

UNITED STATES DISTRICT COURT
DISTRICT OF MINNESOTA

In re NATIONAL HOCKEY LEAGUE) No. 0:14-md-02551-SRN-JSM
PLAYERS' CONCUSSION INJURY)
LITIGATION) PLAINTIFFS' FIRST SET OF
_____) INTERROGATORIES TO DEFENDANT
) NATIONAL HOCKEY LEAGUE
This Document Relates To:)
)
ALL ACTIONS.)
_____)

Pursuant to Rule 33 of the Federal Rules of Civil Procedure, Plaintiffs (defined below) by and through their undersigned counsel, hereby request that Defendant National Hockey League (“NHL”) answer the following interrogatories separately, fully, and under oath, within thirty (30) days of service hereof.

DEFINITIONS

The following definitions apply to each of the interrogatories:

1. “Plaintiffs” shall mean the named plaintiffs in the Master Administrative Long-Form and Class Action Complaint.

2. “You” or “Your” mean the Defendant, NHL, and/or any managers, directors, administrators, officers, executives, agents, contractors, fiduciaries, employees or other representatives of Defendant.

3. “Admission” means a statement offered against a party opponent that was either made by that party, made by a person authorized to make the statement by that party, made by that party’s agent within the scope of the agency, or manifested and adopted by that party. Fed. R. Evid. 801(d)(2).

4. “Communication” means any oral, written, electronic, or other transfer of information, ideas, opinions or thoughts by any means, from or to any Person or thing.

5. The terms “Concerning” or “Relating to” or “Related to” mean referring to, regarding, describing, evidencing, constituting, discussing, memorializing, summarizing, recording or providing evidence of a subject matter.

6. “2011 Concussion Research Study” means the research study by Benson, B., Meeuwisse, W., Rizos, J., Kang, J., and Burke, C., entitled *A Prospective Study of*

Concussions Among NHL Players During Regular Season Games, which was attached as Exhibit 16 to the Declaration of William Daly (“Daly Dec.”) filed in support of Defendant National Hockey League’s Motion to Dismiss Master Complaint Based on Labor Law Preemption.

7. The terms “Defendant” or “NHL” mean the National Hockey League. These terms include, without limitations, any offices and locations of the National Hockey League as well as any of the NHL’s divisions, affiliates, subsidiaries, successors, predecessors, present or former partners, officers, directors, employees, agents, attorneys or representatives, and all other Persons or entities acting, purporting to act or authorized to act on its behalf, including but not limited to NHL Properties, NHL Enterprises, and NHL Network, and any and all other individuals or entities that possess documents the NHL has a legal right to obtain.

8. “Describe in Detail” means a request for a complete description and explanation of the facts, dates, circumstances, analysis, opinion and other information Concerning the subject matter of a specific interrogatory.

9. The terms “Document” or “Documents” mean anything which may be considered to be a document or tangible thing within the contemplation of Rules 33 and 34 of the Federal Rules of Civil Procedure and Federal Rule of Evidence 1001 and includes, without limitation, any typewritten, handwritten, graphic, photographic, printed or otherwise recorded matter or recording of symbols in tangible form, however produced or reproduced, of every kind and regardless of where located, which is in Your possession, custody, or control; or in the possession, custody or control of any servant or

agent of You or of Your attorneys. The terms include the following: electronically recorded information such as electronic mail (“email”), html files, databases, data processing cards or tapes, computerized data, computer diskettes, or information otherwise contained on a computer’s hard drive, disks or backup tapes; video tapes, DVD’s, video recordings, audio tapes, view-graphs, or any information maintained on digital, electronic, magnetic or other media; and any other summary, schedule, memorandum, note, statement, letter, telegram, interoffice communication, report, diary, worksheet, list, graph, chart, or index, tape record, partial or complete report of telephone or oral conversation, transcript or minutes, compilation, tabulation, study, analysis, or other such writing or recording. The terms “Document” and “Documents” include any originals, all file copies, all other copies, no matter how prepared, and all drafts prepared in connection with such Documents, whether or not used, as well as the file in which the Documents are maintained. A draft or non-identical copy of a Document, including a copy or duplicate of a Document that has any nonconforming notes, marginal annotations or other markings, and any preliminary version, draft or revision of the foregoing, is a separate Document within the meaning of these terms.

