

**UNITED STATES DISTRICT COURT  
DISTRICT OF MINNESOTA**

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	)	
	)	
	)	No. 14-2551 (SRN/JSM)
IN RE: NATIONAL HOCKEY LEAGUE	)	
PLAYERS' CONCUSSION INJURY	)	<b>DECLARATION OF</b>
LITIGATION	)	<b>DANIEL J. CONNOLLY IN</b>
	)	<b>SUPPORT OF DEFENDANT</b>
	)	<b>NATIONAL HOCKEY LEAGUE'S</b>
This Document Relates to: ALL ACTIONS	)	<b>MOTION TO COMPEL</b>
	)	<b>PRODUCTION OF DOCUMENTS</b>
	)	<b>FROM THE BOSTON</b>
	)	<b>UNIVERSITY CTE CENTER</b>
	)	

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My name is Daniel J. Connolly. I am one of the attorneys representing the National Hockey League ("NHL") in the above-referenced matter and submit this Declaration in support of Defendant NFL's Memorandum Opposing Plaintiffs' Motion to Compel.

1. Attached as Exhibit A is a true and correct copy of the Subpoena Duces Tecum served on Boston University CTE Center, dated October 11, 2016.
2. Attached as Exhibit B is a true and correct copy of the Subpoena Duces Tecum served on Dr. Ann McKee and Dr. Robert Stern, dated September 1, 2015.
3. Attached as Exhibit C is a true and correct copy of the Responses and Objections of Dr. Ann McKee and Dr. Robert Stern to Subpoena for Documents, dated October 26, 2015.
4. Attached as Exhibit D is a true and correct copy of my Deficiency Letter to Boston University's Associate General Counsel, Larry Elswit, dated February 3, 2016.

5. Attached as Exhibit E is a true and correct copy of the Responses and Objections of Boston University CTE Center to Subpoena for Documents and Objects, dated January 11, 2017.

I declare under penalty of perjury that the foregoing is true and correct.

Dated: January 19, 2017.

s/ Daniel J. Connolly\_\_\_\_\_

AO 88B (Rev. 02/14) Subpoena to Produce Documents, Information, or Objects or to Permit Inspection of Premises in a Civil Action

UNITED STATES DISTRICT COURT

for the

District of Minnesota

In re Nat'l Hockey League Players Concussion Injury

Plaintiff

v.

Defendant

Civil Action No. 14-2551

SUBPOENA TO PRODUCE DOCUMENTS, INFORMATION, OR OBJECTS OR TO PERMIT INSPECTION OF PREMISES IN A CIVIL ACTION

To: Boston University CTE Center, c/o Larry Elswit, Associate General Counsel, Boston University Office of General Counsel, 125 Bay State Road, Boston, MA 002215

(Name of person to whom this subpoena is directed)

Production: YOU ARE COMMANDED to produce at the time, date, and place set forth below the following documents, electronically stored information, or objects, and to permit inspection, copying, testing, or sampling of the material:

See Exhibit A

Table with 2 columns: Place (Skadden, Arps, Slate, Meagher & Flom, LLP, Four Times Square, New York, NY 10036-6522 c/o Matthew Lisagar) and Date and Time (10/31/2016 9:00 am)

Inspection of Premises: YOU ARE COMMANDED to permit entry onto the designated premises, land, or other property possessed or controlled by you at the time, date, and location set forth below, so that the requesting party may inspect, measure, survey, photograph, test, or sample the property or any designated object or operation on it.

Table with 2 columns: Place and Date and Time (empty)

The following provisions of Fed. R. Civ. P. 45 are attached – Rule 45(c), relating to the place of compliance; Rule 45(d), relating to your protection as a person subject to a subpoena; and Rule 45(e) and (g), relating to your duty to respond to this subpoena and the potential consequences of not doing so.

Date: 10/11/2016

CLERK OF COURT

OR

Signature of Clerk or Deputy Clerk

Handwritten signature of Daniel J. Connolly, Attorney's signature

The name, address, e-mail address, and telephone number of the attorney representing (name of party) Defendant, the National Hockey League, who issues or requests this subpoena, are:

Daniel J. Connolly, 90 S. 7th Street, Minneapolis, MN 55402, 612-766-7806. Email: daniel.connolly.FaegreBD.com

Notice to the person who issues or requests this subpoena

If this subpoena commands the production of documents, electronically stored information, or tangible things or the inspection of premises before trial, a notice and a copy of the subpoena must be served on each party in this case before it is served on the person to whom it is directed. Fed. R. Civ. P. 45(a)(4).

AO 88B (Rev. 02/14) Subpoena to Produce Documents, Information, or Objects or to Permit Inspection of Premises in a Civil Action (Page 2)

Civil Action No. 14-2551

**PROOF OF SERVICE**

*(This section should not be filed with the court unless required by Fed. R. Civ. P. 45.)*

I received this subpoena for *(name of individual and title, if any)* \_\_\_\_\_  
on *(date)* \_\_\_\_\_.

I served the subpoena by delivering a copy to the named person as follows: \_\_\_\_\_  
\_\_\_\_\_ on *(date)* \_\_\_\_\_ ; or

I returned the subpoena unexecuted because: \_\_\_\_\_  
\_\_\_\_\_.

Unless the subpoena was issued on behalf of the United States, or one of its officers or agents, I have also  
tendered to the witness the fees for one day's attendance, and the mileage allowed by law, in the amount of  
\$ \_\_\_\_\_.

My fees are \$ \_\_\_\_\_ for travel and \$ \_\_\_\_\_ for services, for a total of \$ \_\_\_\_\_ 0.00.

I declare under penalty of perjury that this information is true.

Date: \_\_\_\_\_  
\_\_\_\_\_  
*Server's signature*  
\_\_\_\_\_  
*Printed name and title*  
\_\_\_\_\_  
*Server's address*

Additional information regarding attempted service, etc.:



**Federal Rule of Civil Procedure 45 (c), (d), (e), and (g) (Effective 12/1/13)****(c) Place of Compliance.**

**(1) For a Trial, Hearing, or Deposition.** A subpoena may command a person to attend a trial, hearing, or deposition only as follows:

- (A) within 100 miles of where the person resides, is employed, or regularly transacts business in person; or
- (B) within the state where the person resides, is employed, or regularly transacts business in person, if the person
  - (i) is a party or a party's officer; or
  - (ii) is commanded to attend a trial and would not incur substantial expense.

**(2) For Other Discovery.** A subpoena may command:

- (A) production of documents, electronically stored information, or tangible things at a place within 100 miles of where the person resides, is employed, or regularly transacts business in person; and
- (B) inspection of premises at the premises to be inspected.

**(d) Protecting a Person Subject to a Subpoena; Enforcement.**

**(1) Avoiding Undue Burden or Expense; Sanctions.** A party or attorney responsible for issuing and serving a subpoena must take reasonable steps to avoid imposing undue burden or expense on a person subject to the subpoena. The court for the district where compliance is required must enforce this duty and impose an appropriate sanction—which may include lost earnings and reasonable attorney's fees—on a party or attorney who fails to comply.

**(2) Command to Produce Materials or Permit Inspection.**

**(A) Appearance Not Required.** A person commanded to produce documents, electronically stored information, or tangible things, or to permit the inspection of premises, need not appear in person at the place of production or inspection unless also commanded to appear for a deposition, hearing, or trial.

