

STATE OF SOUTH CAROLINA
COUNTY OF ORANGEBURG

) IN THE COURT OF COMMON PLEAS
)
) FOR THE FIRST JUDICIAL CIRCUIT

ROBERT GEATHERS and
DEBRA GEATHERS,

) Civil Action No.: 2019-CP-32-0
)

Plaintiffs,

)

SUMMONS
(Jury Trial Demanded)

v.

)

NATIONAL COLLEGIATE ATHLETIC
ASSOCIATION,

)
)

Defendant.

)

TO THE DEFENDANT ABOVE-NAMED:

YOU ARE HEREBY SUMMONED and required to answer the complaint herein, a copy of which is herewith served upon you, and to serve a copy of your answer to this complaint upon the subscriber, at the address shown below, within thirty (30) days after service hereof, exclusive of the day of such service, and if you fail to answer the complaint, judgment by default will be rendered against you for the relief demanded in the complaint.

s/Timothy A. Burke
Timothy A. Burke, Esq. (SC Bar No. 102590)
David D. Langfitt, Esq.
Admission Pro Hac Vice Anticipated
Melanie J. Garner, Esq.
Admission Pro Hac Vice Anticipated
Caroline D. Bar, Esq.
Admission Pro Hac Vice Anticipated
LOCKS LAW FIRM
The Curtis Center
601 Walnut Street, Suite 720E
Philadelphia, PA 19106
(215) 893-0100

s/ John D. Kassel
Thiele McVey (SC Bar No. 16682)
tmcvey@kasselaw.com

John Kassel (SC Bar No. 3286)
jkassel@kassellaw.com
Jamie Rae Rutkoski (SC Bar 103270)
jrutkoski@kassellaw.com
KASSEL McVEY ATTORNEYS AT LAW
1330 Laurel Street
P O Box 1476
Columbia, SC 29201
(803) 256-4242
(803) 256-1952 (Facsimile)
Other email: sfanning@kassellaw.com

ATTORNEYS FOR THE PLAINTIFFS

April 18, 2019

Columbia, South Carolina.

STATE OF SOUTH CAROLINA)	IN THE COURT OF COMMON PLEAS
)	
COUNTY OF ORANGEBURG)	C/A No.
)	
ROBERT GEATHERS and)	
DEBRA GEATHERS, h/w,)	Jury Demand on all Issues
)	
Plaintiffs,)	
)	
vs.)	COMPLAINT
)	
NATIONAL COLLEGIATE ATHLETIC)	
ASSOCIATION)	
)	
)	
Defendant.)	

COMPLAINT

NOW COMES the Plaintiffs ROBERT GEATHERS, and DEBRA GEATHERS, citizens and residents of the State of South Carolina, through their counsel and sues the Defendant and allege as follows:

BACKGROUND FACTS

1. Robert Geathers and Debra Geathers, husband and wife, are citizens and residents of the State of South Carolina.
2. This is a latent brain disease case. It arises from the NCAA’s reckless disregard for the safety of amateur collegiate football players generally and specifically for the safety of Plaintiff Robert Geathers.
3. Plaintiff Robert Geathers was a defensive end for the South Carolina State football team between 1977 and 1981.
4. The NCAA failed to notify, educate, and protect the Plaintiff Robert Geathers (and others) regarding the latent and debilitating long-term dangers of concussions, concussion-related

head impacts, and sub-concussive head impacts that result every day from amateur athletic competition in the form of college football.

5. The latent, pathological and debilitating effects caused by concussive and sub-concussive head impacts have afflicted, and currently afflict, former college football players, including the Plaintiff Robert Geathers, who is permanently disabled and suffers substantial symptoms of neuro-cognitive injuries, including symptoms of traumatic encephalopathy. The plaintiff suffers from latent neurodegenerative brain disease caused or substantially caused by the repetitive sub-concussive and concussive head impacts Robert Geathers sustained while playing NCAA football.

6. The published medical and public health literature, as detailed later in this Complaint, contains studies of athletes dating back as far as 1928 and demonstrates a scientifically-observed link between repetitive blows to the head and short-term and long-term neuro-cognitive problems and disease.

7. The earliest studies focused on boxers, but at least by 1933 and through the 1940s, 1950s, 1960s, 1970s, and 1980s, a substantial body of medical and scientific evidence had been developed specifically relating to brain injuries in the sport of football.

8. The NCAA's power and influence places it in a unique position to understand the latent dangers of concussive and sub-concussive head impacts and to use that information for the benefit of collegiate athletes, particularly football players.

9. Defendant, therefore, has been in a unique position to be aware of the body of scientific evidence and its compelling conclusions that college football players are at greater risk for latent neurodegenerative brain disease. The Defendant also had and has the resources and

power to implement measures to prevent or minimize the risk to NCAA football players regarding head impacts in football and the risks of latent neurodegenerative brain disease.

10. Notwithstanding the body of scientific evidence and the resources and power possessed by the Defendant, the Defendant:

- a. ignored the risks of latent neurodegenerative brain disease to Robert Geathers and other NCAA football players;
- b. failed to educate Robert Geathers and other NCAA football players of the link between sub-concussive and concussive head impacts in amateur football and the latent neurological damage, illnesses, and decline that arise from those head impacts; and
- c. failed to implement or enforce any system at all that would reasonably have mitigated, prevented, or addressed the repetitive sub-concussive and concussive head impacts Robert Geathers sustained and the elevated risks to the Plaintiff of developing latent neurodegenerative brain disease.

11. As a direct result of the Defendant's tortious actions, Robert Geathers, who is in his early sixties, has been diagnosed with neurodegenerative brain disease caused by repetitive head impacts in football.