10. Without limitation of the word “control” as used in the preceding paragraph, a document shall be deemed to be in Your control if You have the right to secure the Document or a copy therefrom from another person or public or private entity having possession or custody thereof.

11. “Identify” means to state or a statement of:

(a) in the case of a Person other than a natural person, its name, the address of its principal place of business (including zip code), its telephone number, and the name of its chief executive officer, as well as, if it has a person other than a natural person that ultimately controls it, that other person's name, the address of that person's principal place of business (including zip code), that other person's telephone number, and the name of that other person's chief executive officer;

(b) in the case of a natural person, his or her name, business address and telephone number, employer, and title or position;

(c) in the case of a Communication, its date, type (*e.g.*, telephone conversation or discussion), the place where it occurred, the identity of the Person who made the Communication, the identity of the Person who received the Communication, the identity of each other Person when it was made, and the subject matter discussed;

(d) in the case of a Document, the title of the Document, the author, the title or position of the author, the addressee, each recipient, the type of Document, the subject matter, the date of preparation, and its number of pages; and

(e) in the case of an agreement, its date, the place where it occurred, the identity of all Persons who were parties to the agreement, the identity of each Person who has knowledge of the agreement and all other Persons present when it was made, and the subject matter of the agreement.

12. "League Rules" means the Constitution and By-Laws of the NHL and/or any official interpretations of them.

13. “League Playing Rules” means the rules and regulations governing team and player conduct during games, as originally drafted and modified from time to time, and as exemplified by the League Playing Rules that were Exhibit 17 to the Daly Dec.

14. “Master Complaint” shall mean Plaintiffs’ Master Administrative Long-Form and Class Action Complaint filed in the above-captioned matter on October 20, 2014 [Doc. 28].

15. “Medical Information” means all medical and/or health information about an NHL Player, including but not limited to all past, present or future: health, mental health, medical or surgical records; medical or health questionnaire(s); information relating to any injury, sickness, disease, condition, medical history, or medical, mental, or clinical status, or diagnosis, treatment or prognosis; clinical or treatment notes or reports; fitness to play determinations; test results (including but not limited to the results of neuropsychological testing); laboratory reports, x-rays or diagnosis imaging results; and data relating to any testing or medial study.

16. “NHL Health Professionals” means the NHL’s physicians, appointed and consulting neuropsychologists, athletic trainers and/or therapists, hospitals, laboratories, clinics and other medical or health professionals or organizations, including but not limited to any member of the National Hockey League Team Physicians Society.

17. “NHL Personnel” means any employee or independent contractor of the NHL.

18. “League Year” means the start date of year of NHL business until the last date of NHL business that year.

19. “NHL Player” means any active or former player who was a member of an active roster for any NHL member club during the preseason, regular season, or postseason.

20. “Person(s)” means any natural person, public or private corporation, general or limited partnership, joint venture, association, government or governmental entity (including any governmental agency or political subdivision of any government), group, form of business or legal organization or arrangement, or other legal entity, including the representatives of any such person or persons.

21. The terms “Policy” or “Policies” mean any practice, procedure, directives, routine, rules, courses of conduct or code of conduct, written or unwritten, formal or informal, recorded or unrecorded, which were recognized, adopted, issued or followed by You.

22. The term “Retired NHL Player” means any individual who played hockey for the NHL and its member teams during the relevant time period but no longer plays hockey in that capacity

23. The word “Statement” means any written statement, signed or otherwise adopted or approved by the person making it, or a stenographic, mechanical, electrical or other recording or transcription thereof which is a substantial verbatim recital or an oral statement by the person making it and contemporaneously recorded.

24. All other terms should be given and interpreted according to their common and typical meanings and usage.

INSTRUCTIONS

1. Pursuant to Rule 26(e), Federal Rules of Civil Procedure, these interrogatories are continuing in nature, so that if, after answering, You acquire additional responsive knowledge or information, Plaintiffs direct that You serve supplemental answers upon them in a timely manner after acquiring such additional knowledge or information.

2. If the Person who verifies the answers to the interrogatories does not have personal knowledge of the information contained in the answers, that Person shall, for each answer not verified by personal knowledge, identify the Person or Persons from whom the information was obtained or, if the source of information is documentary, provide a full description including the location thereof.

