

IN THE UNITED STATES DISTRICT COURT FOR  
WESTERN DISTRICT OF WISCONSIN

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DEBRA PYKA, as the Special Administrator of the Estate

of **Joseph Chernach**, Deceased.

DEBRA PYKA, as the Mother

of **Joseph Chernach**, Deceased.

Plaintiff,

v.

Case No. 15-CV-57

POP WARNER LITTLE SCHOLARS, INC.

THE POP WARNER FOUNDATION

LEXINGTON INSURANCE COMPANY

Defendants

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COMPLAINT

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### **Prefatory Allegations**

1. **The Plaintiff.** The Plaintiff, Debra Pyka, is the Special Administrator of the Estate of Joseph Jeffrey Chernach (“Joseph Chernach”). Joseph was born in 1986 and died on June 7, 2012. At the time of his death, he resided at 14770 Burton Road, Hixton, WI 54635 in Jackson County, Wisconsin, with his mother, Debra Pyka, the Special Administrator (the “Special Administrator”). Jackson County is in the Western District of Wisconsin of the United States Courts.
2. **Debra Pyka’s Personal Claims.** Debra Pyka is also a plaintiff in her individual capacity for damages she suffered as a result of the injuries, illness and death of Joseph Chernach.
3. **The Defendant Pop Warner.** The Defendant, Pop Warner Little Scholars, Inc. (“Pop Warner”), is a Pennsylvania Corporation whose principal office is at 586 Middletown Blvd., Suite C-100, Langhorne, PA 19047. At all times material hereto, Pop Warner did business in the State of Wisconsin by operating youth football leagues where children played tackle football with helmets.
4. **The Defendant, The Pop Warner Foundation.** The Defendant, The Pop Warner Foundation is a Pennsylvania Corporation with its principal office at 586 Middletown Blvd., Suite C-100, Langhorne, PA 19047. The Pop Warner Foundation played a role in the sponsoring and promoting of Pop Warner football leagues in which the plaintiff played. Pop Warner and The Pop Warner Foundation engaged in a joint venture, concerted activity, respondeat superior relationship with respect to sponsoring and promoting Pop Warner football and as such are jointly and severally liable for the actions of Pop Warner hereunder.

5. **Diversity Jurisdiction.** Federal jurisdiction herein lies as a result of diversity of plaintiffs and defendants, pursuant 8 U.S. Code § 1332. The amount in controversy exceeds \$75,000.

6. **Insurance Defendant.** Lexington Insurance Company is a Massachusetts insurance corporation, with its principal offices at 99 High Street, Boston, Massachusetts 02110. It is upon information and belief the liability insurer of Pop Warner and/or the Pop Warner Foundation, and thus may have liability hereunder.

7. **Tackle Football Is War Game.** Tackle football with helmets is a war game. It is not only a “contact” sport, it is a “combat” sport. The game of tackle football is in essence a war between combatants, where the individual player is coached to do battle against his opponent by inflicting the maximum amount of physical punishment to the enemy player. The weapons that such combatants have to inflict such punishment are their own bodies, heads, as well as equipment including helmets and pads. In order to create the greatest likelihood for a team victory, a player is extorted to sacrifice his body and health for the team, to “give it up,” “go all in.” Success is achieved by inflicting “punishment” on the opposing player. The degree to which there is a common knowledge about the combative nature of football is illustrated by the following:

- a. The term "*sack*" was first coined by Hall of Fame defensive end Deacon Jones in the 1960s, who felt that a sack devastated the offense in the same way that a city was devastated when it was sacked.
- b. Football games are said to be *won in the trenches*, meaning in similar ways as wars are won, by foot soldiers, battling hand to hand.
- c. Passing in football is described as an aerial attack, ala, air force in warfare.

- d. If you enter “American football war” in a google search, as many as 28,100,000 results will show up in 0.52 seconds.
- e. According to an article in the LA Times<sup>1</sup>, “Football is tough and based to a large degree on the capacity to overwhelm the other team with sheer force. Football is a tank attack, a sky-borne assault, a charge into the trenches for hand-to-hand fighting. Football is following orders and sticking to the strategy; it's about acting as a unit and taking hits for the group. Football is generals (coaches) and captains (quarterbacks) and the enlisted guys who play on the line. Football is about destruction. Sure, you win by getting more points than the other team, but to get more points, you generally have to slam the life out of your opponents. You try to do away with their skill players — by violence. Knock out the first-string quarterback and chances are you will win.”
- f. Vince Lombardi said: “I firmly believe that any man's finest hour, the greatest fulfillment of all that he holds dear, is that moment when he has worked his heart out in a good cause and *lies exhausted on the field of battle*—victorious.” (Emphasis added.)<sup>2</sup>