PARTIES

A. Plaintiffs Robert Geathers and Debra Geathers

12. Plaintiff Robert Geathers is an individual who resides in South Carolina.
13. Robert Geathers attended South Carolina State University, where he played varsity football.

14. At no time during his participation in NCAA football was Plaintiff Robert Geathers in a position to understand or appreciate the risks of concussive and sub-concussive head impacts in football and the latent long-term neurodegenerative brain disease they can and do cause. At no time while he played NCAA football did Plaintiff Robert Geathers ever have the knowledge or authority to impose and implement health-related measures, treatment, and protocols to prevent, minimize, and/or treat concussive and sub-concussive head impacts and the latent long-term neurodegenerative brain disease they can and do cause.

15. Robert Geathers was drafted by the Buffalo Bills in 1981 NFL, but spent his career on the injured reserve. Currently, Robert Geathers is not employable. He has been diagnosed with severe memory loss, cognitive decline, encephalopathy and dementia, all of which have been caused, aggravated, and/or magnified by the repetitive concussive blows and/or sub-concussive blows to the head he suffered while playing NCAA football.

16. The first time that Plaintiff Robert Geathers, by exercise of reasonable diligence, was diagnosed by a competent medical professional with brain damage caused by head injury in football was in January of 2017. Prior to this date, Plaintiff Robert Geathers did not have a reasonable basis to know or believe that the aforementioned harm was caused by the concealment, neglect and misconduct of the NCAA.

17. Since that diagnosis, Robert Geathers' condition has grown substantially worse, and he now requires supervision and care.

18. Plaintiff Debra Geathers is married to Robert Geathers.

B. Defendant

19. Defendant NCAA is an unincorporated association with its principal office located in Indianapolis, Indiana and with member institutions in every state. The NCAA is

the governing body of collegiate athletics and oversees twenty-three college sports and over 400,000 students who participate in intercollegiate athletics. More than 1,000 colleges are members of the NCAA and submit to NCAA authority on that basis, including but not limited to SC State University.

Factual Allegations Common to All Counts

20. Defendant NCAA generates hundreds of millions of dollars in annual profits by organizing, sponsoring, and staging amateur football games with enrolled student-athletes, almost all of whom are between 18 and 22 years of age.

21. Medical science has known for many decades that repetitive and violent jarring of the head or impact to the head can cause sub-concussive and/or concussive results that can and do create a heightened risk of latent neurodegenerative brain disease.

22. The American Association of Neurological Surgeons (the “AANS”) has defined a concussion as “a clinical syndrome characterized by an immediate and transient alteration in brain function, including an alteration of mental status and level of consciousness, resulting from mechanical force or trauma.” The AANS defines traumatic brain injury (“TBI”) as:

a blow or jolt to the head, or a penetrating head injury that disrupts the normal function of the brain. TBI can result when the head suddenly and violently hits an object, or when an object pierces the skull and enters brain tissue. Symptoms of a TBI can be mild, moderate or severe, depending on the extent of damage to the brain. Mild cases may result in a brief change in mental state or consciousness, while severe cases may result in extended periods of unconsciousness, coma or even death.

23. The Defendant has known (or should have known) for many years that sub-concussive and concussive brain injuries generally occur when the head either accelerates rapidly and then is stopped, or is rotated rapidly. The results frequently include, among other things,

confusion, disorientation, blurred vision, ringing in the ears, memory loss, nausea, and sometimes unconsciousness.

24. The Defendant has known (or should have known) for many years that medical evidence has shown that symptoms of sub-concussive and/or concussive brain injuries can appear hours or days after the injury, indicating that the injured party has not healed from the initial blow.

25. The Defendant has known (or should have known) for many years that once a person suffers sub-concussive and/or concussive brain injuries, that person is up to four times more likely to sustain a second injury. Additionally, the Defendant has known (or should have known) for decades that even a single sub-concussive or concussive blow may cause brain injury, and the injured person often requires substantial time to recover.

26. The Defendant has known (or should have known) for many years that neuropathology studies, brain imaging tests, and neuropsychological tests on boxers and former football players, including former NCAA players, have established that both boxers and football players who sustain repetitive head impacts often suffer latent brain injuries that result in any one or more of the following conditions: early-onset of Alzheimer's Disease, latent neurodegenerative brain disease that presents as dementia, depression, deficits in a wide variety of cognitive functioning, reduced processing speed, decline in attention and reasoning, loss of memory, sleeplessness, mood swings, personality changes, and the debilitating and latent disease known as Chronic Traumatic Encephalopathy (or "CTE"). The latter condition involves the slow build-up of the Tau protein within the brain tissue that causes diminished brain function, progressive cognitive decline, and many of the symptoms listed above. CTE is also associated with an increased risk of suicide.

27. Published peer-reviewed scientific studies have shown that concussive and sub-concussive head impacts while playing football, including amateur football, are linked to significant risk for permanent brain injury.

28. Plaintiff Robert Geathers was subjected to repetitive sub-concussive and concussive head impacts in practices and games for the profit and promotion of the Defendant NCAA, yet he was never aware of the latent short-term and long-term health risks associated with sub-concussive and concussive head impacts, was never educated by the Defendant regarding the risk, and was never furnished with appropriate health and safety protocols that would monitor, manage, and mitigate the risks associated with sub-concussive and concussive head impacts while the Plaintiff Robert Geathers played NCAA football.

29. Those repetitive sub-concussive and concussive head impacts in practices and games to which Plaintiff Robert Geathers was exposed placed him at an increased risk for developing latent neurodegenerative brain disease, including CTE.