3. Where identification of a Document is required, the following shall be separately stated as to each Document:

(a) its date, its exact title, and the nature and substance of the Document with sufficient particularity to enable it to be identified and located within any Document production;

(b) the name of the author, his or her business affiliation (presently and at the time the Document was prepared), and his or her last known address;

(c) the name, business affiliation (both presently and at the time the Document was prepared) and the last known address of the addressee;

(d) the name, business affiliation (both presently and at the time the Document was prepared) and the last known address of every person to whom a copy of the Document was to be sent, other than the addressee described above;

(e) the names and addresses of all Persons who now possess either the original or any copy thereof;

(f) the identification and location of the files where the original and each copy is normally or presently kept; and

(g) if such Document is no longer in existence, state:

(i) the circumstances surrounding its elimination;

(ii) the date and reasons for such elimination; and

(iii) the identity of the Person(s) who ordered and/or supervised the elimination.

4. Whenever identification of a Person is required, the following shall be separately stated as to each Person:

(a) the name and last known business address or location and phone number of each such Person; and

(b) if such Person is an individual, additionally state:

(i) the business position or positions held by that individual at the time or times for which such identification is requested;

(ii) such Person's last known address and telephone number; and

(iii) if such a Person is not an individual, but rather an entity or organization, additionally identify the individual(s) employed by or representing such entity or organization who has knowledge of the matter at issue.

5. If at any time after answering these interrogatories You determine that an answer you provided was incorrect or otherwise inaccurate, You must immediately notify Plaintiffs' counsel and provide amended answers as soon as reasonably possible.

6. If You refuse to respond to any of these interrogatories based on a claim of privilege or confidentiality, You must provide a statement of the claim of privilege (including work-product) and all facts relied upon in support of that claim, including the parties involved, any dates involved, the relevant subject matter of the privileged material, any Documents or oral communications supporting the privileged information, including the dates, authors, recipients, title and subject matter, and present location of any Documents involved. In the case of attorney work-product privilege, you must also identify the litigation for which the work-product was prepared.

7. Whenever a reference to a business entity appears, the reference shall mean the business entity, its affiliated entities, partnerships, divisions, subdivisions, directors, officers, employees, agents, clients, or other representatives of affiliated third parties.

8. If You answer any interrogatory by reference to business records pursuant to Rule 33(d), Federal Rules of Civil Procedure, identify such records by specific Bates number and the name(s) of Your employee(s) certifying the documents as business records for purposes of answering the interrogatory.

9. Plaintiffs reserve the right to propound additional interrogatories.

RULES OF CONSTRUCTION

1. “Any,” “all,” and “each” shall be construed as any, all and each.
2. The connectives “and” and “or” shall be construed either disjunctively or conjunctively as necessary to bring within the scope of the interrogatory all responses that might otherwise be construed to be outside of its scope
3. The singular form of a noun or pronoun includes the plural form and vice versa.
4. The use of any tense of any verb shall also include within its meaning all other tenses of that verb.
5. A term or word defined herein is meant to include both the lower and upper case reference to such term or word.

RELEVANT TIME PERIOD

The relevant time period for each interrogatory is January 1, 1967 through the present, unless otherwise specifically indicated, and shall include all Documents and information that relate to such period, even though prepared or published outside of such period. If a Document prepared before this period is necessary for a correct or complete understanding of any Document covered by an interrogatory, you must produce the earlier or subsequent Document as well. If any Document is undated and the date of its preparation cannot be determined, the Document shall be produced if otherwise responsive to the production request.

I. INTERROGATORIES

INTERROGATORY NO. 1:

Do You contend that any Plaintiff(s) made any Admission(s) concerning this case? If so, kindly state the date, time, and place of the Admission(s); identify the speaker(s) and hearer(s); describe the content of such Admission(s); and identify any Document(s) memorializing, containing, referring to or otherwise evidencing such Admission(s).

ANSWER

INTERROGATORY NO. 2:

Identify all Persons, by League Year, who were corporate officers of the NHL, including but not limited to the Commissioner and President.

ANSWER:

INTERROGATORY NO. 3:

Identify all Persons, by League Year, who were members or alternate members of the NHL Board of Governors.