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<sup>1</sup> <http://www.latimes.com/opinion/op-ed/la-oe-edmundson-americas-and-war-connection-20140824-story.html>

<sup>2</sup> <http://www.barnesandnoble.com/w/what-it-takes-to-be-number-one-vince-lombardi/1004318318?ean=9781400320028>

- g. Duffy Daugherty, former Michigan State Football coach, said: “Football is not a *contact* sport. It’s a *collision* sport. Dancing is a good example of a contact sport.”<sup>3</sup>
- h. Frank Gifford, NFL Hall of Fame player and long time broadcaster, said: “Pro football is like nuclear warfare. There are no winners, only survivors.”<sup>4</sup>
- i. Bob Golic, former NFL player, said about football: “If you’re mad at your kid, you can either raise him to be a nose tackle or send him out to play on the freeway. It’s about the same.”<sup>5</sup>
- j. Tim Green, former player, said: “Let’s face it, you have to have a slightly recessive gene that has a little something to do with the brain to go out on the football field and beat your head against other human beings on a daily basis.”<sup>6</sup>
- k. Archie Griffin, two-time Heisman Trophy winner, said: “It is not the size of the dog in the fight, but the size of the fight in the dog.”<sup>7</sup>
- l. Alfred Hitchcock said of football: “There are several differences between a football game and a revolution. There are usually more casualties in a football game. The object of the game is to move a ball past the other

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<sup>3</sup> Benson, M. (2008). *Winning words: Classic quotes from the world of sports*. Blue Ridge Summit, PA: Taylor Trade Publications.

<sup>4</sup> [http://articles.chicagotribune.com/1988-01-31/features/8803260480\\_1\\_pro-football-nuclear-warfare-frank-gifford](http://articles.chicagotribune.com/1988-01-31/features/8803260480_1_pro-football-nuclear-warfare-frank-gifford)

<sup>5</sup> <http://www.bobgolic.com/articles/>

<sup>6</sup> Green, T. (2008). *The dark side of the game: My life in the NFL*. New York, NY: Grand Central Publishing.

<sup>7</sup> <http://www.chillicothe Gazette.com/story/news/local/2014/11/03/griffin-urges-local-audience-inspire-others/18446869/>

team's goal line. This counts as six points. No points are given for lacerations, contusions, or abrasion, but then no points are deducted, either."<sup>8</sup>

Despite the foregoing – for children – playing the game is emulating the conduct of heroes and celebrities. They have no appreciation that they are doing anything other than play. While they might grasp the concept of a scraped knee, they have no appreciation of the catastrophic lifetime risks that engaging in this combative sports involves.

8. **Dementia Pugilistica/CTE.** The risk of Dementia Pugilistica in *combat and collision* sports such as boxing has been understood since 1928 when in the *Journal of the American Medical Association* article forensic pathologist Dr. Harrison Stanford Martland, the chief medical examiner of Essex County in Newark, New Jersey, noted tremors, slowed movement, confusion, and speech problems typical of the condition.<sup>9</sup> Dementia Pugilistica is now more commonly referred to as Chronic Traumatic Encephalopathy or CTE. In 1973, a group led by J. A. Corsellis described the typical neuropathological findings of Dementia Pugilistica after post-mortem examinations of the brains of 15 former boxers.<sup>10</sup>

9. **Dementia Pugilistica Involves Severe Brain Dysfunction.** Dementia Pugilistica impacts all aspects of brain function. It involves the development of protein plaques called tau on brain tissue and neurofibrillary tangles, slowing and interfering with the function of brain tissue. It also involves progressive degeneration of the brain tissue.

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<sup>8</sup> <http://hitchcock.tv/quotes/quotes.html>

<sup>9</sup> Martland HS (1928). "[Punch Drunk](#)". *Journal of the American Medical Association* **91** (15): 1103–1107.

<sup>10</sup> Corsellis JA, Bruton CJ, Freeman-Browne D (August 1973). "The aftermath of boxing". *Psychological Medicine* **3** (3): 270–303.

These changes in the brain can begin months, years, or even decades after the last brain trauma or end of active athletic involvement. The brain degeneration found in Dementia Pugilistica is associated with memory loss, confusion, impaired judgment, impulse control problems, aggression, depression, and, eventually, progressive dementia.

10. **Two Phases to Dementia Pugilistica.** There is both an early phase of Dementia Pugilistica and a late phase. During the early stage, relatively young people will suffer primarily behavior and mood symptoms. In the later stages it involves a very early onset of severe cognitive and motor decline.