**(B) Objections.** A person commanded to produce documents or tangible things or to permit inspection may serve on the party or attorney designated in the subpoena a written objection to inspecting, copying, testing, or sampling any or all of the materials or to inspecting the premises—or to producing electronically stored information in the form or forms requested. The objection must be served before the earlier of the time specified for compliance or 14 days after the subpoena is served. If an objection is made, the following rules apply:

- (i) At any time, on notice to the commanded person, the serving party may move the court for the district where compliance is required for an order compelling production or inspection.
- (ii) These acts may be required only as directed in the order, and the order must protect a person who is neither a party nor a party's officer from significant expense resulting from compliance.

**(3) Quashing or Modifying a Subpoena.**

**(A) When Required.** On timely motion, the court for the district where compliance is required must quash or modify a subpoena that:

- (i) fails to allow a reasonable time to comply;
- (ii) requires a person to comply beyond the geographical limits specified in Rule 45(c);
- (iii) requires disclosure of privileged or other protected matter, if no exception or waiver applies; or
- (iv) subjects a person to undue burden.

**(B) When Permitted.** To protect a person subject to or affected by a subpoena, the court for the district where compliance is required may, on motion, quash or modify the subpoena if it requires:

- (i) disclosing a trade secret or other confidential research, development, or commercial information; or

- (ii) disclosing an unretained expert's opinion or information that does not describe specific occurrences in dispute and results from the expert's study that was not requested by a party.

**(C) Specifying Conditions as an Alternative.** In the circumstances described in Rule 45(d)(3)(B), the court may, instead of quashing or modifying a subpoena, order appearance or production under specified conditions if the serving party:

- (i) shows a substantial need for the testimony or material that cannot be otherwise met without undue hardship; and
- (ii) ensures that the subpoenaed person will be reasonably compensated.

**(e) Duties in Responding to a Subpoena.**

**(1) Producing Documents or Electronically Stored Information.** These procedures apply to producing documents or electronically stored information:

**(A) Documents.** A person responding to a subpoena to produce documents must produce them as they are kept in the ordinary course of business or must organize and label them to correspond to the categories in the demand.

**(B) Form for Producing Electronically Stored Information Not Specified.** If a subpoena does not specify a form for producing electronically stored information, the person responding must produce it in a form or forms in which it is ordinarily maintained or in a reasonably usable form or forms.

**(C) Electronically Stored Information Produced in Only One Form.** The person responding need not produce the same electronically stored information in more than one form.

**(D) Inaccessible Electronically Stored Information.** The person responding need not provide discovery of electronically stored information from sources that the person identifies as not reasonably accessible because of undue burden or cost. On motion to compel discovery or for a protective order, the person responding must show that the information is not reasonably accessible because of undue burden or cost. If that showing is made, the court may nonetheless order discovery from such sources if the requesting party shows good cause, considering the limitations of Rule 26(b)(2)(C). The court may specify conditions for the discovery.

**(2) Claiming Privilege or Protection.**

**(A) Information Withheld.** A person withholding subpoenaed information under a claim that it is privileged or subject to protection as trial-preparation material must:

- (i) expressly make the claim; and
- (ii) describe the nature of the withheld documents, communications, or tangible things in a manner that, without revealing information itself privileged or protected, will enable the parties to assess the claim.

**(B) Information Produced.** If information produced in response to a subpoena is subject to a claim of privilege or of protection as trial-preparation material, the person making the claim may notify any party that received the information of the claim and the basis for it. After being notified, a party must promptly return, sequester, or destroy the specified information and any copies it has; must not use or disclose the information until the claim is resolved; must take reasonable steps to retrieve the information if the party disclosed it before being notified; and may promptly present the information under seal to the court for the district where compliance is required for a determination of the claim. The person who produced the information must preserve the information until the claim is resolved.

**(g) Contempt.**

The court for the district where compliance is required—and also, after a motion is transferred, the issuing court—may hold in contempt a person who, having been served, fails without adequate excuse to obey the subpoena or an order related to it.

**EXHIBIT A**

**DEFINITIONS**

1. "BU CTE Center" shall mean the Chronic Traumatic Encephalopathy Center at Boston University and any predecessor organizations.
2. "CLF" shall mean the Concussion Legacy Foundation and any predecessor organizations, including the Sports Legacy Institute.
3. "Communication" shall mean any disclosure, transfer, or exchange of information or opinion, however made.
4. "CTE" means Chronic Traumatic Encephalopathy.
5. "Document" means any kind of written, typewritten, printed, electronic, or recorded material whatsoever including, without limitation, notes, memoranda, letters, reports, emails, publications, contracts, recordings, photographs, video, transcriptions of proceedings, and business records, relating to or pertaining in any way to the subject matter to which this subpoena refers, and includes, without limitation, originals, all file copies, all other copies (with or without notes or changes thereon, no matter how prepared, and all drafts, working papers, routing slips and similar materials prepared in connection with such documents, whether used or not, which is in Your actual or constructive possession, custody or control, or available or obtainable by You, or of which You have knowledge.
6. "NHL Player" means any person who, at any time, currently or in the past, has been listed on the active roster of any NHL member club, regardless of whether listed during the preseason, regular season, or postseason.

7. "NHLPA" means the National Hockey League Players' Association.
8. "Player Agent" means any person currently or previously certified or otherwise recognized by the NHLPA as a player representative, whether under the NHLPA's Certified Player Agent program or otherwise, or any person You believe or believed represents the interests of any NHL Player.
9. The term "person" shall mean and include any natural person, association, partnership, joint venture, corporation, trust, and governmental, business or professional entity.
10. "You" or "Your" shall mean the BU CTE Center and any of its employees, representatives, and/or consultants.
11. "Zeidel" shall mean Lawrence Zeidel.
12. The terms "relating to" or "related to" mean referring to, reflecting or pertaining in any manner, logically, factually, indirectly, or directly to the matter discussed.
13. All other terms should be given their common and typical meanings and usage.

### INSTRUCTIONS

1. Each request contained herein extends to any items in Your possession, custody or control.
2. The following rules of construction apply:
  - a. The words "and" and "or" shall be construed either disjunctively or conjunctively as necessary to make the requests inclusive rather than exclusive.

- b. The terms “any” and “each” shall be construed as encompassing any and all.
  - c. The use of the singular form of any word includes the plural and vice versa.
3. As used herein, all phrases following the term “including” are intended to illustrate the kinds of matters that are responsive to the request. Such examples are not intended to be exhaustive of the information sought and shall not be read to limit the scope of the request.
4. In the event a document or portion thereof is withheld for any reason, You shall indicate the following information for each such withheld document, or portion thereof:
- a. the date of the document;
  - b. the general character or type of document (e.g., letter, memorandum, notes, minutes, etc.);
  - c. the identity of the person in possession of the document;
  - d. the identity of the author of the document;
  - e. the identity of the recipient or holder of the document; and
  - f. the reason, including any legal obligation or privilege for withholding the document, or portion thereof.
5. Each request for documents shall be construed independently, and no document request shall limit the scope of any other document request.

**DOCUMENTS TO BE PRODUCED**

1. Documents sufficient to demonstrate the working relationship between the BU CTE Center and CLF.
2. Documents sufficient to show what persons were examined by the BU CTE Center and were not diagnosed with CTE.
3. Documents sufficient to identify all athletes, other than Zeidel, who have donated or who have agreed to donate their brains to You or whose brains have been examined by You, including: (i) the date each athlete agreed to donate his/her brain; (ii) the date(s) on which the brain was examined; (iii) Your finding with regard to CTE pathology; and (iv) the stage of CTE found, if any.
4. Documents sufficient to show the methodology You employ to reach a finding that a person has CTE pathology, as well as Documents demonstrating any changes to such a methodology.
5. Documents sufficient to show the methodology You employ for creating, staining, examining, and/or analyzing sections of brains in connection with research related to CTE, as well as Documents demonstrating any changes to such a methodology.
6. Pathology photographs, including those obtained from autopsy materials, of brains and/or other organs of Zeidel, other hockey players, including NHL Players, and other athletes, examined by You in connection with research related to CTE.

