

STATE OF INDIANA) IN THE ST. JOSEPH CIRCUIT COURT
) SS: 71C01-1709-CT-000404
COUNTY OF ST. JOSEPH) CAUSE NO. _____

DOUGLAS COLES RANDOLPH)
)
Plaintiff,)
)
vs.)
)
ABC HOSPITAL, UNIVERSITY OF NOTRE) JURY TRIAL DEMANDED
DAME, ABC HEALTH SERVICES, DR.)
DOE A, BRIAN KELLY, ROB HUNT, DR.)
DOE B, DR. DOE C, XYZ CLINIC #1, and)
XYZ CLINIC #2;)
)
Defendants.)
)

COMPLAINT

Plaintiff, DOUGLAS COLES RANDOLPH, brings forth this Complaint against Defendants, UNIVERSITY OF NOTRE DAME, ABC HEALTH SERVICES, BRIAN KELLY in his Official Capacity as Head Coach of the Notre Dame Fighting Irish football team, DR. DOE A in his Official Capacity as Team Doctor for the Notre Dame Fighting Irish football team, ROB HUNT in his Official Capacity as the Team Trainer for the Notre Dame Fighting Irish football team, for damages and injuries sustained as a result of the wrongful conduct of Defendants as set forth herein. As grounds therefore, Plaintiff states as follows:

PARTIES

1. Plaintiff, DOUGLAS COLES RANDOLPH, is presently a resident and citizen of Milwaukee, Wisconsin and was, at all times relevant to this Complaint a resident and citizen of South Bend, Indiana.

2. Defendant, ABC HOSPITAL, is and at all times relevant to this Complaint, was a Domestic Nonprofit Corporation with its principal place of business located in Parkway, Mishawaka, Indiana.

3. Defendant, UNIVERSITY OF NOTRE DAME, is, and at all times relevant to this Complaint, was a Domestic Nonprofit Corporation with its principal place of business located at 400 Main Building, Notre Dame, IN, 46556.

4. Defendant, ABC HEALTH SERVICES, is and at all times relevant to this Complaint, was a corporation and employed physicians and other personnel to provide medical care to its patients in St. Joseph County, Notre Dame, Indiana.

5. Defendant, DR. DOE A, is, and at all times relevant to this Complaint, was, the Team Doctor for the Notre Dame Fighting Irish football team with its principal place of business located in St. Joseph County, Notre Dame, Indiana.

6. Defendant, BRIAN KELLY, is, and at all times relevant to this Complaint, was the Head Coach of the Notre Dame Fighting Irish football team with its principal place of business located at 400 Main Building, Notre Dame, Indiana, 46556.

7. Defendant, ROB HUNT, is, and at all times relevant to this Complaint, was the Team Trainer for the Notre Dame Fighting Irish football team with its principal place of business located at 400 Main Building, Notre Dame, Indiana, 46556.

8. Defendant, DR. DOE B, is, and at all times relevant to this Complaint, and was the lead physician responsible for Plaintiff while under the care of Defendant ABC HOSPITAL and/or XYC CLINIC #1 on or about September, 2015.

9. Defendant, XYZ CLINIC #1, is and at all times relevant to this Complaint is a corporation and employed physicians, physician assistants, and other personnel to provide medical care to its patients in St. Joseph County, South Bend, Indiana.

10. Defendant, DR. DOE C, was at all times relevant to this Complaint, the lead physician responsible for Plaintiff while under the care of Defendant XYZ, CLINIC #2 on or about September, 2015.

11. Defendant, XYZ CLINIC #2, is, and at all times relevant to this Complaint, a corporation and employed physicians, physician assistants, and other personnel to provide medical care to its patients in St. Joseph County, South Bend, Indiana.

12. At all times relevant herein, Defendants were the agents of each other, and in doing the things alleged herein, each defendant was acting within the course and scope of its agency and was subject to and under the supervision of its Codefendants. Each of the Defendants, individually and collectively, owed a duty of care and disclosure to Plaintiff and each failed to comply with such duties.

13. Upon information and belief, at all times herein mentioned, the employees of all Defendants, their subsidiaries, affiliates, and other related entities, as well as the employees of the Defendants' subsidiaries, affiliates, and other related entities, were the agents, servants and employees of Defendants, and at all relevant times, were acting within the purpose and scope of said agency and employment. Whenever reference in this Complaint is made to any act or transaction of Defendants, such allegations shall be deemed to mean that the principals, officers, employees, agents, and/or representatives of the Defendants committed, knew of, performed, authorized, ratified and/or directed such act or transaction on behalf of Defendants while actively engaged in the scope of their duties.