11. **Suicide and Dementia Pugilistica/CTE.** During the early stages of Dementia Pugilistica, severe depression and suicide are among the most common features.

Dementia Pugilistica is the perfect storm for suicide as it synergistically combines the following traits in a despondent individual:

- a. Depression, anxiety, paranoia;
- b. Reduced impulse control;
- c. Behavioral extremes that can often be violent;
- d. Despair; and
- e. All resulting from a pattern of violence in combat sports that deconditions the sufferer from the horrific result of violence, even death.

12. **Football and Boxing Involve Comparable Forces.** Tackle football with helmets involves comparable biomechanical forces directed against the human brain as boxing, and more biomechanical force to the rest of the human body than boxing. The objective



in both boxing and football is to knock the opponent down. The risk of head injury in football has been understood at least as long ago as the first football helmet, circa 1894.

13. **Football Involves Risk of Injury on Every Play.** Every single play in tackle football, whether in practices or in games, involves risk of injury to each and every player on both teams. On most plays, the majority of players on both teams engage in collisions, whereby the hitter is given the illusion that he is being protected from injury by the protective equipment he is wearing. In fact, protective equipment just allows one player to deliver a more forceful blow to the opponent, without necessarily protecting the hitter from injury, including head and brain injury.

14. **Helmets Become Weapons.** Helmets are the most dangerous piece of equipment in football, because they not only are the hardest piece of equipment, but also the piece of equipment where there is the greatest misconception as to degree to which the helmet protects the hitter from injury. Helmets are made almost indestructible because they are expensive and costly to be replaced. The trade-off for making helmets so hard is that they primarily only protect the head from skull fracture, not brain damage. Each time a helmet collides with another player, the hitter's brain suffers a jolt. While many of these jolts are subconcussive blows, the sum total of those subconcussive blows can cause severe brain damage.

15. **Injuries in Football Are Not Accidental.** Head, brain injuries and other injuries in tackle football are not the result of an accident but of a good play. That heads and brains are injured playing tackle football has been known since before the football helmet was invented.

16. **Children More Vulnerable to Injury.** Children are more vulnerable to injury, particularly head, neck and brain injuries than adults.<sup>11</sup> The reasons for this additional vulnerability include the following:

- a. **Recovery Time.** A child's brain takes longer to recover from concussion than an adult's.
- b. **Less Protective Coating on Brain Cells.** Children's brains have less myelin than adults' brains. Myelin is a type of insulator to axonal fibers that connect the brain internally and throughout the nervous system. Myelin serves to protect neurons from damage. The less myelin, the more risk for damage.
- c. **Heads Disproportionally Large.** Children's brains and heads are disproportionately large compared to the rest of the body, up until at least 14 years of age. A child's neck is disproportionately weak, compared to an adult's. The extra size and weight of the head coupled with a child's weaker neck results in less ability to limit the degree to which the head will be subject to rotational forces in a collision. Rotational forces (which are the most dangerous inside the brain) will be greater for a child, proportional to the severity of the impact.

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<sup>11</sup> See generally Wilson, Marie-France (2011) "Young Athletes At Risk: Preventing and Managing Consequences of Sports Concussions in Young Athletes and the Related Legal Issues," **Marquette Sports Law Review**: Vol. 21: Iss. 1, Article 8. Available at: <http://scholarship.law.marquette.edu/sportslaw/vol21/iss1/8>

- d. **Helmets Are Disproportionately Large.** The weight of the helmet adds additional weight to the issues of the head being disproportionately large.

17. **Neuronal Reserves Exhausted Prematurely.** The earlier a person becomes exposed to neural wasting activities (brain trauma), the greater the likelihood that the “*neuronal reserve*” of such person will be prematurely exhausted before normal aging. The human brain is the most complex computer nature can evolve and the *neuron* is the nano chip that makes that computer go.

- a. **Brain Is a Computer.** Computers work because the computer chip will have millions of tiny electrical connections, where a go/no go (1’s and 0’s) signal will be sent. This choice of a one or a zero is called a “binary” choice. Any key stroke in a word processor, any digital photograph, any music recording will be seen by the computer as a long combination of ones and zeros. The computer reads this code to mean what it is intended it to mean. Programmers have trained the machine to translate the binary code into the end product (or file) desired. The more complicated that file, the more ones and zeros it takes to make that file.
  - i. Computers get faster not by making the digital connection more complicated, but by adding more connections. Speed and complexity are increased by more and more and smaller and smaller.
- b. **Neuron Is the Information Chip in the Brain.** The brain too has electrical connections. These impulses have been programmed over life—