7. Slides, or copies of slides, related to Zeidel, other hockey players, including NHL Players, and other athletes, examined by You in connection with research related to CTE, including:
  - a. Slides stained with hematoxylin and eosin (brain, as well as other organs and tissues if examined);
  - b. "Special stains," including Bielschowsky silver and luxol-fast blue;
  - c. Immunohistochemical stains, including immunohistochemical stains using antibodies directed against tau protein (e.g., AT8), alpha-synuclein, amyloid-beta, TDP-43, phosphorylated TDP-43 or phosphorylated neurofilaments (e.g. SMI31, SMI34); and/or
  - d. Slides that contain thick (at least 50 micron) immunohistochemical stains produced by the "free-floating" method (such as depicted in McKee et al., *The Spectrum of Disease in Chronic Traumatic Encephalopathy*, Brain 2013, 136:43-53 (e.g., Figure 3, page 52)). Antibodies for these preparations would include antibodies directed against tau protein (such as AT8), amyloid beta, TDP-43, phosphorylated TDP-43, PHF-1 and CP13.
8. Documents and Communications related to any finding or assertion by You that:
  - a. Zeidel's CTE pathology was caused by concussions and/or subconcussive blows sustained while playing hockey;
  - b. CTE pathologies of other hockey players, including NHL Players, were caused by concussions and/or subconcussive blows sustained while playing hockey; and

- c. Other athletes' CTE pathologies were caused by concussions and/or subconcussive blows sustained while playing contact sports.
9. Documents and Communications related to the biological mechanism supporting any purported causal link between the CTE pathologies of Zeidel, other hockey players, including NHL Players, or other athletes and concussions and/or subconcussive blows that occurred while playing hockey or other contact sports.
10. Documents and Communications related to the methodology You use to support any finding or assertion that the CTE pathologies of Zeidel, other hockey players, including NHL Players, or other athletes were caused by concussions and/or subconcussive blows sustained while playing hockey or other contact sports, as well as any Documents demonstrating any changes to such a methodology.
11. Documents and Communications related to any finding or assertion by You that:
  - a. Zeidel's CTE pathology caused any clinical symptoms Zeidel purportedly experienced;
  - b. CTE pathologies of other hockey players, including NHL Players, caused any clinical symptoms those players purportedly experienced; and
  - c. Other athletes' CTE pathologies caused any clinical symptoms those players purportedly experienced.
12. Documents and Communications related to the biological mechanism supporting any purported causal link between the CTE pathologies of Zeidel,

other hockey players, including NHL Players, or other athletes and any clinical symptoms those players purportedly experienced.

13. Documents and Communications related to the methodology You use to support any finding or assertion that the CTE pathologies of Zeidel, other hockey players, including NHL Players, or other athletes caused any clinical symptoms those players purportedly experienced, as well as any Documents demonstrating any changes to such a methodology.
14. Death certificates and autopsy reports, including any general autopsy or neuropathology reports of Zeidel, other hockey players, including NHL Players, and other athletes examined by You in connection with research related to CTE.
15. Medical records of Zeidel, other hockey players, including NHL Players, and other athletes examined by You and/or other affiliated entities, such as CLF, including: (i) clinical records; (ii) medical histories or summaries; and (iii) interviews conducted with family members or acquaintances.
16. Documents and Communications related to any meeting between or among You and/or other affiliated entities, including CLF, with: Julie Grand; Gary Bettman; Brendan Shanahan; Bill Daly; any other representative, employee or consultant of the NHL; any representative, employee or consultant of an NHL team; any representative, employee or consultant of the NHLPA; or any NHL Player or Player Agent.
17. Communications between or among You and/or other affiliated entities, including CLF, and: (i) any representative, employee or consultant of any NHL



team; (ii) any representative, employee or consultant of the NHLPA; or (iii) any NHL Player or Player Agent.

18. Documents related to publications or potential publications (even if not submitted) related to CTE or other long-term neurodegenerative diseases that You prepared for peer-reviewed journals or that You considered for submission, including: (i) abstracts; (ii) presentations; (iii) draft publications; and/or (iv) Communications between or among employees, representatives, and/or consultants of the BU CTE Center and/or other affiliated entities, including CLF, about those Documents, including Communications related to the scope, limitations, conclusions, and/or phraseology used in such publications or potential publications.
19. Documents related to publications or draft publications related to CTE or other long-term neurodegenerative diseases You prepared for peer-reviewed journals constituting (i) reviewer comments or questions and (ii) responses to reviewer comments or questions, including Communications related to the scope, limitations, conclusions, and/or phraseology used in such publications or draft publications.

AO 88B (Rev. 02/14) Subpoena to Produce Documents, Information, or Objects or to Permit Inspection of Premises in a Civil Action

UNITED STATES DISTRICT COURT

for the
District of Minnesota

In re Nat'l Hockey League Players Concussion Injury

Plaintiff

v.

Defendant

Civil Action No. 14-2551

SUBPOENA TO PRODUCE DOCUMENTS, INFORMATION, OR OBJECTS OR TO PERMIT INSPECTION OF PREMISES IN A CIVIL ACTION

To: Ann McKee

(Name of person to whom this subpoena is directed)

Production: YOU ARE COMMANDED to produce at the time, date, and place set forth below the following documents, electronically stored information, or objects, and to permit inspection, copying, testing, or sampling of the material: See Exhibit A

Table with 2 columns: Place (Skadden, Arps, Slate, Meagher & Flom, LLP, 500 Boylston Street, Boston, Massachusetts 02116) and Date and Time (10/01/2015 2:00 pm)

Inspection of Premises: YOU ARE COMMANDED to permit entry onto the designated premises, land, or other property possessed or controlled by you at the time, date, and location set forth below, so that the requesting party may inspect, measure, survey, photograph, test, or sample the property or any designated object or operation on it.

Table with 2 columns: Place and Date and Time (empty)

The following provisions of Fed. R. Civ. P. 45 are attached - Rule 45(c), relating to the place of compliance; Rule 45(d), relating to your protection as a person subject to a subpoena; and Rule 45(e) and (g), relating to your duty to respond to this subpoena and the potential consequences of not doing so.

Date: September 1, 2015

CLERK OF COURT

OR

Handwritten signature of Daniel J. Connolly

Signature of Clerk or Deputy Clerk

Attorney's signature

The name, address, e-mail address, and telephone number of the attorney representing (name of party) the National Hockey League, who issues or requests this subpoena, are: Daniel J. Connolly, 90 S. 7th St, Minneapolis, MN 55402, 612-766-7806, daniel.connolly@FaegreBD.com

Notice to the person who issues or requests this subpoena

If this subpoena commands the production of documents, electronically stored information, or tangible things or the inspection of premises before trial, a notice and a copy of the subpoena must be served on each party in this case before it is served on the person to whom it is directed. Fed. R. Civ. P. 45(a)(4).