ANSWER:

INTERROGATORY NO. 4:

Identify all NHL Health Professionals, by League Year, including but not limited to NHL physicians, medical staff, and athletic trainers.

ANSWER:

INTERROGATORY NO. 5:

Describe in Detail the Athlete Health Management System or its equivalent (“AHMS”), used by the NHL to track, compile, follow or otherwise become informed of player’s Medical Information including, but not limited to, the information stored in the AHMS, the purpose for its creation, the exact Medical Information that is stored in the AHMS, the manner in which such Medical Information is monitored, and all Persons involved with inputting information into, access to, or responsible for implementing changes to the AHMS.

ANSWER:

INTERROGATORY NO. 6:

State whether the NHL tracks, compiles, follows, collects information about or otherwise becomes informed of physical, mental and/or psychological problems, including but not limited to Chronic Traumatic Encephalopathy (CTE), dementia, Alzheimer’s disease or similar cognitive-impairing conditions, suffered by Retired NHL Players (“Retiree Illness Tracking”) and, if so, Describe in Detail such Retiree Illness Tracking, including but not limited to, how the information is tracked, where it is stored, why it was created, what Medical Information is tracked, who has access to such information and the identification of all Persons, including NHL Personnel and NHL

Health Professionals involved with inputting information into or responsible for implementing changes to the Retiree Illness Tracking.

ANSWER:

INTERROGATORY NO. 7:

Please Describe in Detail the circumstances in which the NHL first became aware that repeated head injuries, concussions or subconcussive impacts to the head suffered by NHL Players may cause or be a substantial factor in causing long-term neurological problems, including but not limited to, when, and how the NHL became aware of such information, and the Persons involved.

ANSWER:

INTERROGATORY NO. 8:

Identify all Persons, NHL programs, departments, committees, and their members, NHL Health Professionals, and medical consultants, by League Year, responsible for initiating, drafting, reviewing, revising or advising on recommendations to the NHL concerning player safety, player injuries, or medical treatment, including but not limited to:

- (a) the NHL Health Management Team;
- (b) the Joint Health & Safety Subcommittee; and
- (c) the Department of Player Safety.

For every program, department and/or committee, Describe in Detail, why it was formed, when it was formed, its primary function, and whether each created any drafts or work products that were reviewed by any NHL Personnel. If any such drafts or work products were created, identify those Documents by author, date, and title.

ANSWER:

INTERROGATORY NO. 9:

Identify all Persons, NHL programs, departments, committees, and their members, NHL Health Professionals, and medical consultants, by League Year, responsible for initiating, drafting, reviewing, revising or advising on recommendations to the NHL concerning head injuries, mild traumatic brain injury (MTBI), concussions, and subconcussive impacts, including:

- (a) the NHL Neuropsychological Assessment Advisory Board;
- (b) the NHL Neuropsychological Testing Program;
- (c) the NHL Consulting Neuropsychologists;
- (d) the NHL Concussion Program, including the Persons involved in the 2011 Concussion Research Study;
- (e) the NHL Concussion Working Group; and
- (f) the NHL Concussion Subcommittee.

For every such program, department and/or committee, Describe in Detail, why it was formed, when it was formed, its primary function, and whether it created any drafts

or work products that were reviewed by any NHL Personnel. If any such drafts or work products were created, identify those Documents by author, date, and title.

ANSWER:

INTERROGATORY NO. 10:

Identify all Persons responsible for initiating, drafting, reviewing, revising or advising on the NHL's medical treatment and protocol for addressing NHL Player head injuries, concussions, MTBI, and subconcussive impacts, including but not limited to the NHL's 2009-2010 Concussion Evaluation and Management Protocol, the 2011 and 2013-2014 updates to the Concussion Evaluation and Management Protocol, and the use of the SCAT2 test.

ANSWER:

INTERROGATORY NO. 11:

Please Describe in Detail the circumstances in which the NHL, including NHL Health Professionals, became aware of the research studies or reports referenced by Plaintiffs in ¶¶179-214, 226-35, and 384 of the Master Complaint.