14. Defendants are severally and separately liable to the Plaintiff.

JURISDICTION AND VENUE

15. This Court has jurisdiction over this matter as the Defendants are located and do substantial business in the State of Indiana.

16. Venue is proper in St. Joseph County as all Defendants have primary places of business located within its boundaries and Plaintiff's injury was sustained therein. As such, preferred venue lies in St. Joseph County, Indiana, pursuant to Indiana Trial Rule 75. *American Family Insurance Company v. Ford Motor Company*, 857 N.E.2d 971 (Ind. 2006).

FACTUAL ALLEGATIONS

17. Plaintiff, DOUGLAS COLES RANDOLPH, was enrolled at Defendant, UNIVERSITY OF NOTRE DAME, on an athletic scholarship with the Notre Dame Fighting Irish football team from approximately August of 2014 until May, 2017. Plaintiff was positioned at Linebacker or Defensive end throughout all active years. Unfortunately, instead of getting to play football for the full four (4) seasons he anticipated, Plaintiff's football career was cut short after just two (2) seasons due to injury while at Notre Dame.

18. Defendant, BRIAN KELLY, head coach of defendant, UNIVERSITY OF NOTRE DAME's Fighting Irish football team reports to athletic director and has full responsibility and oversight of all aspects of the Fighting Irish football program, including supervision of coaching staff and trainers, and ultimate responsibility for the health and well-being of his players.

19. Defendant, ROB HUNT, was the athletic trainer for the Notre Dame football team reporting directly to the Head Coach and Defendant, BRIAN KELLY. His primary job duty was to ensure the health and well-being of football players like Plaintiff.

20. In September, 2015, Plaintiff was hit during a practice drill, and as a result of that hit suffered numbness in his upper extremities.

21. Plaintiff complained to his trainer, Defendant, ROB HUNT, who noted that numbness in both extremities after such an impact was rare and pulled Plaintiff from practice for two (2) minutes.

22. Plaintiff returned to full participation in practice after such time, and continued to suffer similar instances of numbness with impact.

23. Shortly thereafter, Plaintiff's symptoms began to manifest after every single impact on the field and after complaining of same to Defendant, ROB HUNT, as well as the team doctor, DR. DOE A, an MRI was scheduled for on or about September, 2015.

24. On or about September 15-16, 2015, Plaintiff presented to Defendant, ABC HOSPITAL where under the care of Defendant, DR. DOE B, Plaintiff underwent an MRI scan.

25. The imaging and results of that MRI scan remained in the custody of Defendants until well after the 2015 football season had come to an end. Neither the actual imaging nor the results of this scan were provided to Plaintiff during the 2015 football season. If Plaintiff had been told the truth about the results of this MRI scan his football career would have ended on that date and all subsequent injuries and permanent damage he has endured would have never occurred.

26. However, on September 15-16, 2015, Plaintiff was told by both, Defendant, ROB HUNT, and Defendant, DR. DOE A, that it was safe for him to continue to play in the 2015

season and the bowl game as his MRI had been negative for abnormalities and structural problems with his neck. Those statements were false and completely inaccurate.

27. Relying solely on the advice of his team's trainer and doctor, Defendants, ROB HUNT and DR. DOE A, respectively, Plaintiff continued to play throughout the rest of season in all 13 games (including the bowl game).

28. Throughout the course of that period, Plaintiff frequently spoke with Defendants, ROB HUNT and DR. DOE A, concerning his worsening symptoms and the additional issues of lower extremity numbness following impact, as well as occasional complete loss of muscle control in his upper extremities for a significant amount of time, and physical findings. However, they continued to stress that it was safe for him to play and only asked that he continue to alert them of any ongoing or further problems. Despite knowledge of Plaintiff's September 15, 2015 and September 16, 2015 MRI results and inflammation, at no time did any of the Defendants advise Plaintiff that continuing to play football posed a significant risk to his future health and wellbeing; including paralysis and neurological problems.

29. On or about September, 2015, Plaintiff was prescribed an anti-inflammatory steroid by Defendant, DR. DOE A, for the "muscle strain" in his neck in order to decrease the numbness, pain, and inflammation he experienced when he turned his head in a certain direction.

30. Unfortunately, during the 2015 season, Plaintiff continued to suffer several side effects including irritability, difficulty focusing, and difficulty sleeping, as well as extreme bouts of aggressive behavior, which ultimately forced him to discontinue the use of the pain killer in October, 2015.