**EXHIBIT A**

**DEFINITIONS**

1. “CTE” means Chronic Traumatic Encephalopathy.
2. “Document” means any kind of written, typewritten, printed, electronic, or recorded material whatsoever (including, without limitation, notes, memoranda, letters, reports, emails, publications, contracts, recordings, photographs, video, transcriptions of proceedings, and business records, relating to or pertaining in any way to the subject matter to which this subpoena refers, and includes, without limitation, originals, all file copies, all other copies (with or without notes or changes thereon), no matter how prepared, and all drafts, working papers, routing slips and similar materials prepared in connection with such documents, whether used or not, which is in your actual or constructive possession, custody or control, or available or obtainable by you, or of which you have knowledge.
3. “NHL” means the National Hockey League, or anyone acting under the authority of the same, including but not limited to representatives and consultants.
4. “NHL Player” means any person who, at any time, currently or in the past, has been listed on the active roster of any NHL member club, regardless of whether listed during the preseason, regular season, or postseason.
5. “NHLPA” means the National Hockey League Players’ Association.
6. “Player Agent” means any person currently or previously certified or otherwise recognized by the NHLPA as a player representative, whether under the NHLPA’s Certified Player Agent program or otherwise, or any person You believe or believed represents the interests of any NHL Player.

7. The terms “relating to” or “related to” mean referring to, reflecting or pertaining in any manner, logically, factually, indirectly, or directly to the matter discussed.
8. “You” or “your” means the person responding to this request, individually and all of his attorneys or representatives.
9. All other terms should be given their common and typical meanings and usage.

### **INSTRUCTIONS**

1. Each request contained herein extends to any items in your possession, custody or control.
2. The singular herein includes the plural and vice versa; the words “and” and “or” shall be both conjunctive and disjunctive; the word “all” means “any and all”; the word “any” means “any and all”; the word “including” means “including without limitation.”
3. In the event a document or portion thereof is withheld for any reason, you shall indicate the following information for each such withheld document, or portion thereof:
  - a. the date of the document;
  - b. the general character or type of document (e.g., letter, memorandum, notes, minutes, etc.);
  - c. the identity of the person in possession of the document;
  - d. the identity of the author of the document;
  - e. the identity of the recipient or holder of the document; and
  - f. the reason, including, but not limited to, any legal obligation or privilege for withholding the document, or portion thereof.

4. Each request for documents shall be construed independently and no document request shall limit the scope of any other document request.

### **DOCUMENTS TO BE PRODUCED**

**Request No. 1:** All Documents related to sub-concussive head injuries, concussions, brain injuries, post-concussion syndrome, second-impact syndrome or long-term neurological problems, including CTE, for hockey players generally or NHL Players specifically.

**Request No. 2:** All Documents provided, presented or relied upon during meetings with Julie Grand, Gary Bettman, Brendan Shanahan, Bill Daly, any other representative or consultant of the NHL, any NHL team, any representative or consultant of the NHLPA, or any current or former NHL Player or Player Agent that relate to sub-concussive head injuries, concussions, brain injuries, post-concussion syndrome, second-impact syndrome or long-term neurological problems for athletes.

**Request No. 3:** All communications between You and Julie Grand, Gary Bettman, Brendan Shanahan, Bill Daly, any member of the NHL-NHLPA concussion working group or any predecessor or successor committee thereto, any other representative or consultant of the NHL, any NHL team, the NHLPA, or any current or former NHL Player or Player Agent.

AO 88B (Rev. 02/14) Subpoena to Produce Documents, Information, or Objects or to Permit Inspection of Premises in a Civil Action (Page 2)

Civil Action No. 14-2551

**PROOF OF SERVICE**

*(This section should not be filed with the court unless required by Fed. R. Civ. P. 45.)*

I received this subpoena for *(name of individual and title, if any)* Ann McKee  
on *(date)* 9/11/15

I served the subpoena by delivering a copy to the named person as follows: by serving  
Nicole Gulletti, Assistant and authorized person.  
on *(date)* 9/12/15; or

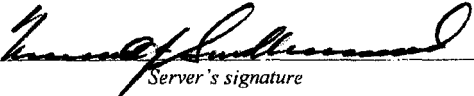
I returned the subpoena unexecuted because: \_\_\_\_\_

Unless the subpoena was issued on behalf of the United States, or one of its officers or agents, I have also  
tendered to the witness the fees for one day's attendance, and the mileage allowed by law, in the amount of  
\$ \_\_\_\_\_

My fees are \$ \_\_\_\_\_ for travel and \$ \_\_\_\_\_ for services, for a total of \$ 0.00

I declare under penalty of perjury that this information is true.

Date: 9/13/15

  
*Server's signature*  
Merrill Smartwood, Constable  
*Printed name and title*

87 Broad St 153 Boston, MA 02110  
*Server's address*

Additional information regarding attempted service, etc.:

AO 88B (Rev. 02/14) Subpoena to Produce Documents, Information, or Objects or to Permit Inspection of Premises in a Civil Action

UNITED STATES DISTRICT COURT

for the
District of Minnesota

In re Nat'l Hockey League Players Concussion Injury

Plaintiff

v.

Defendant

Civil Action No. 14-2551

SUBPOENA TO PRODUCE DOCUMENTS, INFORMATION, OR OBJECTS OR TO PERMIT INSPECTION OF PREMISES IN A CIVIL ACTION

To:

Robert Stern

(Name of person to whom this subpoena is directed)

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Date: September 1, 2015

CLERK OF COURT

OR

Handwritten signature of Daniel J. Connolly

Signature of Clerk or Deputy Clerk

Attorney's signature

The name, address, e-mail address, and telephone number of the attorney representing (name of party) defendant the National Hockey League, who issues or requests this subpoena, are: Daniel J. Connolly, 90 S. 7th St, Minneapolis, MN 55402, 612-766-7806, daniel.connolly@FaegreBD.com

Notice to the person who issues or requests this subpoena

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**EXHIBIT A**

**DEFINITIONS**

1. "CTE" means Chronic Traumatic Encephalopathy.
2. "Document" means any kind of written, typewritten, printed, electronic, or recorded material whatsoever (including, without limitation, notes, memoranda, letters, reports, emails, publications, contracts, recordings, photographs, video, transcriptions of proceedings, and business records, relating to or pertaining in any way to the subject matter to which this subpoena refers, and includes, without limitation, originals, all file copies, all other copies (with or without notes or changes thereon), no matter how prepared, and all drafts, working papers, routing slips and similar materials prepared in connection with such documents, whether used or not, which is in your actual or constructive possession, custody or control, or available or obtainable by you, or of which you have knowledge.
3. "NHL" means the National Hockey League, or anyone acting under the authority of the same, including but not limited to representatives and consultants.
4. "NHL Player" means any person who, at any time, currently or in the past, has been listed on the active roster of any NHL member club, regardless of whether listed during the preseason, regular season, or postseason.
5. "NHLPA" means the National Hockey League Players' Association.
6. "Player Agent" means any person currently or previously certified or otherwise recognized by the NHLPA as a player representative, whether under the NHLPA's Certified Player Agent program or otherwise, or any person You believe or believed represents the interests of any NHL Player.



7. The terms “relating to” or “related to” mean referring to, reflecting or pertaining in any manner, logically, factually, indirectly, or directly to the matter discussed.
8. “You” or “your” means the person responding to this request, individually and all of his attorneys or representatives.
9. All other terms should be given their common and typical meanings and usage.

### **INSTRUCTIONS**

1. Each request contained herein extends to any items in your possession, custody or control.
2. The singular herein includes the plural and vice versa; the words “and” and “or” shall be both conjunctive and disjunctive; the word “all” means “any and all”; the word “any” means “any and all”; the word “including” means “including without limitation.”
3. In the event a document or portion thereof is withheld for any reason, you shall indicate the following information for each such withheld document, or portion thereof:
  - a. the date of the document;
  - b. the general character or type of document (e.g., letter, memorandum, notes, minutes, etc.);
  - c. the identity of the person in possession of the document;
  - d. the identity of the author of the document;
  - e. the identity of the recipient or holder of the document; and
  - f. the reason, including, but not limited to, any legal obligation or privilege for withholding the document, or portion thereof.