30. At no time while the Plaintiff played NCAA football, or until he was diagnosed in January 2017, did Plaintiff know that he sustained diagnosable latent neurodegenerative brain disease from college football.

The Purported Mission to Protect Student Athletes

31. Formerly known as the Intercollegiate Athletic Association of the United States, the NCAA was formed in 1906 purportedly to protect college students from dangerous athletic practices.

32. 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 formed (IAAUS). In 1910, the IAAUS changed its name to the National Collegiate Athletic Association.

33. The NCAA's founding purpose is to protect student-athletes. As far back as 1909 at the annual convention of member institutions, 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.”

34. Since its inception, Defendant NCAA has held itself out as the supervisory force over the conduct at intercollegiate events and practices throughout the country and shouldered a legal duty to protect the health and safety of student-athletes, including Robert Geathers.

35. According to its website, Defendant NCAA was founded “*to protect* young people from the dangerous and exploitive athletic practices of the time.” This core purpose is stated on the website:

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, equipment standards, drug testing procedures and research into 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.

36. The NCAA’s purported commitment to safeguarding its student-athletes is expressed throughout the NCAA Constitution, which clearly defines the NCAA's purpose and

fundamental policies to include maintaining control over and responsibility for intercollegiate sports and student-athletes.

37. 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 association; . . .

NCAA Const., Art. 1, § 1.2(a)(b).

38. 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.

39. 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.)

40. The NCAA Constitution also 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).

41. To accomplish this purported purpose, Defendant NCAA promulgates and implements standard sport regulations and requirements, such as the NCAA Constitution, Operating Bylaws, and Administrative Bylaws. These NCAA documents provide detailed instructions on game and practice rules, player eligibility, scholarships, and player well-being and safety. NCAA member institutions are required to abide by the NCAA rules and requirements.

42. The NCAA publishes a health and safety guide termed the Sports Medicine Handbook (the “Handbook”). The Handbook, which is produced annually, includes the NCAA’s official policies and guidelines for the treatment and prevention of sports-related injuries, as well as return-to-play guidance, and recognizes that “student-athletes rightfully assume that those who sponsor intercollegiate athletics have taken reasonable precautions to minimize the risk of injury from athletics participation.”

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

44. The NCAA, therefore, holds itself out as both a proponent of and authority on the treatment and prevention of sports-related injuries upon which student-athletes and member

institutions can rely upon for guidance on player-safety issues. The NCAA has expressly and implicitly assumed a duty of care to the student-athletes its promised to protect.

45. The NCAA, however, long ago shirked its legal duty, and permitted a system of NCAA football that actively promoted college players to inflict head injuries on opponents and, therefore, themselves. For that and many other reasons set forth in this Complaint, the NCAA has lost sight of the founding principles and breached its duties to Robert Geathers.

The Defendant Knew or Should Have Known of the Risks to the Plaintiff

46. Both before and after the Plaintiff played NCAA football, the NCAA knew or should have known of the mounting literature and medical science regarding the latent neurodegenerative brain disease that can and does arise from concussive and sub-concussive impacts and the need for, among other thing, (a) full disclosure to its member football players, (b) pre-season baseline neuro-psychological testing, and (c) safe return to play guidelines.

47. Beginning with studies on the brain injuries suffered by boxers in the 1920s, medical science has long recognized the debilitating effects of concussions and found that repetitive head impacts can cause latent irreversible brain damage and an increased risk of long-term cognitive decline and disability.

48. In 1928, pathologist Harrison Martland described the clinical spectrum of abnormalities found in “almost 50 percent of fighters [boxers] . . . if they ke[pt] at the game long enough” (the “Martland study”). The article was published in the *Journal of the American Medical Association*. The Martland study was the first to link sub-concussive blows and “mild concussions” to neurodegenerative brain disease.

49. In 1933, the NCAA published a manual on health a safety for student-athletes and included within that manual a chapter on the dangers of concussions in football. Among other

things, the chapter shows the NCAA's knowledge and recognition of the dangers of head injury in football and that it leads to "punch drunk" syndrome (latent neurodegenerative brain disease) in boxers and football players.

50. In 1937, the American Football Coaches Association published a report warning that players who suffer a concussion should be removed from sports demanding personal contact.

51. In 1948, the New York State Legislature created the Medical Advisory Board of the New York Athletic Commission for the specific purpose of creating mandatory rules for professional boxing designed to prevent or minimize the health risks to boxers.

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

53. The recommendations were codified as rules of the New York State Athletic Commission.

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

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

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

57. A 1963 study by Drs. Mawdsley & Ferguson published in *Lancet* found that some boxers sustain chronic neurological damages as a result of repeated head injuries. This damage manifested in the form of dementia and impairment of motor function.

58. A 1967 study Drs. Hughes & Hendrix examined brain activity impacts from football by utilizing EEG to read brain activity in game conditions, including after head trauma.

59. Also in 1967 the American Medical Association Committee on Medical Aspects of Sports declared that coaches should not teach players to lead with their head.

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

61. In 1973, Drs. Corsellis, Bruton, & Freeman-Browne studied the physical neurological impact of boxing. This study outlined the neuropathological characteristics of “Dementia Pugilistica,” including loss of brain cells, cerebral atrophy, and neurofibrillary tangles.

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

63. By 1975, the number of head and neck injuries from football that resulted in permanent quadriplegias in Pennsylvania and New Jersey led to the creation of the National

Football Head and Neck Registry, which was sponsored by the National Athletic Trainers Association and the Sports Medicine Center at the University of Pennsylvania.

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

65. By 1976, the NCAA and the National Federation of State High School Associations passed a safety rule prohibiting initial contact with the head. On information and belief, the NCAA never implemented or enforced this rule both during and/or after Robert Geathers played college football.