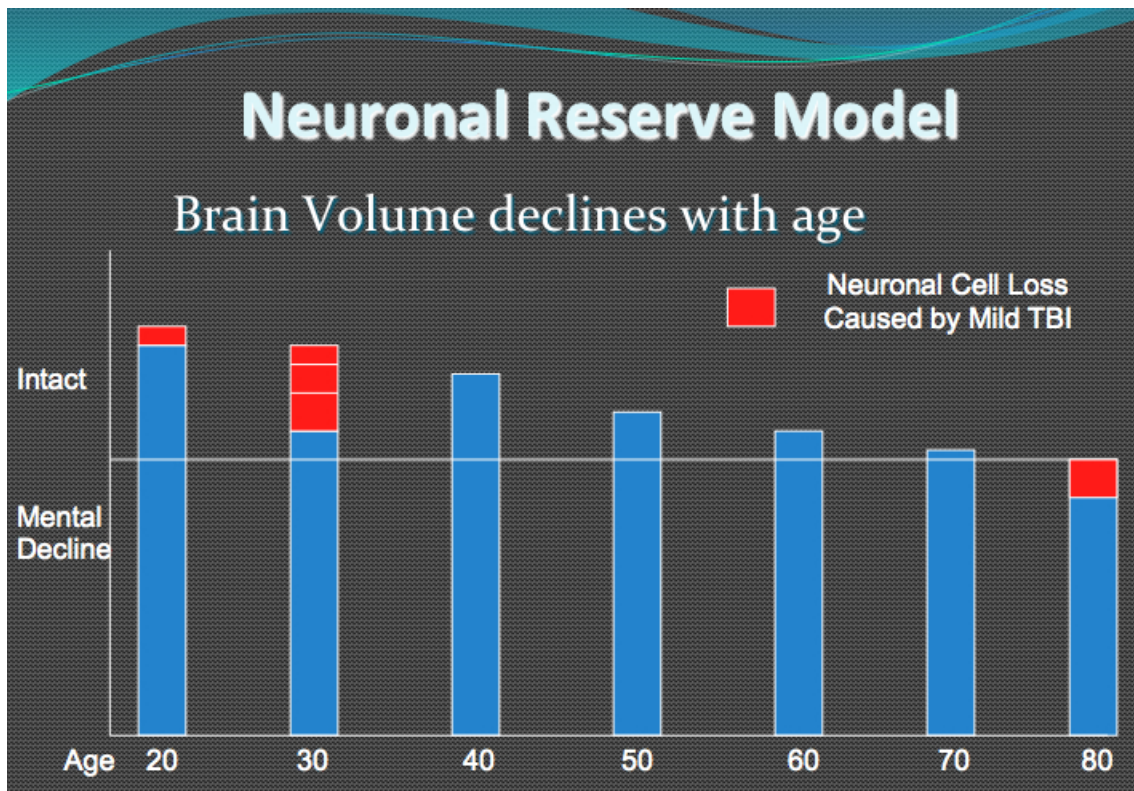
by life—to interpret and control all that human beings do and are. But unlike the simple binary hard-wired circuits, the brain’s circuitry has at its core, the not so simple *neuron*.

- c. **The Neuron Is Better than Any Man-made Chip.** The neuron is a far more brilliant component than anything made by man. It communicates not in ones and zeros, but more likely in a code more complicated than our alphabet. It is not a one on one connection, but one in which a single cerebral cortex neuron has many thousands of connections with other neurons. While our current technology is approaching the capacity to make digital connections as small as a neuron (perhaps tens of thousands on the tip of a pen) we have yet to nuance the multiplicity of a more complex code. In the early part of the 21st century, it is unfathomable we could ever make computer coding as complicated as that of a single neuron.
- d. **Neurons Are Responsible for Information Processing.** Neurons are the cells of the brain that are responsible for the information transfer, both with the neuron itself and between other neurons. The neuron first makes a choice or records an input (infinitely more complex than the binary choice a computer chip makes), preserves some aspect of that choice in its memory, and then communicates that choice down its axon to other receiving cells neurons. It does all of that while simultaneously processing the input from the neighboring cells across the “synapse.” For more on neurons and the biomechanical forces which cause neuronal

damage, see <http://braininjuryhelp.com/mild-brain-injury-neuropathology/>

Traumatically caused neuronal damage interferes with the brain's communication networks, slowing thought, physical responses, negatively impacting the brain's ability to monitor and optimize its own functioning.