4. Each request for documents shall be construed independently and no document request shall limit the scope of any other document request.

### **DOCUMENTS TO BE PRODUCED**

**Request No. 1:** All Documents related to sub-concussive head injuries, concussions, brain injuries, post-concussion syndrome, second-impact syndrome or long-term neurological problems, including CTE, for hockey players generally or NHL Players specifically.

**Request No. 2:** All Documents provided, presented or relied upon during meetings with Julie Grand, Gary Bettman, Brendan Shanahan, Bill Daly, any other representative or consultant of the NHL, any NHL team, any representative or consultant of the NHLPA, or any current or former NHL Player or Player Agent that relate to sub-concussive head injuries, concussions, brain injuries, post-concussion syndrome, second-impact syndrome or long-term neurological problems for athletes.

**Request No. 3:** All communications between You and Julie Grand, Gary Bettman, Brendan Shanahan, Bill Daly, any member of the NHL-NHLPA concussion working group or any predecessor or successor committee thereto, any other representative or consultant of the NHL, any NHL team, the NHLPA, or any current or former NHL Player or Player Agent.

AO 88B (Rev. 02/14) Subpoena to Produce Documents, Information, or Objects or to Permit Inspection of Premises in a Civil Action (Page 2)

Civil Action No. 14-2551

**PROOF OF SERVICE**

*(This section should not be filed with the court unless required by Fed. R. Civ. P. 45.)*

I received this subpoena for *(name of individual and title, if any)* Robert Stern.  
on *(date)* 9/1/15

I served the subpoena by delivering a copy to the named person as follows: by serving  
Ann Culletti, Asst. and authorized person  
on *(date)* 9/2/15 ; or

I returned the subpoena unexecuted because: \_\_\_\_\_

Unless the subpoena was issued on behalf of the United States, or one of its officers or agents, I have also  
tendered to the witness the fees for one day's attendance, and the mileage allowed by law, in the amount of  
\$ \_\_\_\_\_

My fees are \$ \_\_\_\_\_ for travel and \$ \_\_\_\_\_ for services, for a total of \$ 0.00

I declare under penalty of perjury that this information is true.

Date: 9/3/15

*[Signature]*  
Server's signature

Merrill Smallwood, Constable  
Printed name and title

82 Broad St 153 Boston, MA 02110  
Server's address

Additional information regarding attempted service, etc.:

UNITED STATES DISTRICT COURT  
DISTRICT OF MINNESOTA

\_\_\_\_\_) MDL No. 14-2551  
)  
)  
IN RE NATIONAL HOCKEY PLAYERS' ) RESPONSES AND OBJECTIONS OF  
CONCUSSION INJURY LITIGATION ) DR. ANN MCKEE AND DR. ROBERT  
) STERN TO SUBPOENA FOR  
) DOCUMENTS  
)  
\_\_\_\_\_)

Pursuant to Rules 26 and 34 of the Federal Rules of Civil Procedure, Dr. Ann McKee (“Dr. McKee”) and Dr. Robert Stern (“Dr. Stern”) (together, “Boston University”) hereby respond and object to Defendant National Hockey League’s (“NHL” or “Defendant”) document requests set forth in Exhibit A to the subpoenas served upon Boston University and dated September 1, 2015 (“Requests”) as follows:

**I. GENERAL OBJECTIONS**

1. Boston University objects to the Requests to the extent that they call for the production of documents that are not relevant to the claims or the subject matter of this litigation and are not reasonably calculated to lead to the discovery of admissible evidence relating to a claim or defense in this litigation.

2. Boston University objects to the Requests to the extent that they purport to impose any obligations that are not imposed by law, or are otherwise inconsistent with Fed. R. Civ. P. 26 or the Local Rules of the United States District Court for the District of Minnesota.

3. Boston University objects to the Requests and the “Definitions” and “Instructions” contained therein to the extent they seek or require the production of documents that are protected from discovery by applicable statutory or common law privileges, including, but not limited to, attorney-client privilege, the attorney work product doctrine, the right to privacy, HIPAA, or any other applicable privilege or immunity.

4. In providing information in response to the Requests, Boston University does not in any way waive, or intend to waive, but rather preserves:

(a) all objections as to competency, relevancy, materiality, and admissibility of any Request, the responses, and their subject matter;

(b) all objections as to vagueness, ambiguity, or other infirmity in the form of the Requests, any objections based on the undue burden imposed by the Requests, and each individual Request contained therein;

(c) all rights to object on any ground to the use of any of the documents or their subject matter in any subsequent proceedings, including the trial of this or any other action;

(d) all rights to object on any ground to any further document requests or other discovery requests involving, or related to, the subject matter of any Request;

(e) all General or Specific Objections to the Requests;

(f) the right to amend, modify, or otherwise supplement responses to the Requests; and

(g) any and all privileges and rights under the applicable Federal Rules of Civil Procedure, the Local Rules of this Court, other statutes, guidelines, or common law.



5. Boston University objects to the Requests to the extent they seek documents and/or information that have already been provided by any party or other third party to Defendant in this litigation.

6. Any inadvertent or partial production of information or materials shall not constitute a waiver of any applicable privilege or other protection.

7. By making these responses, Boston University does not concede that it is in possession of any information responsive to any particular Request or that any response given is relevant to this litigation.

8. The following Specific Objections and Responses are subject to the General Objections. By setting forth the Specific Objections, Boston University does not intend to limit or restrict the General Objections. Boston University incorporates the above General Objections into his responses to each of the Requests. To the extent that Boston University responds to the Requests, any stated objections are not waived by providing responses. In addition, the inadvertent disclosure of privileged documents shall not constitute a waiver of any applicable privilege.

## **II. SPECIFIC OBJECTIONS AND RESPONSES TO DOCUMENT REQUESTS**

### REQUEST NO. 1:

All Documents related to sub-concussive head injuries, concussions, brain injuries, post-concussion syndrome, second-impact syndrome or long-term neurological problems, including CTE, for hockey players generally or NHL Players specifically.

RESPONSE TO REQUEST NO. 1:

Boston University objects to this Request on the grounds that it is vague, overly broad, and unduly burdensome as written. Boston University further objects to this Request on the grounds that it seeks information that is available to the public at large. Boston University further objects to this Request on the grounds that production of certain documents that may comply with this request would require the University to violate confidentiality agreements and the privacy of research participants.

Subject to and without waiving the General Objections incorporated herein by reference, Boston University hereby produces the Curriculum Vitae of Dr. McKee and Dr. Stern, which identify and set forth in detail their publications that may comply in this Request. Boston University further produces documents relating to individual research subjects whose next of kin have authorized the release of such information. Boston University objects to the production of any documents concerning the study of the brains of individual hockey players whose families declined to authorize the release of such information, or pertaining to research subjects whose participation in funded research studies were conditioned upon assurances of confidentiality.

REQUEST NO. 2:

All Documents provided, presented or relied upon during meetings with Julie Grand, Gary Bettman, Brendan Shanahan, Billy Daly, and any other representative or consultant of the NHL, any NHL team, any representative or consultant of the NHLPA, or any current or former NHL Player or Player Agent that relate to sub-concussive head injuries brain injuries,

post-concussion syndrome, second-impact syndrome or long-term neurological problems for athletes.

RESPONSE TO REQUEST NO. 2:

Subject to and without waiving the General Objections incorporated herein by reference, Boston University states it has no responsive documents in its possession, to the extent they exist.