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

- a. repetitive head trauma in contact sports, including boxing and football, has potential dangerous long-term effects on brain function;
- b. encephalopathy (dementia pugilistica) is caused in boxers by repeated sub-concussive and concussive blows to the head;
- c. acceleration and rapid deceleration of the head that results in brief loss of consciousness in primates also results in a tearing of the axons (brain cells) within the brainstem;

- d. with respect to mild head injury in athletes who play contact sports, there is a relationship between neurologic pathology and length of the athlete's career;
- e. immediate retrograde memory issues occur following concussions;
- f. mild head injury requires recovery time without risk of subjection to further injury;
- g. head trauma is linked to dementia;
- h. a football player who suffers a concussion requires significant rest before being subjected to further contact; and,
- i. minor head trauma can lead to neuropathological and neurophysiological alterations, including neuronal damage, reduced cerebral blood flow, altered brainstem evoked potentials and reduced speed of information processing.

67. In the early 1980s, the Department of Neurosurgery at the University of Virginia, an NCAA member institution, published studies on patients who sustained mild closed head injury and observed long-term damage in the form of cognitive impairment. The studies were published in neurological journals and treatises within the United States and received national attention.

68. In 1982, the University of Virginia and other institutions conducted studies on college football teams that showed that football players who suffered head concussive and sub-concussive head impacts in football games and practices suffered pathological short-term and long-term cognitive damage. With respect to concussions, the same studies showed that a person who sustained one concussion was more likely to sustain a second, particularly if that person was not properly treated and removed from activity so that the concussion symptoms were allowed to resolve.

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

70. In 1986, Dr. Robert Cantu of the American College of Sports Medicine published *Concussion Grading Guidelines*, which he later updated in 2001.

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

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

73. In 2004, a convention of neurological experts in Prague met with the aim of providing recommendations for the improvement of safety and health of athletes who suffer concussive injuries in ice hockey, rugby, football, and other sports based on the most up-to-date research. These experts recommended that a player never be returned to play while symptomatic, and coined the phrase, “when in doubt, sit them out.”

74. This echoed similar medical protocol established at a Vienna conference in 2001. These two conventions were attended by predominately American doctors who were experts and leaders in the neurological field.

75. The University of North Carolina’s Center for the Study of Retired Athletes published survey-based papers in 2005 through 2007 that found a strong correlation between

depression, dementia, and other cognitive impairment in professional football players and the number of concussions those players had received.

76. A 2006 publication stated that “[a]ll standard U.S. guidelines, such as those first set by the American Academy of Neurology and the Colorado Medical Society, agree that athletes who lose consciousness should never return to play in the same game.”

77. Although the Defendant NCAA knew for decades of the harmful and latent effects of concussive and sub-concussive head impacts on student football players, it ignored these facts and failed to institute any meaningful method of warning and/or protecting the student football players, most likely because the revenue from football was so great, and the business of college football so profitable.

78. On information and belief, during every decade referenced above, the Defendant NCAA had access to the foregoing information.

79. Information collected by the NCAA’s own injury surveillance data confirmed that high rates of concussions and head injuries, with concussions accounting for 7% of all football practice and game injuries and between 7% and 14% of all hockey injuries in the 2005-2006 season.

80. In 2003, two separate studies partially funded by the NCAA concluded the following: (1) student who are athletes required a full seven days to regain their pre-concussion abilities after sustaining a concussion; and (2) that NCAA football players with a history of concussions were at an increased risk of sustaining additional future concussions, and thus, should receive more information about this risk before deciding whether to continue playing football. One of the studies further recommended the use of standardized assessment tools to guide medical staff in evaluating and treating student athletes.

The NCAA Ignored Mounting Medical Evidence and Refused to Implement Any of the Recommended Guidelines

81. Despite the foregoing knowledge by the NCAA and the ongoing studies and expert recommendations, Defendant NCAA failed to implement any guidelines or rules to prevent repeated concussive and sub-concussive head impacts and failed to educate or warn players (including but not limited to the Plaintiff Robert Geathers) regarding the increased risk of latent neurodegenerative brain disease caused by concussive and sub-concussive head impacts in football, particularly under circumstances when the helmet is used as a weapon when tackling, blocking, or running with the football.

82. Despite the forgoing knowledge by the NCAA and the ongoing studies and expert recommendations, the NCAA never recommended (during the Plaintiff's time as an NCAA football player) return to play procedures or took any action to educate student football players on the risk of latent neurodegenerative brain disease caused by repeated head impacts in NCAA football.

83. Despite the foregoing research studies and expert recommendations, the NCAA never contacted Robert Geathers after he graduated to inform him that he had been exposed to an increased risk of latent long-term neurodegenerative brain disease caused by concussive and sub-concussive head impacts sustained while playing NCAA football.

84. Later, after the Plaintiff had graduated, the NCAA did not accept or adopt any of the internationally accepted guidelines regarding concussion management and return to play protocols, thereby endorsing and allowing the ongoing practices of its member institutions. Rather, the NCAA rejected the international recommendations and continued to promote individualized approaches, such that its college football players continued to inflict head injuries on themselves and others during games and practices for the sole purpose of winning games, obtaining fame, and making money for the NCAA.

85. It was not until April 2010 that the NCAA made changes to its concussion treatment protocols, this time passing legislation that required its member institutions to have a Concussion Management Plan (“CMP”) in place for all sports.

86. Under that new policy, schools were required to have a CMP on file “such that a student-athlete who exhibits signs, symptoms, or behaviors consistent with a concussion shall be removed from practice or competition and evaluated by an athletics healthcare provider with experience in the evaluation and management of concussions.”

