



No. S145512  
Vancouver Registry

In the Supreme Court of British Columbia

Between

Arland Richard Bruce,

Plaintiff

and

Mark Steven Cohon, Leo Ezerins, B.C. Lions Football Club Inc., Edmonton Eskimo Football Club, Calgary Stampeders 2012 Inc., Saskatchewan Roughrider Football Club Inc., Winnipeg Blue Bombers, The Hamilton Tiger-Cat Football Club, Toronto Argonauts Football Club Inc., Compagnie Club de Football des Alouettes de Montréal, Capital Gridiron Limited Partnership, Capital Gridiron GP Inc., The Canadian Football League (CFL) Alumni Association, Charles H. Tator, and Krembil Neuroscience Centre,

Defendants

### RESPONSE TO CIVIL CLAIM

Filed by: Krembil Neuroscience Centre, ("Krembil")

#### PART 1: RESPONSE TO NOTICE OF CIVIL CLAIM FACTS

##### Division 1 – Krembil's Response to Facts

1. The facts alleged in paragraph 53 of Part 1 of the Notice of Civil Claim are admitted.
2. The facts alleged in paragraphs 16, 118, 119, 120, 200-204 of Part 1 of the Notice of Civil Claim are denied.
3. The facts alleged in paragraphs 1-15, 17-52, 54-117, 121-199 of Part 1 of the Notice of Civil Claim are outside the knowledge of Krembil.

##### Division 2 – Krembil's Version of Facts

1. Unless specifically admitted herein, Krembil denies each and every allegation of fact contained in the Notice of Civil Claim.
2. Krembil is a non-profit combined clinical, research and education program operated by the University Health Network which is incorporated pursuant to the *University Health*

*Network Act, 1997*, S.O. 1997, c. 45, and located at the Toronto Western Hospital in the province of Ontario. Krembil is not a natural or statutory person.

3. Krembil denies that the Plaintiff has sustained or continues to sustain the injury, damage, loss and expense as alleged, or any injury, damage, loss or expense whatsoever, and puts the Plaintiff to the strict proof thereof.

#### **Division 3 – Additional Facts**

1. The Plaintiff's employment as a professional football player in the Canadian Football League and/or for a Canadian Football League Member Club is governed by the terms and conditions of a collective agreement in force between the Canadian Football League Players Association, the Canadian Football League Player Relations Committee, the Canadian Football League Member Clubs, and the Canadian Football League (the "**Collective Agreement**").

2. The nature of the dispute at issue in this action falls within the ambit of the Collective Agreement. The Collective Agreement in force at all material times will be referred to in this action for its precise terms and effect.

3. Krembil is not a person, corporation, partnership, or unincorporated association ordinarily resident in the province of British Columbia.

4. The events that give rise to the dispute in this action largely took place in the province of Ontario.

5. Krembil has filed a Jurisdictional Response in this proceeding disputing that this Honourable Court has jurisdiction over Krembil and submitting that this Honourable Court ought not to exercise its jurisdiction over Krembil.

#### **Part 2: RESPONSE TO RELIEF SOUGHT**

1. Krembil is opposed to the granting of all of the relief sought in paragraph 1 of Part 2 of the Notice of Civil Claim.

2. Krembil denies that the Plaintiff is entitled to damages, interest and costs as alleged, or at all. In the further alternative, Krembil says that the damages as claimed by the Plaintiff are remote, excessive, and not recoverable at law.

3. Krembil seeks an order that this action be dismissed with costs.

### **Part 3: LEGAL BASIS**

1. Krembil says that this Honourable Court does not have the jurisdiction to hear the claims made by the Plaintiff in this action on the basis that the facts surrounding those claims arise under the Collective Agreement and the jurisdiction to resolve them lies exclusively with the arbitrator appointed under the Collective Agreement.
2. In the alternative, Krembil says that this action creates the risk that the administration of justice will be brought into disrepute by the failure of the Plaintiff to bring his claims before the arbitrator appointed under the Collective Agreement.
3. In the further alternative, Krembil says that this Honourable Court ought not to exercise its jurisdiction over Krembil on the basis that the Supreme Court of British Columbia does not have territorial competence with respect to this action. Krembil pleads and relies on the provisions of the *Court Jurisdiction and Proceedings Transfer Act*, S.B.C. 2003, c. 28.
4. In the further alternative, if the Supreme Court of British Columbia has territorial competence with respect to this action, this Honourable Court ought not to exercise its jurisdiction on the basis that the Ontario Superior Court of Justice is the more appropriate forum pursuant to the *Court Jurisdiction and Proceedings Transfer Act*, *supra*.
5. Krembil says that it is not a proper party to this action on the basis that it has no legal personality.
6. In the further alternative, Krembil says that this action is wholly unmaintainable as it discloses no reasonable cause of action and is an abuse of process of this Honourable Court.
7. In the further alternative, Krembil says that the Plaintiff has failed to plead the necessary facts to establish the elements of a cause of action for negligence or negligent misrepresentation by Krembil.
8. In the further alternative, Krembil denies that it owed the Plaintiff a common law or statutory duty of care.
9. In the further alternative, Krembil says that if it owed the Plaintiff a common law or statutory duty of care, which is expressly denied, then it discharged that duty.

10. In the further alternative, Krembil denies that the Plaintiff sustained any injury, loss, damage, or expense as alleged, or at all.

11. In the further alternative, Krembil says that the Plaintiff was negligent and caused or contributed to any alleged resulting injury, loss, damage or expense.

12. In the further alternative, if the Plaintiff sustained any injury, loss, damage, or expense as alleged, or at all, the alleged negligence of Krembil, which is specifically denied, was not the factual or legal cause of the Plaintiff's injury, loss, damage, or expense.


13. In the further alternative, if the Plaintiff sustained any injury, loss, damage, or expense as alleged, or at all, he could, by the exercise of due diligence, have mitigated his alleged injury, loss, damage, or expense, but has failed to do so.

Krembil's address for service: BORDEN LADNER GERVAIS LLP  
1200 Waterfront Centre  
200 Burrard Street  
P.O. Box 48600  
Vancouver, British Columbia  
V7X 1T2  
Attention: Allison K. Foord

Fax number address for service (if any): None

E-mail address for service (if any): None

Date: 02/09/2014



Signature of

defendant[s]  lawyer for defendant

Krembil Neuroscience Centre  
Allison K. Foord

Rule 7-1 (1) of the Supreme Court Civil Rules states:

- (1) Unless all parties of record consent or the court otherwise orders, each party of record to an action must, within 35 days after the end of the pleading period,
- (a) prepare a list of documents in Form 22 that lists
- (i) all documents that are or have been in the party's possession or control and that could, if available, be used by any party at trial to prove or disprove a material fact, and

- (ii) all other documents to which the party intends to refer at trial, and
- (b) serve the list on all parties of record.

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**RESPONSE TO CIVIL CLAIM**

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BORDEN LADNER GERVAIS LLP  
1200 Waterfront Centre  
200 Burrard Street  
P.O. Box 48600  
Vancouver, British Columbia  
V7X 1T2  
Telephone: (604) 687-5744  
Attn: Allison K. Foord