18. **Premature Senility Worse with Younger Start of Playing Football.** Each person has a certain number of functioning neurons, which exceed the number required to function as an adult. Through normal aging a person will lose a predictable number of neurons each decade of life. Cognitive decline is substantially related to the number of neuron's left in a human brain, dipping below the number required for normal cognitive, behavioral, mood and physical function. People not subjected to trauma or other disease processes (such as Alzheimer's) are likely to reach their 8<sup>th</sup> or 9<sup>th</sup> decade in life before their "neuronal reserve" has dropped below a critical level. Playing tackle football involves repetitive brain trauma, which kills brain cells, likely billions of brain cells. The younger a person starts playing tackle football, the longer they play tackle football, the more likely it is that their neuronal reserve will prematurely dip below the level needed for normal cognitive, mood, behavioral and physical function. Accelerating the pace of neuronal decline will accelerate the point in time at which a person becomes demented. See the below graph, which demonstrates the impact of traumatically caused neuronal loss on mental decline.



In order to preserve neuronal reserve, children's brains should not be allowed to play combat games such as boxing and football.

19. **Suicide Risk Great for Young Men.** Adolescents and early adults are at substantial risk for suicide. It is the public policy of the State of Wisconsin to allocate State resources specifically to help prevent youth suicide. See the **Wisconsin Youth Suicide Prevention Guide**.<sup>12</sup> The period of time after a young man would stop playing Pop Warner is the most difficult adjustment period during a person's life. Hormonal, growth, social adjustment, developing adulthood manners and lifestyles, leaving home, starting college, all add extraordinary psychic stress to young people's lives. Bullying is also a problem in this age group. The vast majority of suicide attempts do not succeed, yet men are far more likely to succeed at a suicide attempt than women. Violent methods

<sup>12</sup> <http://ssp.wi.gov/sites/default/files/imce/ssp/pdf/spguide.pdf>

of suicide such as shooting oneself and hanging oneself are far more likely to succeed than other methods. Dementia Pugilistica dramatically increases the suicidal ideation of those who suffer from it. The violent culture of football teaches these young people the violence that makes a suicidal attempt more likely to be successful. There are more gun deaths in the United States from suicide than there are from murder.

20. **Suicide Linked to Brain Changes.** Postmortem studies of the brains of people who have died by suicide have shown a number of visible differences in the brains of people who died by suicide, compared to those who died from other causes. Suicide is a result of a disease of the brain. Dementia Pugilistica is one of the diseases that causes changes that can be seen on postmortem studies of brains.

21. **Public Policy to Protect Children's Brains.** It has long been the public policy of the State of Wisconsin and the United States, to protect child's brains from forces involved in collisions. Under Wisconsin law a child must be in a booster seat until they reach age 8 or more than 80 pounds in weight, or more than 4 ft. 9 in. tall. Pop Warner allows children as young as 5 years old and as light as 35 pounds to play tackle football with helmets. <http://www.popwarner.com/football/footballstructure.htm>

22. **Post Concussion Syndrome and Pop Warner Football.** In addition to the risk of Dementia Pugilistica from engaging in a collision sport, there is also the risk of discrete specific concussive injury, which may result in Post Concussion Syndrome. While most concussions in isolation do result in "apparent full recovery," there is a significant proportion of individuals, typically estimated at 10–15%, who suffer long-term concussion symptoms, i.e., Post Concussion Syndrome. The more often a person suffers a concussion, the more likely they will get Post Concussion Syndrome as a result.

When a person has suffered one concussion, the more likely they are to have another concussion. The closer in time a person experiences one concussion to the second concussion, the more likely they are to get Post Concussion Syndrome. If an individual suffers two concussions in the same acute period (such as one game) they are at risk of “Second Impact Syndrome,” which can be a catastrophic event, causing death or severe immediate permanent injury.

23. **No Return to Play Critical After Concussion.** It has long been known that it is essential for brain recovery after a concussion that a player be removed from further contact thereafter. 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. In 1952, the *New England Journal of Medicine* recommended a three-strike rule for concussions in football (*i.e.*, recommending that players cease to play football after receiving their third concussion). In order to minimize the risk of Post Concussion Syndrome and Second Impact Syndrome – *sport and concussion* guidelines have been promulgated for more than 25 years to assure that still symptomatic individuals are not allowed to return to collision sports before the symptoms clear. In 1986, “Return to Play” were published guidelines in the **Physician and Sports Medicine**, Cantu, Robert. In that peer reviewed article, Dr. Cantu established three grades of concussion and return to play rules with respect to each of those levels. In March 1997, prior to Joseph Chernach starting to play Pop Warner football, the **American Academy of Neurology** promulgated its **Practice Parameter: The Management of Concussion in Sports**<sup>13</sup>. Pursuant thereto, any player who suffered a concussion in a game and was symptomatic for more than 15 minutes after the concussion, was required to sit out for seven full days, after he ceased to be symptomatic. From March of 1997 onwards, some similar

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<sup>13</sup> *Neurology*, March 1997;48:581-585.



type of concussion management/return to play rule has been the standard for all sport concussion management in the United States.