87. The policy further states that students diagnosed with a concussion “shall not return to activity for the remainder of that day” and that medical clearance would be determined by the team physician.

88. Finally, the policy required students to sign a statement “in which they accept the responsibility for reporting their injuries and illnesses, including signs and symptoms of concussion” to medical staff and noted that students would be provided educational materials on concussions during the signing process.

89. The policy was too late for Robert Geathers.

90. Moreover, Defendant NCAA passed the responsibility for developing prevention and management procedures on to its member schools, and placed the burden of actively seeking medical attention on student football players, most of whom are less than 22 years old and are beholden to coaches for both a place on the team roster and the right to attend the school.

The Statute of Limitations is Tolled by Consent

91. On July 16, 2017, The Honorable John Z. Lee of the United States District Court in the Northern District of Illinois conditionally approved the Second Amended Settlement

Agreement in the matter of *In Re: National Collegiate Athletic Association Student-Athlete Concussion Injury Litigation*, Case No.: 1:13-cv-09116.

92. This Second Amended Settlement Agreement, drafted and entered into by consent by the NCAA, tolled the statute of limitations for college football players bringing claims against the NCAA for concussion related personal injuries until Final Approval by the Court in *In Re: National Collegiate Athletic Association Student-Athlete Concussion Injury Litigation*, Case No.: 1:13-cv-09116.

93. The specific language consented to by the NCAA in this Settlement Agreement reads, “The NCAA agrees that *all statutes of limitations on claims asserted in Arrington have been tolled since* those claims were first asserted and will remain tolled until the Court has ruled on the Motion for Final Approval filed by Class Counsel of this Settlement, at which point the tolling period on such claims will end except as otherwise specified in this Settlement Agreement.” *See In Re: National Collegiate Athletic Association Student-Athlete Concussion Injury Litigation*, Case No.: 1:13-cv-09116. Document # 266-1. (Emphasis Added).

94. As of the date of this filing, the Court in *In Re: National Collegiate Athletic Association Student-Athlete Concussion Injury Litigation* has not ruled on Class Counsel’s Motion for Final Approval. Thus, the statute of limitations on all personal injury claims asserted in and against the NCAA in *Arrington v. NCAA*, Case No.: 1:11-cv-06356, including those asserted in this Complaint, are currently tolled by the consent of the NCAA.

Jurisdiction and Venue

95. The NCAA, as a foreign registered corporation, is amenable to jurisdiction in the Courts of South Carolina by virtue of its respective contacts with the State of South Carolina and/or their respective conduct of substantial and/or systematic business in South Carolina which subjects

them to the jurisdiction of the South Carolina Courts pursuant to the South Carolina Long-Arm Statute.

96. The NCAA, as a foreign registered corporation, is amenable to specific jurisdiction in the Courts of South Carolina by virtue of its tortious acts and omissions which took place in South Carolina which resulted in injury to the Plaintiff by causing or contributing to his injuries both in South Carolina and outside of South Carolina.

97. As a membership organization, the NCAA is at home in every jurisdiction in which it has a member organization. Thus, as South Carolina State University is a member institution, the NCAA is at home in the State of South Carolina.

98. Venue is proper in this County in that the material facts occurred, in whole or part, in this County and one or more parties reside in this County, including the NCAA in the form of its member institution SC State, which Plaintiff Robert Geathers attended as a student and NCAA football player.

99. Material facts occurring in this county include but are not limited to the fact that Robert Geathers attended and played football games for SC State in this County, suffered head impacts during football games in this county, and NCAA member institution SC State is resident in this County.

FOR A FIRST CAUSE OF ACTION
(Negligence)

100. Plaintiff Robert Geathers incorporates by reference the allegations contained in the preceding paragraphs as though fully set forth herein.

101. From its inception and by virtue of its role as the governing body in college athletics, the NCAA has historically assumed a duty to protect the health and safety of all student football players at member institutions.

102. The NCAA also assumed a duty of care by voluntarily taking steps to protect and promote the health and safety of its players, including promulgating safety handbooks and regulations. That duty included an obligation to supervise, regulate, and monitor the rules of its governed sports, and provide appropriate and up-to-date guidance and regulations to minimize the risk of injury to NCAA student football players.

103. The duties of the Defendant included an obligation to supervise, regulate, and monitor the rules of the SC State football program and provide appropriate and up-to-date guidance and regulations to minimize the risk of latent neurodegenerative brain disease to SC State student football players.

104. Defendant NCAA had an additional duty to educate SC State, and the SC State student football players on the proper ways to evaluate, treat, and prevent concussive and sub-concussive injuries during football games and practices. The NCAA's duty further included (a) a duty to warn student football players of the dangers of sub-concussive and concussive head impacts, and (b) the risks to student football players of latent neurodegenerative brain disease caused by such impacts while they were students, but also after they played college football as additional medical information came to light.

105. Defendant NCAA had a duty not to conceal material information about these risks from Plaintiff Robert Geathers.

106. Defendant NCAA breached its duties to Robert Geathers by failing to implement, promulgate, or require appropriate and up-to-date guidelines regarding the evaluation and treatment of concussive and sub-concussive head impacts on the playing field, in the locker rooms, and during the weeks and months after Robert Geathers participated in games or practices where

he sustained or could have sustained concussive and sub-concussive head impacts. This failure includes, but is not limited to:

- (a) failing to implement, promulgate, or require up-to-date guidelines that demand that NCAA member institutions recognize, identify and monitor concussive and sub-concussive head impacts during football practices and games;
- (b) failing to inform student football players of the latent dangers of concussive and sub-concussive injuries;
- (c) failing to implement return to play regulations for student football players who sustained concussive and/or sub-concussive head impacts and/or are suspected of sustaining such head impacts;
- (d) failing to implement procedures to monitor the health of student football players who have sustained (or are suspected of sustaining) concussive and/or sub-concussive head impacts;
- (e) failing to inform the student football players' extended families of concussive and/or sub-concussive head impacts the student football players had sustained; and
- (f) failing to provide adequate notification, warning and treatment for latent neuro-cognitive and neuro-behavioral effects of concussive and sub-concussive head impacts, after the time Robert Geathers left SC State, an NCAA member institution, and no longer played NCAA football.

