complex Cases. |