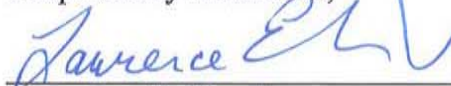
REQUEST NO. 3:

All communications between You and Julie Grand, Gary Bettman, Brendan Shanahan, Billy Daly, any member of the NHL-NHLPA concussion working group or any predecessor or successor committee thereto, any representative or consultant of the NHL, any NHL team, the NHLPA, or any current or former NHL Player or Player Agent.

RESPONSE TO REQUEST NO. 3:

Subject to and without waiving the General Objections incorporated herein by reference, Boston University states it has no responsive documents in its possession, to the extent they exist.

Respectfully submitted,



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Lawrence S. Elswit  
Boston University  
Office of the General Counsel  
125 Bay State Road  
Boston, MA 02215  
(617) 353-2326  
lelswit@bu.edu

DATED: October 26, 2015



**CERTIFICATE OF SERVICE**

I hereby certify that a true copy of the above document was served upon Daniel J. Connolly, Faegre Baker Daniels LLP, 2200 Wells Fargo Center 90 South Seventh Street, Minneapolis, Minnesota, 55402 by First Class mail, postage prepaid, and by electronic mail on this 23rd day of October, 2015.



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Lawrence S. Elswit

FaegreBD.com

**FAEGRE BAKER  
DANIELS**

USA • UK • CHINA

Daniel J. Connolly  
+1 612 766 7806  
daniel.connolly@FaegreBD.com

**Faegre Baker Daniels LLP**  
2200 Wells Fargo Center • 90 South Seventh Street  
Minneapolis • Minnesota 55402-3901  
**Phone +1 612 766 7000**  
**Fax +1 612 766 1600**

February 3, 2016

Larry Elswit  
Associate General Counsel  
Boston University  
Office of the General Counsel  
125 Bay State Road  
Boston, MA 02215

**BY EMAIL AND U.S. MAIL**

**In Re: *National Hockey League Players' Concussion Injury Litigation*  
MDL No. 14-2551 (SRN/JSM)**

Dear Mr. Elswit:

We appreciate your assistance in responding to the document requests that accompanied the National Hockey League's ("NHL's") subpoenas on Drs. Ann McKee and Robert Stern. We have had a chance to review the responses you forwarded, and thought it would be helpful to outline in a letter some questions we have regarding the responses, and if it makes sense schedule a call to discuss those questions further.

First, your October 26, 2015 email transmitting this document production indicates that the documents are "Boston University's response to subpoenas issued to Drs. Ann McKee and Robert Stern." Please confirm that the production includes all responsive documents in the possession of Boston University. Please also confirm that the personal emails and files of Drs. McKee and/or Stern have been searched for relevant materials. To the extent Drs. McKee and/or Stern maintain any emails or documents at the Sports Legacy Institute, please also confirm that those files have been searched for relevant materials.

Second, we have identified several apparent deficiencies in your clients' responses:

- **Emails and other written correspondence:** The production does not include emails or other written correspondence regarding:
  - Meetings or other communications with Gary Bettman, Bill Daly, Julie Grand, John Rizos, Brendan Shanahan, Ruben Echemendia, Winne Meeuwisse, or any other NHL, NHL Clubs, or NHLPA employee, representative, or consultant, including but not limited to communications between Robert Cantu, Chris

Nowinski, or other representatives of the Sports Legacy Institute or Boston University in advance of or regarding such meetings or communications with the NHL, NHL Clubs, or NHLPA;

- Presentations or speeches that Drs. McKee and/or Stern have given, including but not limited to panels where they wear speaking on their personal behalf or on behalf of Boston University, as well as notes or summaries of interviews with family members or;
  - All communications with NHL hockey players, the families of NHL hockey players, or agents of NHL hockey players, including but not limited to communications about their decisions to donate brain tissue samples to the Sports Legacy Institute or Boston University;
  - Work related to head injuries and hockey, including communications with other employees of Boston University or the Sports Legacy Institute about that work;
  - Published papers that they have produced; and/or
  - Requests for comments or quotations from the media related to head injuries and sports, including hockey.
- **Other Document Files:** The production does not include documents regarding:
    - Notes or summaries of interviews with family members and others about any player for whom Drs. McKee and/or Stern have performed autopsies in connection with their research on head trauma;
    - Decision by Drs. McKee and Stern offered not to join as a signatory (or to remove his or her name) from the Consensus Statement issued by the 2012 International Convention on Concussion in Sport held in Zurich, Switzerland, dated February 8, 2013.
  - **Documents Provided or Relied Upon:** The production does not include documents provided, presented or relied upon in meetings with representatives of the NHL.
  - **Publications:** The production includes several published articles, but it does not include drafts, notes, and/or reviewer comments regarding these papers. The production also does not include any of the background research or backup data created or collected in connection with work on these publications, including death certificates, family interviews, case files, and/or statistical analysis.
  - **Speeches and Presentations:** The production does not include drafts, speaker's notes, slides, or transcripts of any speeches or presentations Drs. McKee and/or Stern have given related to head injury and hockey. The production also does not include

Larry Elswit

Page 3

February 3, 2015

correspondence with the organizers of the events at which any speeches or presentations were given.

- **Notes:** The production does not include any handwritten or other notes, including notes related to the aforementioned publications and presentations or from meetings at which topics relevant to the subpoenas were discussed.

If all documents related to these topics have not been produced, please let us know when the remaining documents will be produced. If Drs. McKee and/or Stern are withholding any otherwise responsive documents for any reason, please supply a log detailing the basis for the claim of privilege or setting forth any other reasons for withholding the document. If Drs. McKee and/or Stern disagree with any of the deficiencies identified in the letter and are unwilling to supplement as we have requested, please let me know the earliest times at which you would be available for a meet-and-confer discussion.

We request that you provide full and complete responses to the NHL's subpoena no later than February 12, 2016. Thank you for your attention to this matter. Please feel free to call me if it would be helpful to discuss these matters further.

Very truly yours,

  
Daniel J. Connolly

DJC/djb

**UNITED STATES DISTRICT COURT  
DISTRICT OF MINNESOTA**

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	)	MDL No. 14-2551
	)	
	)	RESPONSES AND OBJECTIONS OF
IN RE NATIONAL HOCKEY LEAGUE	)	BOSTON UNIVERSITY CTE CENTER TO
PLAYERS' CONCUSSION INJURY	)	SUBPOENA FOR DOCUMENTS AND
LITIGATION	)	OBJECTS
	)	
	)	

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Pursuant to Rules 26 and 34 of the Federal Rules of Civil Procedure, Boston University and its Chronic Traumatic Encephalopathy (CTE) Center (“Boston University” or the “University”) hereby respond and object to Defendant National Hockey League’s (“NHL” or “Defendant”) request for documents and objects set forth in Exhibit A to the subpoena served upon the University and dated October 11, 2016 (“Requests”) as follows:

**I. GENERAL OBJECTIONS**

1. Boston University objects to the Requests to the extent that they call for the production of documents that are not relevant to the claims or the subject matter of this litigation and are not reasonably calculated to lead to the discovery of admissible evidence relating to a claim or defense in this litigation.

2. Boston University objects to the Requests to the extent that they purport to impose any obligations that are not imposed by law, or are otherwise inconsistent with Fed. R. Civ. P. 26 or the Local Rules of the United States District Court for the Districts of Minnesota and Massachusetts.

3. Boston University objects to the Requests insofar as they subject the University to undue burden and/or seek private, confidential information pertaining to third parties not subject to the demands of the Requests and that is protected by law from disclosure.