107. Defendant NCAA breached its duties to Robert Geathers by failing to disclose and/or failing to recognize and/or being willfully blind to: (a) material information regarding the latent long-term risks of neurodegenerative brain disease caused by repetitive head impacts in NCAA football the NCAA possessed or should have possessed; (b) the dangers of concussive and sub-concussive head impacts in NCAA football; and (c) the proper ways to evaluate, treat, and avoid concussive and sub-concussive trauma to student football players.

108. At all times, the Defendant NCAA had superior knowledge of material information regarding the effect of repeated concussive and sub-concussive head impacts in NCAA football. Because such information was not readily available to Robert Geathers, the Defendant NCAA knew or should have known that Robert Geathers would act and rely upon the guidance, expertise, and instruction of the Defendant NCAA on this crucial medical issue, while he attended college and thereafter.

109. Repetitive concussive and sub-concussive head impacts in NCAA football practices and games has a latent and pathological effect on the brain. Repetitive exposure to accelerations to the head causes deformation, twisting, shearing, and stretching of neuronal cells such that multiple forms of damage take place, including the release of small amounts of chemicals within the brain, such as Tau protein, which is a signature pathology of CTE, the same phenomenon as boxer's encephalopathy (or punch drunk syndrome) studied and reported by Harrison Martland in 1928.

110. Plaintiff Robert Geathers experienced repetitive sub-concussive and concussive head impacts during his college football career, none of which he recognized at the time. These sub-concussive and concussive head impacts significantly increased his risk of developing latent

neurodegenerative brain disease, including but not limited to CTE, Alzheimer's disease, and other similar cognitive-impairing conditions.

111. Absent the defendant's negligence and concealment, the risks of harm to the Plaintiff would have been materially lower, and Robert Geathers would not have sustained the latent neurodegenerative brain disease from which he currently suffers.

112. The repetitive head impacts Robert Geathers sustained while playing NCAA football resulted in latent neuro-cognitive and neuro-behavioral changes over time. Robert Geathers is permanently disabled based on the latent effects of head impacts in NCAA football. The latent injuries sustained by Robert Geathers developed over time and manifested after his career as an NCAA football player ended.

113. Robert Geathers' symptoms of latent neurodegenerative brain disease caused by repetitive head impacts in NCAA football were first noted and observed by competent medical professionals in January 2017, and his care and examination is ongoing.

114. As a direct and proximate result of the NCAA's negligence, Robert Geathers has incurred damages in the form of latent and permanent brain damage, emotional distress, pain and suffering, past and future medical, health care, and home care expenses, other out of pocket expenses, lost time, lost future earnings, and other damages that are ongoing. Robert Geathers will incur future damages caused by the NCAA's negligence.

115. As a result of its misconduct, the Defendant NCAA is liable to Plaintiff Robert Geathers for the full measure of damages allowed under applicable law.

FOR A SECOND CAUSE OF ACTION
(Fraudulent Concealment)

116. Plaintiff Robert Geathers incorporates by reference the allegations contained in the preceding paragraphs as though fully set forth herein.

117. Between the early 1970s and the 2000s, which includes the time period within which Robert Geathers played NCAA football, the NCAA knew that repetitive head impacts in NCAA football games and practices created an elevated risk of latent long-term neurodegenerative brain disease to college football players. That risk of harm was similar or identical to the risk of harm to boxers who receive repetitive impacts to the head during boxing practices and matches, and to professional football players, many of whom were forced to retire from professional football because of the latent effects of on-the-field sub-concussive and concussive head impacts.

118. The Defendant NCAA was aware of and understood the significance of the published medical literature which detailed the serious risk of short-term and long-term brain injury associated with repetitive traumatic impacts to the head to which NCAA student football players are exposed.

119. Defendant NCAA was willfully blind to and/or knowingly concealed from NCAA football players generally, and the Plaintiff specifically, the risks of latent brain disease from concussive head impacts in NCAA games and practices, including the risks associated with returning to physical activity too soon after sustaining a sub-concussive or concussive head impact.

120. Given the NCAA's superior and unique vantage point, Robert Geathers reasonably looked to the NCAA for guidance on sub-concussive and concussive head impacts, including the later-in-life latent consequences of the repetitive head impacts he sustained while he was an NCAA student football player.

121. As a direct and proximate result of the NCAA's knowing concealment and/or willful blindness, Plaintiff Robert Geathers has suffered and will continue to suffer substantial and ongoing latent neurodegenerative brain disease, emotional distress, pain and suffering, and economic and non-economic damages that are ongoing and continuing in nature.

122. As a result of the NCAA's and misconduct, the NCAA is liable to Plaintiff Robert Geathers for the full measure of damages allowed under applicable law.

FOR A THIRD CAUSE OF ACTION
(Constructive Fraud)

123. Plaintiff Robert Geathers incorporates by reference the allegations contained in the preceding paragraphs as though fully set forth herein.

124. Defendant NCAA had a duty to protect its student football players, which included, among other things, the duty to warn, disclose and/or otherwise speak to these students, including Plaintiff Robert Geathers, about the risk of harm and long-term latent health effects of repetitive head impacts while playing football.