31. The season concluded on January 1, 2016 in the Fiesta Bowl game against Ohio State, during which Plaintiff suffered complete numbness in all four extremities after simply

looking down at the field. Despite immediate complaints to Defendant, ROB HUNT, and other medical staff, Plaintiff was told to continue playing and was told to get back in the game.

32. Following the close of the 2015 football season, Plaintiff's symptoms showed no regression and only worsened. Around the beginning of January, 2016 after experiencing complete extremity numbness again without any impact, Plaintiff spoke with his trainer, Defendant, ROB HUNT, and team doctor, Defendant, DR. DOE A, and requested help because his symptoms were worsening.

33. Following this request, Plaintiff presented to Defendant, ABC HOSPITAL for a second MRI on January 15, 2016.

34. Mr. Randolph was still not provided the results of his first scan even after the results of this second scan became known. However, Plaintiff was now given a much different diagnosis from his second physician, Dr. Reddy, than the preceding scans had yielded from Defendants.

35. Plaintiff was advised by Dr. Reddy on or about January 15, 2016 that he had diagnosed Plaintiff with Spinal Stenosis of the C4 and C6 vertebra in his neck, a debilitating condition that ultimately cannot be cured but only maintained by active avoidance of certain neck positions and/or surgery to fuse the vertebra together or the insertion of an artificial disc.

36. During this same late January period, Mr. Randolph presented to a third physician unaffiliated with Defendant, UNIVERSITY OF NOTRE DAME or its football program, for testing with regard to non-contact nerve damage caused by his continued football play after the onset of symptoms in September, 2015.

37. After a series of tests, Mr. Randolph was advised by this independent physician that he has possible if not probable permanent nerve damage in his neck that had occurred as a result of continuing to play college football after September, 2015.

38. Following these diagnoses, Plaintiff spoke with Defendant, ROB HUNT and Defendant, DR. DOE A, about the concerns raised by Dr. Reddy and his possible permanent nerve damage with resulting pain and numbness.

39. Around mid-February, 2016, Plaintiff was then told by Defendant, DR. DOE A that he was no longer cleared for football play at Defendant, UNIVERSITY OF NOTRE DAME.

40. Later, Plaintiff presented to neurologist, Dr. Singleton of Richmond, VA for further testing and management of his condition. During that visit his initial MRI scans from September 2015 and January 15, 2016 were reviewed. It confirmed, based upon those scans, that he should not have been cleared for play following his September MRI. He was instructed to never play football again.

41. Since the September 2015 MRI, and Mr. Randolph's nonstop participation in the 2015 season, he has continued to suffer from sometimes incapacitating pain, constant muscle strain, daily headaches, and difficulty focusing, as well as continued numbness, tingling sensations throughout his upper and lower extremities, and difficulty with muscle control.

42. Plaintiff's injuries due to his continual play in 2015 have resulted in severe nerve damage to his left side extremities to the point where participating in everyday activities, such as reaching for a drink or playing chess can often end in unexpected, miserable, negative consequences. In addition to the physical pain of the injuries, Plaintiff's social wellbeing and mental health have diminished due to his forced and unnecessary football play in 2015.

COUNT I
NEGLIGENCE

43. Plaintiff incorporates by reference all preceding paragraphs and allegations of this Complaint as though fully set forth herein.

44. At all material times, Defendants had a duty to exercise reasonable care in the supervision and conveyance of medical advice to Plaintiff with regards to his football career and any injuries he may have suffered.

45. Defendants failed to exercise ordinary care in that they failed to disclose to Plaintiff the serious spinal stenosis condition of which they were aware by September, 2015.

46. Moreover, instead of advising Plaintiff to discontinue playing football, Defendants not only encouraged Plaintiff to continue his career and play in the entire 2015 season, but also failed to disclose his severe neck injury which led to additional permanent injuries and possible permanent disability.

47. Defendants knew or should have known as of the September 2015 MRIs that Plaintiff's football career should be terminated and that by continuing to play he was at risk of significant permanent injury, including paralysis.

48. As a direct and proximate result of Defendant's negligence and reckless negligence, Plaintiff has suffered serious and permanent physical injuries, harm, damages, and economic loss, and will continue to suffer such harm, damages, and economic loss in the future.

WHEREFORE, the Plaintiff demands judgment against Defendants, and each of them, individually, jointly and severally, and requests compensatory and punitive damages where applicable, together with costs and interest, and any further relief as the court deems proper, as well as a trial by jury of all issues to be tried.

COUNT II
NEGLIGENT MISREPRESENTATION

49. Plaintiff incorporates by reference all preceding paragraphs and allegations of this Complaint as though fully set forth herein.