24. **Pop Warner's Failure to Warn.** Pop Warner knew, or should have known all of the facts contained in Paragraphs 3 through 23 hereof. Pop Warner never warned Joseph Chernach (or other children who were playing this game) or Joseph Chernach's parents (or any other parents) that these children were more vulnerable to risk of injury than the older players who Joseph Chernach (or the other children) were emulating.

25. **Pop Warner Conduct Intentional, Malicious or Reckless.** Pop Warner's conduct in organizing, promoting and allowing children to play tackle football with helmets – and failing to warn children and parents of the risk of permanent brain damage – intentionally, maliciously or in the alternative, recklessly exposed children to the risk of injury including head, brain and other injuries. Joseph Chernach was exposed to these injuries and did in fact suffer such injuries.

#### **Allegations Specific to Joseph Chernach**

26. That commencing in the summer of 1997, Joseph Chernach played youth football in a Pop Warner football league that spanned the border between the State of Wisconsin and the State of Michigan. Beginning in 1997, he played for a team that had its home in Florence, Wisconsin and played half of its games in Wisconsin and the other half of its games in Michigan. At the time Joseph Chernach started playing football in a Pop Warner football league, he was 11 years old. Joseph Chernach played football in this Pop Warner football league in the years 1997, 1998, 1999 and 2000. During the years that Joseph Chernach played Pop Warner football, he was not old enough to fully appreciate

the danger that playing tackle football involved. Neither of Joseph Chernach's parents fully appreciated the added danger to a child of playing tackle football with a helmet.

27. On June 7, 2012, Joseph Chernach died as a result of hanging in his mother's shed. A substantial factor contributing to this hanging death was the fact that Joseph Chernach suffered from the disease of Dementia Pugilistica, also known as Chronic Traumatic Encephalopathy, or CTE. The disease of Dementia Pugilistica caused severe emotional, behavior, cognitive and physical problems in Joseph Chernach, all which contributed to his mental state of mind at the time of his hanging.

28. At the time of his death, the disease Dementia Pugilistica made it so that Joseph Chernach lacked the full mental capacity to control his behavior and mood and avoid the deep despair that lead to his death. Joseph Chernach's suicide was the natural and probable consequence of the injuries he suffered playing Pop Warner football, particularly the disease of Dementia Pugilistica/CTE.

29. Joseph Chernach got Dementia Pugilistica as a result of playing football, which included playing football beginning at the age of 11 in the Pop Warner football league. Playing tackle football with a helmet in Pop Warner during the years 1997–2000 was a substantial factor in Joseph Chernach getting the disease of Dementia Pugilistica.

30. Joseph Chernach also suffered from Post Concussion Syndrome at the time of his death, the result of numerous concussions playing football. Some of these concussions were suffered while playing Pop Warner football, even though they were never diagnosed as such while he was playing Pop Warner. Playing Pop Warner football was a substantial factor in Joseph Chernach having Post Concussion Syndrome. Post Concussion Syndrome was a substantial factor contributing to Joseph Chernach's hanging death. Post

Concussion Syndrome caused severe emotional, behavior, cognitive and physical problems in Joseph Chernach, all which contributed to his mental state of mind at the time of his hanging.

31. Prior to reaching the age of 19, Joseph Chernach was an extraordinary individual, a good student, an outstanding athlete and family member. He graduated high school with high ACT scores, won several Michigan High School Athletic Association honors and championships and got good grades in his freshman year at Central Michigan University.

32. On or about the time that Joseph Chernach began his sophomore year in college, the cumulative effects of Dementia Pugilistica and Post Concussion Syndrome began to impact his cognition, behavior and mood. From that point on, his cognitive functioning declined each year until his death. From that point on, his behavior became increasingly bizarre. From that point on, his mood became progressively depressed and ultimately paranoid, distrusting his closest friends and family.

33. In the years preceding his death, Joseph Chernach endured pain, suffering and disability as a result of the combination of Post Concussion Syndrome and Dementia Pugilistica in his brain.

