



“University” or “Institution”). In return, and to exploit his athletic skills and drive, key personnel of the University failed to advise him about what they knew was a serious injury he sustained while performing in a basketball game on behalf of the Institution. They did this knowing that continuing to play in the injured condition without immediate surgical repair would exacerbate the injury and seriously damage plaintiff’s professional opportunities.

## **II. FACTS RELEVANT TO ALL COUNTS**

1. Plaintiff Myles Powell is an individual and citizen of New York with an address at 605 W. 42<sup>nd</sup> St., Unit 17U, New York, New York 10036.

2. Defendant Seton Hall University is a private university with an address of 400 S Orange Avenue, South Orange, New Jersey 07079.

3. Defendant Kevin Willard (“Coach Willard”), the Coach of the Seton Hall University Basketball Team, has an address of 400 S Orange Avenue, South Orange, New Jersey 07079..

4. Defendant Tony Testa, M.D. (“Dr. Testa”), the Director of Sports Medicine at Seton Hall University and the Basketball Team’s physician, has an address of 400 S Orange Avenue, South Orange, New Jersey 07079.

5. Myles Powell was a stand-out high school player at Trenton Catholic High and South Kent High School, averaging more than 20 points a game.

6. Recruited by a number of colleges and universities, Powell chose Seton Hall University so he could stay in New Jersey close to his family, and based on the representations by the University that it was the best choice for Powell.

7. Powell began attending the University and playing basketball for it in 2016.

8. His only compensation for playing basketball for the University was a scholarship to attend the University.

9. Powell's success on the basketball court for the University, however, brought considerable financial rewards to the University and the professionals who were allowed to be compensated for the revenues generated by the basketball program.

10. As a sophomore, Powell was named to the Big East All-Academic team and named the conference Most Improved Player.

11. In his Junior season, Powell finished second in the Big East Conference in scoring with a 23.1-point average, with eight games of 30 points or better, including a season-high 40 points.

12. At the close of the 2018-2019 season, his Junior year of college, Powell was named first-team All-Big East and won the award as the top college player in the New York City metro area.

13. Powell could have entered the NBA Draft after his Junior season but his coaches and particularly his father wanted him to graduate from Seton Hall University. As incentive to stay in school, the coaches advised that the University would purchase insurance on Powell's behalf in the event he was injured during the following season.

14. As he entered his Senior year, the 2019-2019 NCAA season, expectations were high for Powell and for the Seton Hall Basketball Program, whose principals would no doubt continue to benefit financially by the success of Powell and the other student athletes whose compensation was limited to the scholarships they received.

15. The Associated Press named Powell a preseason first-team All-American and the Big East Conference named him preseason Big East Player of the Year.

16. In his second game of the season, against Stony Brook, Powell suffered what he thought was an ankle injury. He was examined by the Coach and the team doctor who advised it was indeed confined to the ankle and continued play would not exacerbate the injury.

17. Relying on this information, Powell played in the next game against the number 3 ranked Michigan State, scoring a game-high 37 points.

18. On December 14, Powell suffered a concussion during a loss to Rutgers, an injury unrelated to what he thought was the prior ankle injury and was forced to sit out under the concussion protocol for the next two games.

19. In the following game against DePaul on December 30<sup>th</sup>, Powell scored 27 points, had five rebounds, and five steals.

20. Throughout these later games, Powell continued to feel pain in his right knee, so much so that his practice time was severely limited.

21. Whenever he would ask Dr. Testa about the pain, the doctor would advise it was just a bone bruise and that playing on it would not exacerbate the injury.

22. Before these games, to alleviate or mask the pain, Dr. Testa would inject pain killer medicine into Powell's knee to allow him to play and perform on behalf of the University.

23. At all times, Coach Willard was aware of the pain in Powell's knee, the advice given to Powell by Dr. Testa, and the steps Dr. Testa took to allow Powell to play basketball for the Seton Hall University Basketball Team.

24. In the next game against fifth ranked Butler on January 15, 2020, Powell scored 29 points.

25. On January 18, 2020, when Seton Hall beat St. Johns for its 8<sup>th</sup> straight win, Powell achieved a milestone achieved by few players in the history of Seton hall University or college basketball in general, surpassing the 2,000-point milestone.

26. What Powell did not know was that defendants knew he had suffered not just an ankle injury and concussion during the season but a lateral meniscus tear to his right knee which should have necessitated his sitting out the rest of the season so as not to exacerbate the injury.

27. Such a standout college career capped by such a successful senior year should have guaranteed Powell to be selected as a lottery pick in the NBA Draft, but the professionals connected to the various teams in the NBA had suspected or discovered that Powell had a serious injury to his right knee that had gone untreated.

28. In light of Powell's medical condition, of which he was unaware, no NBA team drafted Powell.

### **III. COUNTS**

#### **COUNT ONE** **NEGLIGENCE v. DR. TESTA**

29. Plaintiff incorporates by reference all other paragraphs of this complaint as if fully set forth herein.

30. At all times mentioned herein and material hereto Dr. Testa held himself out to be skillful and qualified to attend, care for, treat and render medical care and services to patients such as Powell.