125. This duty arose by virtue of the unique nature of the relationship between the Plaintiff and the NCAA which, among other things, regulated Robert Geathers' participation in the sport of NCAA football. As a result of these relationships, the NCAA was in a position to take unfair advantage of Plaintiff Robert Geathers.

126. As early as 1933, and certainly between the early 1970s and the early 2000s, which includes the time period within which Robert Geathers played NCAA football, the NCAA knew that repetitive head impacts in NCAA football games and full-contact practices created a substantial risk of latent brain disease to student football players that was similar or identical to the risk of latent brain disease to boxers who receive repetitive impacts to the head during boxing practices and matches, and professional football players.

127. The Defendant was aware of and understood the significance of the published medical literature described in the preceding paragraphs of this Complaint, which detailed the

serious risk of short-term and long-term latent neurodegenerative brain disease associated with repetitive impacts to the head to which NCAA student football players are and were exposed.

128. Despite this knowledge and awareness, Defendant NCAA concealed and/or otherwise withheld information regarding these risks from student football players, including the Plaintiff, leading the Plaintiff to believe that he was safe and that he would not suffer any latent neurodegenerative disease from playing NCAA football.

129. Defendant NCAA concealed and/or otherwise withheld from NCAA student football players the risks of concussive and sub-concussive impacts in NCAA games and practices, including the risks associated with returning to physical activity too soon after sustaining a sub-concussive or concussive event. Concealing and otherwise failing to disclose these risks to NCAA student football players had the same force and effect of Defendant NCAA misrepresenting facts to NCAA football players, including Plaintiff Robert Geathers.

130. Given the NCAA's superior and unique vantage point, Robert Geathers reasonably looked to and otherwise relied upon the NCAA for guidance on health and safety issues, such as disclosing to them and providing them with information, precautionary measures, and warnings about the elevated risks of latent brain disease repetitive head impacts in NCAA football creates.

131. As a direct and proximate result of Plaintiff Robert Geathers' reliance upon Defendant NCAA, Plaintiff has suffered and will continue to suffer substantial injuries, harm, emotional distress, pain and suffering, and economic and non-economic damages that are ongoing and continuing in nature.

132. As a direct and proximate result of the NCAA's concealment and/or withholding of facts and information, Plaintiff Robert Geathers has suffered and will continue to suffer

substantial injuries, harm, emotional distress, pain and suffering, and economic and non-economic damages that are ongoing and continuing in nature.

133. At the same time, the NCAA gained the unfair advantage of having NCAA football players, including Robert Geathers, continue to play football, resulting in profits, prestige and pecuniary gains to the NCAA at the expense of Robert Geathers and his long-term health.

134. As a result of the NCAA's misconduct, including the concealment of facts known to it, which it had a duty to disclose to NCAA student football players, including Plaintiff Robert Geathers, the NCAA is liable to Plaintiff Robert Geathers for the full measure of damages allowed under applicable law.

FOR A FOURTH CAUSE OF ACTION
(Punitive Damages)

135. Plaintiff Robert Geathers incorporates by reference the allegations contained in the preceding paragraphs as though fully set forth herein.

136. During the pertinent times, Defendant NCAA had actual knowledge of the long-term risk to NCAA student football players of latent neurodegenerative brain disease caused by sub-concussive and concussive head impacts during NCAA football games and practices.

137. Nevertheless, Defendant NCAA deliberately, intentionally and purposefully withheld such information from Plaintiff and those similarly situated, thus denying Plaintiff of the knowledge with which to take necessary safety precautions to avoid sub-concussive and concussive head impacts.

138. As early as 1933, and certainly between the early 1970s and the early 2000s, which includes the time period within which Robert Geathers played NCAA football, the NCAA knew that repetitive head impacts in football games and practices created an elevated risk of latent brain

disease to NCAA football players that was similar or identical to the risk of harm to boxers who receive repetitive impacts to the head during boxing practices and matches, and professional football players.

139. The Defendant NCAA was aware of and understood the significance of the published medical literature described in the preceding paragraphs of this Complaint, which detailed the serious risk of short-term and long-term latent brain disease associated with repetitive impacts to the head to which the Plaintiff was exposed.

140. Despite such knowledge and awareness, Defendant NCAA concealed and/or otherwise withheld information regarding those elevated risks from Plaintiff Robert Geathers, which lead the Plaintiff to believe that he was safe and that he would not suffer any latent long-term brain disease from playing college football.

141. Defendant NCAA concealed and/or otherwise withheld from NCAA student football players generally, and from the Plaintiff specifically, the risks of latent brain disease caused by concussive and sub-concussive head impacts in NCAA games and practices, including the risks associated with returning to physical activity too soon after sustaining a sub-concussive or concussive event.

142. Concealing and otherwise failing to disclose these risks to NCAA student football players, including Plaintiff Robert Geathers, had the same force and effect of Defendant NCAA affirmatively misrepresenting facts to Plaintiff Robert Geathers.

143. Given the NCAA's superior and unique vantage point, Robert Geathers reasonably looked to, and otherwise relied upon, the NCAA for guidance on health and safety issues, such as disclosing to them and providing them with information, precautionary measures, and warnings

about the latent later-in-life consequences of repetitive head impacts the Plaintiff sustained as an NCAA football player.

144. As a direct and proximate result of Plaintiff Robert Geathers' reliance upon Defendant NCAA, Plaintiff has suffered and will continue to suffer substantial injuries, harm, emotional distress, pain and suffering, and economic and non-economic damages that are ongoing and continuing in nature.