ANSWER:

INTERROGATORY NO. 12:

Identify all outside (non-NHL) entities, companies, corporations, hospitals, groups, or Persons (collectively, "Non-NHL Entities"), who, at the request of or

otherwise for or on behalf of the NHL, examined, investigated, explored, reviewed, assessed or otherwise studied NHL player safety, player injuries, or medical treatment of NHL Players. For each such Non-NHL Entity, Describe in Detail its task, time frame and overall duration of its work, the actual work it did, the results, data or information generated, any conclusions reached, and any tangible work product generated.

ANSWER:

INTERROGATORY NO. 13:

Identify all Non-NHL Entities, who, at the request of or otherwise for or on behalf of the NHL, examined, investigated, explored, reviewed, assessed or otherwise studied NHL Player head injuries, concussions, MTBI, and subconcussive impacts. For each such Non-NHL Entity, Describe in Detail its task, time frame, and overall duration of its work, the actual work it did, the results, data or information generated, any conclusions reached, and any tangible work product generated.

ANSWER:

Dated: January 16, 2015

Steven D. Silverman
Stephen G. Grygiel
William Sinclair
SILVERMAN, THOMPSON,
SLUTKIN & WHITE, LLC
201 N. Charles Street, Suite 2600
Baltimore, MD 21201
Telephone: (410) 385-2225

By: /s/Stuart A. Davidson
Stuart A. Davidson
Mark J. Dearman
Leonard B. Simon
Kathleen B. Douglas
Janine D. Arno
ROBBINS GELLER RUDMAN
& DOWD LLP
120 E. Palmetto Park Road, Suite 500
Boca Raton, FL 33432

ssilverman@mdattorney.com
sgrygiel@mdattorney.com
bsinclair@mdattorney.com

Telephone: (561) 750-3000
sdavidson@rgrdlaw.com
mdearman@rgrdlaw.com
lens@rgrdlaw.com
kdouglas@rgrdlaw.com
jarno@rgrdlaw.com

Charles S. Zimmerman
Brian C. Gudmundson
Hart L. Robinovitch
David M. Cialkowski
Brad Buhrow
ZIMMERMAN REED, PLLP
1100 IDS Center, 80 S. 8th St.
Minneapolis, MN 55402
Telephone: (612) 341-0400
charles.zimmerman@zimmreed.com
brian.gudmundson@zimmreed.com
hart.robinovitch@zimmreed.com
david.cialkowski@zimmreed.com
brad.buhrow@zimmreed.com

Plaintiffs' Co-Lead Counsel

UNITED STATES DISTRICT COURT
DISTRICT OF MINNESOTA

In re NATIONAL HOCKEY LEAGUE) No. 0:14-md-02551-SRN-JSM
PLAYERS' CONCUSSION INJURY)
LITIGATION) CERTIFICATE OF SERVICE
_____)
)
This Document Relates To:)
)
ALL ACTIONS.)
_____)

I, Stuart A. Davidson, hereby certify that the foregoing was served on January 16, 2015, upon the counsel below by electronic and U.S. Mail:

John H. Beisner
Jessica D. Miller
SKADDEN, ARPS, SLATE,
MEAGHER & FLOM LLP
1440 New York Avenue, N.W.
Washington, D.C. 20005-2111
Telephone: (202) 371-7000
john.beisner@skadden.com
jessica.miller@skadden.com

Daniel J. Connolly
Joseph M. Price
Linda S. Svitak
Aaron D. Van Oort
FAEGRE BAKER DANIELS LLP
2200 Wells Fargo Center
90 South Seventh Street
Minneapolis, MN 55402
Telephone: (612) 766-7000
daniel.connolly@FaegreBD.com
joseph.price@FaegreBD.com
linda.svitak@FaegreBD.com
aaron.vanoort@FaegreBD.com

I further certify that I caused a copy of the same to be served upon all counsel of record via electronic mail.

Respectfully submitted,

January 16, 2015

By: /s/Stuart A. Davidson
Stuart A. Davidson
Mark J. Dearman

Leonard B. Simon
Kathleen B. Douglas
Janine D. Arno
ROBBINS GELLER RUDMAN
& DOWD LLP
120 E. Palmetto Park Road, Suite 500
Boca Raton, FL 33432
Telephone: (561) 750-3000
s davidson@rgrdlaw.com
m dearman@rgrdlaw.com
lens@rgrdlaw.com
k douglas@rgrdlaw.com
j arno@rgrdlaw.com