4. Boston University objects to the Requests and the “Definitions” and “Instructions” contained therein to the extent they seek or require the production of documents that are protected from discovery by applicable statutory or common law privileges, including, but not limited to, attorney-client privilege, the attorney work product doctrine, the right to privacy, HIPAA, or any other applicable privilege or immunity.

5. In providing information in response to the Requests, Boston University does not in any way waive, or intend to waive, but rather preserves:

(a) all objections as to competency, relevancy, materiality, and admissibility of any Request, the responses, and their subject matter;

(b) all objections as to vagueness, ambiguity, or other infirmity in the form of the Requests, any objections based on the undue burden imposed by the Requests, and each individual Request contained therein;

(c) all rights to object on any ground to the use of any of the documents or their subject matter in any subsequent proceedings, including the trial of this or any other action;

(d) all rights to object on any ground to any further document requests or other discovery requests involving, or related to, the subject matter of any Request;

(e) all General or Specific Objections to the Requests;

(f) the right to amend, modify, or otherwise supplement responses to the Requests; and

(g) any and all privileges and rights under the applicable Federal Rules of Civil Procedure, the Local Rules of this Court, other statutes, guidelines, or common law.

6. Boston University objects to the Requests to the extent they seek documents and/or information that have already been provided by any party or other third party to Defendant in this litigation.

7. Any inadvertent or partial production of information or materials shall not constitute a waiver of any applicable privilege or other protection.

8. By making these responses, Boston University does not concede that it is in possession of any information responsive to any particular Request or that any response given is relevant to this litigation.

9. The following Specific Objections and Responses are subject to the General Objections. By setting forth the Specific Objections, Boston University does not intend to limit or restrict the General Objections. Boston University incorporates the above General Objections into its responses to each of the Requests. To the extent that Boston University responds to the Requests, any stated objections are not waived by providing responses. In addition, the inadvertent disclosure of privileged documents shall not constitute a waiver of any applicable privilege.

## **II. SPECIFIC OBJECTIONS AND RESPONSES TO DOCUMENT**

### **REQUESTS**

#### REQUEST NO. 1:

Documents sufficient to demonstrate the working relationship between the BU CTE Center and CLF.

RESPONSE TO REQUEST NO. 1:

Attached is a copy of the executed Collaboration Agreement dated as of September 16, 2008 between Trustees of Boston University on behalf of its School of Medicine and The Sports Legacy Institute, Inc., as amended by the First Amendment dated August 22, 2013 and the Second Amendment dated November 12, 2013. This agreement ended January 15, 2014.

REQUEST NO. 2:

Documents sufficient to show what persons were examined by the BU CTE Center and were not diagnosed with CTE.

RESPONSE TO REQUEST NO. 2:

Boston University objects to this Request on the grounds that the production of the information requested would require the University to violate confidentiality agreements, the privacy of research participants, and federal funding restrictions. This includes multiple Certificates of Confidentiality issued by the National Institute of Neurological Disorders and Stroke (NINDS) protecting the identity of research subjects in the following NINDS-funded projects:

1. Longitudinal Examination to Gather Evidence of Neurodegenerative Disease (LEGEND).
2. Chronic Traumatic Encephalopathy: Detection, Diagnosis, Course and Risk Factors (Also known as: Diagnostics, Imaging and Genetics Network for the Objective Study and Evaluation of Chronic Traumatic Encephalopathy (DIAGNOSE CTE)).



3. Diagnosing and Evaluating Traumatic Encephalopathy Using Clinical Test (DETECT) (Also known as: Chronic Traumatic Encephalopathy: Clinical Presentation and Biomarkers).

4. CTE and Posttraumatic Neurodegeneration: Neuropathology and Ex Vivo Imaging.

Copies of the Confidentiality Certificates are included. As provided in section 301(d) of the Public Health Service Act 42 U.S.C. 241(d), “Persons so authorized to protect the privacy of such individuals may not be compelled in any Federal, State or local civil, criminal, administrative, legislative or other proceedings to identify such individuals.”

Subject to and without waiving the General Objections incorporated herein by reference, Boston University hereby states that on or about October 26, 2015, it produced documents relating to individual research subjects whose next of kin have authorized the release of such information. Boston University objects to the production of any further documents concerning the study of the brains of individuals whose families declined to authorize the release of such information, or pertaining to research subjects whose participation in funded research studies were conditioned upon assurances of confidentiality.

REQUEST NO. 3:

Documents sufficient to identify all athletes, other than Zeidel, who have donated or who have agreed to donate their brains to You or whose brains have been examined by You, including: (i) the date each athlete agreed to donate his/her brain; (ii) the date(s) on which the brain was examined; (iii) Your finding with regard to CTE pathology; and (iv) the stage of CTE found, if any.

RESPONSE TO REQUEST NO. 3:

Boston University objects to this Request on the grounds that the production of the information requested would require the University to violate confidentiality agreements, the privacy of research participants, and federal funding restrictions. This includes multiple Certificates of Confidentiality issued by the National Institute of Neurological Disorders and Stroke (NINDS) as referenced in RESPONSE TO REQUEST NO. 2.

Subject to and without waiving the General Objections incorporated herein by reference, Boston University hereby states that on or about October 26, 2015, it produced documents relating to individual research subjects whose next of kin have authorized the release of such information. Boston University objects to the production of any further documents concerning the study of the brains of individuals whose families declined to authorize the release of such information, or pertaining to research subjects whose participation in funded research studies were conditioned upon assurances of confidentiality.

REQUEST NO. 4:

Documents sufficient to show the methodology You employ to reach a finding that a person has CTE pathology, as well as Documents demonstrating any changes to such a methodology.

RESPONSE TO REQUEST NO. 4:

There have been two National Institute of Neurological Disorders and Stroke (NINDS) and National Institute of Biomedical Imaging and Bioengineering (NBIB) sponsored panels of neuropathologists that have independently concluded that Chronic Traumatic Encephalopathy

(CTE) is a distinct disease with defined pathological criteria for diagnosis and a pathognomonic lesion. The First NIH Consensus Conference to Define the Neuropathological Criteria for the Diagnosis of CTE occurred in February of 2015. The results of this consensus conference have been reported in peer reviewed literature (see below) and through public websites:

<https://www.ninds.nih.gov/Current-Research/Focus-Research/Traumatic-Brain-Injury/NIH-Chronic-Traumatic-Encephalopathy>

The actual slides and clinical summaries used for the 2015 consensus are uploaded onto the FITBIR site. Below is a link to the FITBIR study with the Data Repository where the data is located. Files can be downloaded from that location.

Data Repository:

<https://fitbir.nih.gov/portal/study/studyAction!view.action?studyId=FITBIR-STUDY0000319>

After logging in, select the field: + Dataset Submissions . It will expand to show the dataset containing the imaging data submitted.

To download: Select the hyperlink of the dataset submitted, then select the green “add to download queue” button. This will send the data to the download tool, found here:

<https://fitbir.nih.gov/portal/repository/downloadQueueAction!view.action>

The Second Consensus Conference occurred in November 2016 and is still in process. Enclosed with this response are the following published papers setting forth the methodology established for the CTE pathology:

1. McKee *et al.* The first NINDS/NBIB Consensus meeting to define neuropathological criteria for the diagnosis of chronic traumatic encephalopathy. *Acta Neuropathologica* (2016) 131: 75-86. *This peer reviewed paper shows the results of the first NINDS/NBIBS sponsored panel that concluded that Chronic Traumatic Encephalopathy (CTE) was a distinct disease with defined criteria for diagnosis.*

C. Mez *et al.* Assessing clinicopathological correlation in chronic traumatic encephalopathy: rationale and methods for the UNITE study. *Alzheimer's Research & Therapy* (2015) 7:62. *This paper describes the methodology and rationale for the Understanding Neurologic Injury and Traumatic Encephalopathy (UNITE) project funded by the National Institute of Neurological Disorders and Stroke and the National Institute of Biomedical Imaging and Bioengineering.*

REQUEST NO. 5:

Documents sufficient to show the methodology You employ for creating, staining, examining, and/or analyzing sections of brains in connection with research related to CTE, as well as Documents demonstrating any changes to such a methodology.