145. As a direct and proximate result of the NCAA's concealment and/or withholding facts and information, Plaintiff Robert Geathers has suffered and will continue to suffer substantial injuries, harm, emotional distress, pain and suffering, and economic and non-economic damages that are ongoing and continuing in nature.

146. With this knowledge, Defendant NCAA opted to put its profits over the health and safety of student football players, and similarly had the knowledge, intent and/or reasonable expectation that NCAA student football players would rely upon their representations and omissions with regard to health and safety.

147. The above referenced conduct of the Defendant NCAA was motivated by the financial interest the NCAA had and has in the continuing and uninterrupted performance of NCAA college football games for profit. In pursuit of these profits, the NCAA consciously disregarded the safety of NCAA student football players and the Plaintiff, and was, in fact, consciously willing to permit long-term latent brain damage to college football players, including Plaintiff, in exchange for ongoing profits.

148. The above referenced conduct was and is willful, malicious, outrageous, and in conscious disregard and indifference to the safety of NCAA student football players, including the Plaintiff.

149. Plaintiff therefore, for the sake of example and by way of punishing the Defendant NCAA, seeks punitive damages, according to proof.

150. Plaintiff and others around him relied upon the fraudulent representations, misrepresentations, and omissions made by the Defendant NCAA and did so to the Plaintiff's detriment causing him debilitating latent brain disease and life altering side effects.

151. The foregoing deliberate, intentional and purposeful acts of the Defendant was the direct and proximate cause of Plaintiff's injuries and damages hereinafter described, and the Plaintiff is therefore entitled to compensation and punitive damages.

FOR A FIFTH CAUSE OF ACTION
(LOSS OF CONSORTIUM)
(Plaintiff DEBRA GEATHERS v. NCAA)

152. Plaintiff Debra Geathers incorporates by reference the allegations contained in the preceding paragraphs as though fully set forth herein.

153. As a result of its misconduct, the Defendant NCAA is liable to Plaintiff Debra Geathers.

154. As a direct and proximate result of the intentional misconduct, carelessness, negligence, and recklessness, Plaintiff Robert Geathers has sustained the injuries as set forth above and will continue to incur injuries and damages as his life progresses.

155. As a result, Plaintiff Debra Geathers has been damaged as follows:

- a. She has been and will continue to be deprived of the services, society and companionship of her husband;
- b. She has been and will continue to be required to spend money for medical care and household care for the treatment of her husband; and
- c. She has been and will continue to be deprived of the earnings of her husband, but for the injuries he has sustained as a result of the conduct of the Defendant.

156. As a result of the NCAA's misconduct and the injuries sustained by Plaintiff Robert Geathers, Plaintiff Debra Geathers is entitled to damages, as alleged herein and allowed by law.

DAMAGES

157. As a result of the Defendant's aforementioned negligent conduct, the Plaintiff Robert Geathers suffered unrecognized concussive and sub-concussive head impacts in NCAA football that resulted over time in the Plaintiff's aforementioned latent brain disease, including but not limited to memory loss, headaches, and cognitive decline.

158. Plaintiff Robert Geathers further suffered great pain and mental anguish as a direct result of the aforesaid injuries.

159. Plaintiff's life span has been compromised, shortened and adversely affected as a result of the latent brain disease he has sustained.

160. As a result of the aforesaid illnesses, Plaintiff Robert Geathers is and will be forced to incur large medical expenses by way of doctor and drug bills in an effort to treat his illnesses as aforesaid, all to Plaintiff's damage, compensatory and punitive in amounts to be determined by the trier of fact.

161. Plaintiff Debra Geathers, as a spouse-plaintiff, has been and will continue to be deprived of the services, society and companionship of Robert Geathers, as well as great physical pain, suffering, mental anguish and distress caused by the acts and omissions of the Defendant NCAA as referenced in this Complaint.

PRAYER FOR RELIEF

WHEREFORE, the Plaintiffs Robert Geathers, and Debra Geathers pray to ask that this Court:

- A. Award the Plaintiffs actual and compensatory damages, in an amount to be determined at trial, for the wrongful, negligent, reckless and willful acts of the defendant;

- B. Award the Plaintiffs pre-judgment and post-judgment interest to the extent allowable by law;
- C. Award the Plaintiffs punitive damages to the extent allowable by law; and
- D. Award the Plaintiffs attorney fees and costs to the extent allowable by law; and
- F. Award the Plaintiffs such other and further relief as may be just and proper.

A JURY IS RESPECTFULLY DEMANDED TO TRY THESE ISSUES.

s/Timothy A. Burke

Timothy A. Burke, Esq. (SC Bar No. 102590)
David D. Langfitt, Esq.
Admission *Pro Hac Vice* Anticipated
Melanie J. Garner, Esq.
Admission *Pro Hac Vice* Anticipated
Caroline D. Bar, Esq.
Admission *Pro Hac Vice* Anticipated
LOCKS LAW FIRM
The Curtis Center
601 Walnut Street, Suite 720E
Philadelphia, PA 19106
(215) 893-0100

s/ John D. Kassel

Thiele McVey (SC Bar No. 16682)
tmcvey@kassellaw.com
John Kassel (SC Bar No. 3286)
jkassel@kassellaw.com
Jamie Rae Rutkoski (SC Bar 103270)
jrutkoski@kassellaw.com
KASSEL McVEY ATTORNEYS AT LAW
1330 Laurel Street
P O Box 1476
Columbia, SC 29201
(803) 256-4242
(803) 256-1952 (Facsimile)
Other email: sfanning@kassellaw.com

ATTORNEYS FOR THE PLAINTIFFS

April 18, 2019

Columbia, South Carolina.