31. Dr. Testa is Director of Sports Medicine at Seton Hall University and the Basketball Team's physician.

32. At all relevant times, while Powell was under the care, supervision and treatment of Dr. Testa, Powell suffered injuries as a direct and proximate result of the negligence and carelessness of Dr. Testa.

33. Dr. Testa's negligence included, but was not limited to, the following:

- a. Failing to properly diagnose and treat Powell's lateral meniscus tear to his right knee;
- b. Failing to prescribe appropriate medications and/or treatments;
- c. Failing to properly and fully inform Powell regarding his injuries and the risks of continued play with the aforesaid injuries;
- d. Failing to uphold the proper standard of care under the circumstances presented; and
- e. Failing to properly supervise and control the procedures set forth above.

34. As a direct and proximate result of the carelessness and negligence of Dr. Testa as set forth above, Powell suffered severe and permanent injuries, including physical pain, emotional distress, and monetary damages.

**WHEREFORE**, plaintiff requests judgment in his favor and against Dr. Testa for an order granting plaintiff damages and other appropriate relief.

**COUNT TWO**  
**NEGLIGENCE v. SETON HALL AND COACH WILLARD**

35. Plaintiff incorporates by reference all other paragraphs of this complaint as if fully set forth herein.

36. During all relevant times, Coach Willard, in his role as coach of the basketball team, was acting as an agent of Seton Hall.

37. As set forth above, Coach Willard was negligent in failing to properly safeguard the health and safety of his players, such as Powell.

38. At all relevant times hereto, Seton Hall acted by and through its agents, servants and employees, including but not limited to Dr. Testa and Coach Willard.

39. Seton Hall is vicariously liable for the negligence of Dr. Testa and Coach Willard including such acts of negligence described in Count I, above.

40. Seton Hall is directly liable for failing to monitor and supervise the conduct of all persons who attended to Powell.

41. As a direct and proximate result of the carelessness and negligence of defendants, jointly and severally, as set forth above, Powell suffered severe and permanent injuries, including physical pain, emotional distress, and monetary damages.

**WHEREFORE**, plaintiff requests judgment in his favor and against Seton Hall University and Coach Willard, jointly and severally, for an order granting plaintiff damages and other appropriate relief.

**COUNT THREE**  
**BREACH OF FIDUCIARY DUTY v. ALL DEFENDANTS**

42. Plaintiff incorporates by reference all other paragraphs of this complaint as if fully set forth herein.

43. The defendants, each of them respectively, jointly and severally, owed a fiduciary duty to Powell by virtue of the establishment of the physician-patient, athlete-coach and student-university relationships, and through the advice and recommendations of treatment to Powell by defendants and their representatives, affiliates, agents and/or employees, as set forth above.

44. This fiduciary duty carried with it, among other things, the obligation to provide Powell with the information needed to make an informed decision of whether to participate in

basketball practice and games after sustaining injuries, to make sure such information was truthful and accurate, and not to include Powell in the basketball activities if it would pose a risk to his health and safety.

45. Defendants and each of them respectively, jointly and severally, breached their fiduciary duty to Powell as described above.

46. As a result of defendants' conduct, by and through their agents, servants, affiliates, workmen, representatives, physicians, nurses, staff, contractors, medical personnel and employees, Powell was caused to suffer severe and agonizing personal injuries, emotional and psychological injuries, pain and suffering and expenses affiliated with treatment and care of the foregoing.

**WHEREFORE**, plaintiff requests judgment in his favor and against Seton Hall University, Dr. Testa, and Coach Willard, jointly and severally, for an order granting plaintiff damages and other appropriate relief.

**COUNT FOUR**  
**BREACH OF CONTRACT v. SETON HALL UNIVERSITY**

47. Plaintiff incorporates by reference all other paragraphs of this complaint as if fully set forth herein.

48. The letter of intent executed by Powell and Seton Hall established a binding contract by which Seton Hall owed a duty to protect Powell from the negligent conduct of its professionals, to make sure he was fully informed of any injuries he sustained, to provide him with insurance in the event he sustained serious injury during his Senior Year, and to not damage the professional opportunities available to him.

49. Seton Hall breached that contract by the actions and inactions set forth above.



50. As a proximate result of that breach, plaintiff has suffered serious physical harm and financial damages.

**WHEREFORE**, plaintiff requests judgment in his favor and against Seton Hall University, Dr. Testa, and Coach Willard, jointly and severally, for an order granting plaintiff damages and other appropriate relief.

**SHERMAN, SILVERSTEIN, KOHL,  
ROSE & PODOLSKY, P.A.**

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Attorneys for Plaintiff, Myles Powell

**Dated: July 13, 2021**

**JURY TRIAL DEMAND**

Please take notice that the plaintiff demands a trial by jury as to all issues in the above matter.

**SHERMAN, SILVERSTEIN, KOHL,  
ROSE & PODOLSKY, P.A.**

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**Dated: July 13, 2021**