50. Following Plaintiff's September, 2015 MRI, Defendants knew or should have known that Plaintiff's continued involvement with Defendant, UNIVERSITY OF NOTRE DAME's Fighting Irish football team put Plaintiff at significant risk for permanent injury; including permanent paralysis.

51. Defendants owed a duty to Plaintiff to accurately and truthfully represent the risks of Plaintiff's continued participation in football. Defendants breached that duty by misrepresenting and/or failing to adequately warn Plaintiff about the risks of this participation, which Defendants knew or in the exercise of diligence should have known the risk of permanent injury.

52. As a direct result of Defendants' conduct, Plaintiff has suffered and continues to suffer serious and permanent non-economic and economic injuries to be determined at trial,

WHEREFORE, the Plaintiff demands judgment against Defendants, and each of them, individually, jointly and severally, and requests compensatory and punitive damages where applicable, together with costs and interest, and any further relief as the court deems proper, as well as a trial by jury of all issues to be tried.

COUNT III
FRAUDULENT CONCEALMENT

53. Plaintiff incorporates by reference all preceding paragraphs and allegations of this Complaint as though fully set forth herein.

54. Defendants fraudulently concealed important medical information from Plaintiff regarding his health condition starting on September 15, 2015. Specifically, Defendants did not disclose the results of his first MRI, which suggested that his continued involvement with Defendant, UNIVERSITY OF NOTRE DAME's Fighting Irish football team could and likely would result in permanent injury.

55. Defendants had sole access to Plaintiff's MRI results and by default were the only parties in this matter who knew of the hazardous neck condition and that Plaintiff should have been instructed to immediately stop playing football.

56. The concealment of information by the Defendants was intentional, and the representations made by Defendants were known by Defendants to be false.

57. The concealment of information and the misrepresentations were made with the intent that Plaintiff rely upon them and continue to play football for Defendant, UNIVERSITY OF NOTRE DAME's Fighting Irish football team.

58. Plaintiff relied upon the representations of Defendant, UNIVERSITY OF NOTRE DAME it's employees and physicians and was therefore unaware of the substantial hazardous risk associated with continuing to play football.

59. Plaintiff was injured as a direct and proximate result of Defendants' actions, omissions, and misrepresentations. Plaintiff has incurred, and will continue to incur expenses as a result of his permanent injuries.

WHEREFORE, the Plaintiff demands judgment against Defendants, and each of them, individually, jointly and severally, and requests compensatory and punitive damages where applicable, together with costs and interest, and any further relief as the court deems proper, as well as a trial by jury of all issues to be tried.

COUNT IV
PUNITIVE DAMAGES

60. Plaintiff incorporates by references all preceding paragraphs and allegations of this Complaint as though fully set forth therein.

61. Plaintiff is entitled to punitive damages because Defendants' wrongful acts and/or omissions constituted willful and wanton conduct and were done in conscious and intentional disregard of, and indifference to, the rights and safety of others. Defendants misled Plaintiff by making false representations concerning his health and his ability to safely continue playing college football.

62. Defendants' misrepresentations also included knowingly withholding his medical records and test results in order to induce Plaintiff to continue to play college football for Defendant, UNIVERSITY OF NOTRE DAME.

63. As a result of Defendants' conduct, Defendants are liable to Plaintiff in an amount to be determined at trial.

WHEREFORE, the Plaintiff demands judgment against Defendants, and each of them, individually, jointly and severally, and requests compensatory and punitive damages where applicable, together with costs and interest, and any further relief as the court deems proper, as well as a trial by jury of all issues to be tried.

PRAYER FOR RELIEF AS TO ALL COUNTS

WHEREFORE, Plaintiff, DOUGLAS COLES RANDOLPH, prays for judgment against Defendants as follows:

- a. judgment in favor of Plaintiff and against all Defendants, for damages in such amounts as may be proven at trial;

- b. compensation for both economic and non-economic losses, including but not limited to medical expenses, future loss of earnings, pain and suffering, mental anguish and emotional distress, in such amounts as may be proven at trial;
- c. punitive and/or exemplary damages in such amounts as may be proven at trial;
- d. attorneys' fees, expenses and costs of this action;
- e. pre- and post-judgment interest as provided by law; and
- f. any and all further relief, both legal and equitable, that the Court may deem just and proper.

Respectfully Submitted,

HOVDE DASSOW & DEETS, LLC

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JURY DEMAND

TAKE NOTICE that Plaintiff demands trial by jury as to all issues herein.

Dated: 09.01.17

HOVDE DASSOW & DEETS, LLC

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