34. On June 7, 2012, unable to any longer deal with the despair in his life, Joseph Chernach hung himself. At the time of his death, Joseph Chernach's mental state had reached the point that he was no longer able to control the impulse to kill himself. Joseph Chernach's suicide was the "natural and probable consequence" of the brain damaged he suffered playing football.

35. The Plaintiffs did not discover that Joseph Chernach had Dementia Pugilistica and Post Concussion Syndrome until receiving the autopsy results on his brain on September 23, 2013.

**Cause of Action #1 – Strict Liability for Ultrahazardous Activity**

36. The Plaintiffs reallege and incorporate herein, all of the allegations of the complaint herein.

37. Pop Warner football is an abnormally dangerous/ultrahazardous activity as defined in § 519 of Restatement (Second) of Torts, as it exposes children to a combative/collision sport which is likely to result in harm to children. The sport of tackle football is made even more abnormally dangerous by playing the sport with a football helmet, especially for children for whom the weight of the helmet is disproportionately heavy for their necks and bodies.

38. Children playing tackle football with helmets involves a risk of probable injury to such a degree that the activity fairly can be said to be intrinsically dangerous to those who engage in it.

- a. No later than 1997, it was a known risk that children playing tackle football with helmets could suffer brain damage and other injuries. In 1997, Pop Warner knew or should have known that tackle football was dangerous for children and exposed children to head injuries, including Dementia Pugilistica.
- b. Children playing tackle football is so ultrahazardous that no amount of due care can eliminate the risk of probable injury, only the extent of it. Dementia Pugilistica is caused not just by repetitive concussions, but by

sub-concussive blows, the kind of blows that can occur on every play.

Making the game safer (increased due care as alleged below) would reduce the number of players with clinically significant brain damage by the age of 25, but would not eliminate that risk. Further, neuronal loss will occur to all participants.

- c. While children playing tackle football was a historically common practice, by 1997, after the American Academy of Neurology issued its sport and concussion guidelines, it should have been seen as ultrahazardous.
- d. There is no cost benefit analysis to the children or to the community that would justify such ultrahazardous activity based upon the state of knowledge about head injuries, Dementia Pugilistica and other injuries, in 1997 or thereafter. Concussions and subconcussive blows in football are not accidents, they are the result of a good play. Any activity which has as its goal to injure a child, must be against public policy and those who are in the business of engaging in such activities should be found strictly liable for injuries suffered thereby. For the same policy reasons as the State of Wisconsin does not allow children to smoke cigarettes and drink alcohol, Pop Warner should be held strictly liable herein.

39. Joseph Chernach was damaged as a result of playing Pop Warner football, including pain, suffering and disability during his lifetime, which lead to despair that ultimately lead to his death. Such harm to Joseph Chernach is the kind of harm that makes Pop Warner football an abnormally dangerous/ultrahazardous activity.

40. Debra Pyka in her individual capacity was damaged by Joseph Chernach playing Pop Warner tackle football. Debra Pyka suffered damages in having to care for Joseph Chernach as a result of the injuries. Debra Pyka also was damaged in terms of both the pre-death loss of society and companionship and post death loss of society and companionship with Joseph Chernach.

41. Pop Warner is strictly liable for the damages of Joseph Chernach and Debra Pyka as a result Pop Warner's engaging in, sponsoring and promoting tackle football for children.

### **Cause of Action #2 – Negligence**

42. The plaintiff realleges and incorporates herein, all of the allegations of the complaint herein.

43. Pop Warner owed to Joseph Chernach, and all other children playing Pop Warner football, a duty to use ordinary care to prevent those children from being exposed to an unreasonable risk of injury.

44. Pop Warner breached that duty to Joseph Chernach and all other children playing Pop Warner football and was negligent in protecting the safety of Joseph Chernach and those other children as follows:

- a. Allowing small children to play a violent pseudo warrior sport of tackle football with the dangerous instrumentality of the football helmet;
- b. By using amateur coaches with short tenures, who were never properly trained in the game of football, injury prevention, concussion or head injury identification;
- c. By failing to enforce limitations on hitting in practice;

- d. By failing to require that properly trained athletic trainers be in attendance at all games and practices and that such trainers have independent power to pull a player out of play in the case of a possible concussion;
- e. By failing to have a training program for all trainers, including that all coaches and athletic trainers be certified in concussion identification and return to play rules;
- f. Failing to use the safest helmets. Often old and recycled football helmets were used;
- g. By failing to properly train coaches, trainers and other supervising adults as to the proper fit for football helmets;
- h. By failing to provide even the modicum of protection that professional and collegiate players have from injury that comes from a *strict* enforcement of football's rules and penalties. Pop Warner's games are not refereed by highly trained officials, who have been taught in the importance of safer tackling techniques, personal fouls and the increased safety that comes from enforcing such rules. Instead, most games are refereed by crews that include other children. During the period of time that Joseph Chernach played Pop Warner football, few if any personal fouls were called in his games;
- i. Failure to monitor play to ensure that rules are strictly enforced;
- j. By failing to warn about the risk of brain damage and dementia pugilistica;
- k. Failing to implement concussion identification and return to play rules;
- l. Failing to implement baseline brain testing of all players so that concussions can be more easily monitored;

m. By failing to warn either Joseph Chernach or his parents of the risks of permanent brain damage from playing Pop Warner football. Pop Warner was in a superior position to Joseph Chernach or his parents to appreciate the risk of permanent brain damage from playing tackle football with a helmet – for a child.

45. Playing Pop Warner football and the negligence of Pop Warner in failing to care for the safety of Joseph Chernach when he played Pop Warner football was a substantial cause of pain, suffering and disability of Joseph Chernach during his lifetime, which led to despair that ultimately led to his death. Playing Pop Warner football was a substantial cause in Joseph Chernach's death.

46. Debra Pyka in her individual capacity was damaged by the negligence of Pop Warner in not protecting Joseph Chernach from the dangers of playing Pop Warner tackle football. Debra Pyka suffered damages in having to care for Joseph Chernach as a result of the injuries. Debra Pyka also was damaged in terms of both the pre-death loss of society and companionship and post death loss of society and companionship with Joseph Chernach. Such harm to Debra Pyka was caused by the negligence of Pop Warner. Pop Warner was a substantial cause of the damages of Debra Pyka, herein.

### **Cause of Action #3 – Punitive Damages**

47. The plaintiff realleges and incorporates herein, all of the allegations of the complaint herein.

48. Pop Warner—by engaging in the business of sponsoring, organizing and promoting tackle football for children—engaged in conduct that was outrageous, malicious, intentional and was done with the intentional disregard of Joseph Chernach's



rights as well as all other children who played Pop Warner football, not just in the State of Wisconsin, but everywhere in the United States.

49. Pop Warner acted with the purpose to disregard the rights of all children playing the game of tackle football.

50. Pop Warner was aware that its actions were substantially certain to cause children to suffer head injuries and other injuries.

51. Pop Warner was substantially certain that its acts would result in the plaintiff's rights being disregarded and that Joseph Chernach and all other children playing Pop Warner were going to suffer injuries, including brain damage.

52. Pop Warner's course of conduct was deliberate, an actual disregard of the plaintiff's right to safety, health, or life, and sufficiently aggravated to warrant punishment by punitive damages.

53. Debra Pyka, in her individual capacity and Joseph Chernach were both damaged as a result Pop Warner's outrageous, malicious, and intentional actions with intentional disregard of Joseph Chernach's rights. Pop Warner was a substantial cause of the damages of herein. Punitive damages should be awarded to the Plaintiffs hereunder.

**Cause of Action #4 – Intentional, Reckless and Wanton Conduct**

54. The plaintiff realleges and incorporates herein, all of the allegations of the complaint herein.

55. Pop Warner knew, or should have known all of the facts contained in Paragraphs 3 through 53 hereof. Pop Warner never warned Joseph Chernach (or other children who were playing this game) or Joseph Chernach's parents (or any other parents) that these

children were more vulnerable to risk of injury than the older players who Joseph Chernach (or the other children) were emulating.

56. Pop Warner's conduct in organizing, promoting and allowing children to play tackle football with helmets intentionally, maliciously, wantonly or in the alternative, recklessly exposed children to the risk of injury including head, brain and other injuries. Joseph Chernach was exposed to these injuries and did in fact suffer such injuries.

**WHEREFORE**, the Plaintiffs hereby demand judgment against Pop Warner, The Pop Warner Foundation and Lexington Insurance Company, for the following damages, in an amount not less than \$5,000,000:

- A. The Wrongful Death of Joseph Chernach;
- B. The survivorship damages of Joseph Chernach for the injuries, pain, suffering and disability he suffered as a result of injuries he suffered playing Pop Warner football;
- C. The damages of Debra Pyka in her individual capacity for the care of Joseph Chernach in his lifetime for the injuries he suffered herein; and the loss of society and companionship of Joseph Chernach, both pre-death and post death;
- D. Punitive Damages for the intentional, malicious, willful and outrageous conduct of Pop Warner, which caused the Wrongful Death and pain, suffering and disability of Joseph Chernach;

Dated this 5<sup>th</sup> day of February, 2015

Brain Injury Law Group, S.C.

By: 

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