RESPONSE TO REQUEST NO. 5:

The methods section of each CTE-related peer-reviewed publication of original research involving brain sections includes a description of the methodology followed by researchers in creating, staining, examining and/or analyzing sections of brain or a reference to the prior published methodologies. The following paper provides a detailed description:

- A. Vonsattel *et al.* An improved approach to prepare human brains for research. *J. Neuropathologica* (1995) 54: 42-56.

Additional background on brain banking techniques can be found in:

McKee A. Neuropathology and brain banking: basic science methods. *Alzheimer Dis Assoc Dis.* 1999, 13, suppl 1:S39-S44.

REQUEST NO. 6:

Pathology photographs, including those obtained from autopsy materials, of brains and/or other organs of Zeidel, other hockey players, including NHL Players, and other athletes, examined by You in connection with research related to CTE.

RESPONSE TO REQUEST NO. 6:

Boston University objects to this Request on the grounds that the production of the information requested would require the University to violate confidentiality agreements, the privacy of research participants, and federal funding restrictions. This includes multiple

Certificates of Confidentiality issued by the National Institute of Neurological Disorders and Stroke (NINDS) as referenced in RESPONSE TO REQUEST NO. 2.

Subject to and without waiving the General Objections incorporated herein by reference, Boston University hereby states that on or about October 26, 2015, it produced documents relating to individual research subjects whose next of kin have authorized the release of such information. Boston University objects to the production of any further documents concerning the study of the brains of individuals whose families declined to authorize the release of such information, or pertaining to research subjects whose participation in funded research studies were conditioned upon assurances of confidentiality.

REQUEST NO. 7:

Slides, or copies of slides, related to Zeidel, other hockey players, including NHL Players, and other athletes, examined by You in connection with research related to CTE, including:

- a. Slides stained with hematoxylin and eosin (brain, as well as other organs and tissues if examined);
- b. “Special stains,” including Bielschowsky silver and luxol-fast blue;
- c. Immunohistochemical stains, including immunohistochemical stains using antibodies directed against tau protein (e.g., AT8), alpha-synuclein, amyloid-beta, TDP-43, phosphorylated TDP-43 or phosphorylated neurofilaments (e.g. SMI31, SMI34); and/or
- d. Slides that contain thick (at least 50 micron) immunohistochemical stains produced by the “free-floating” method (such as depicted in McKee et al., *The*

*Spectrum of Disease in Chronic Traumatic Encephalopathy*, Brain 2013, 136:43-53 (e.g., Figure 3, page 52)). Antibodies for these preparations would include antibodies directed against tau protein (such as AT8), amyloid beta, TDP-43, phosphorylated TDP-43, PHF-1 and CP13.

RESPONSE TO REQUEST NO. 7:

Boston University objects to this Request on the grounds that the production of the information requested would require the University to violate confidentiality agreements, the privacy of research participants, and federal funding restrictions. This includes multiple Certificates of Confidentiality issued by the National Institute of Neurological Disorders and Stroke (NINDS) as referenced in RESPONSE TO REQUEST NO. 2.

REQUEST NO. 8:

Documents and Communications related to any finding or assertion by You that:

- a. Zeidel's CTE pathology was caused by concussions and/or subconcussive blows sustained while playing hockey;
- b. CTE pathologies of other hockey players, including NHL Players, were caused by concussions and/or subconcussive blows sustained while playing hockey; and
- c. Other athletes' CTE pathologies were caused by concussions and/or subconcussive blows sustained while playing contact sports.

RESPONSE TO REQUEST NO. 8:

Boston University objects to this Request on the grounds that the production of the information requested would require the University to violate confidentiality agreements, the privacy of research participants, and federal funding restrictions. This includes multiple Certificates of Confidentiality issued by the National Institute of Neurological Disorders and Stroke (NINDS) as referenced in RESPONSE TO REQUEST NO. 2.

Subject to and without waiving the General Objections incorporated herein by reference, Boston University hereby states that on or about October 26, 2015, it produced documents relating to individual research subjects whose next of kin have authorized the release of such information. Boston University objects to the production of any further documents concerning the study of individuals whose families declined to authorize the release of such information, or pertaining to research subjects whose participation in funded research studies were conditioned upon assurances of confidentiality.

Several of the peer-reviewed publications listed in the attached document entitled “Relevant Peer Reviewed Publications and Reviews of Boston University CTE Center” relate to and/or discuss CTE pathologies found in athletes and former athletes that sustained concussive and/or subconcussive impacts while playing sports. This list may not be exhaustive of all potentially relevant scientific articles authored or co-authored by members of the Boston University faculty affiliated with the CTE Center. All publications are available through publicly accessible sources. The University has attempted to indicate next to each citation the REQUEST NO. to which each paper broadly relates (unless specifically cited within a response)



and hereby produces copies of the most frequently cited original research publications and review articles relevant to the Requests.

REQUEST NO. 9:

Documents and Communications related to the biological mechanism supporting any purported causal link between the CTE pathologies of Zeidel, other hockey players, including NHL Players, or other athletes and concussions and/or subconcussive blows that occurred while playing hockey or other contact sports.

RESPONSE TO REQUEST NO. 9:

Several of the peer-reviewed publications listed in the attached document entitled “Relevant Peer Reviewed Publications and Reviews of Boston University CTE Center” relate to and/or discuss CTE pathologies found in athletes and former athletes that sustained concussive and/or subconcussive impacts while playing sports. This list may not be exhaustive of all potentially relevant scientific articles authored or co-authored by members of the Boston University faculty affiliated with the CTE Center. All publications are available through publicly accessible sources. The University has attempted to indicate next to each citation the REQUEST NO. to which each paper broadly relates (unless specifically cited within a response) and hereby produces copies of the most frequently cited original research publications and review articles relevant to the Requests.

REQUEST NO. 10:

Documents and Communications related to the methodology You use to support any finding or assertion that the CTE pathologies of Zeidel, other hockey players, including NHL Players, or other athletes were caused by concussions and/or subconcussive blows sustained while playing hockey or other contact sports, as well as any Documents demonstrating any changes to such a methodology.

RESPONSE TO REQUEST NO. 10:

Each of the original research publications cited in the preceding responses includes a methods section that describes the methodologies followed for the specific study reported. In addition, the methodologies utilized to examine the CTE pathologies as part of the ongoing CTE Center project entitled “Understanding Neurologic Injury and Traumatic Encephalopathy (UNITE),” funded by the National Institute of Neurological Disorders and Stroke and the National Institute of Biomedical Imaging, is described in detail in:

Mez *et al.* Assessing clinicopathological correlation in chronic traumatic encephalopathy: rationale and methods for the UNITE study. *Alzheimer’s Research & Therapy* (2015) 7:62.

See also the following consensus paper regarding the neuropathological criteria of CTE:

McKee *et al.* The first NINDS/NBIB Consensus meeting to define neuropathological criteria for the diagnosis of chronic traumatic encephalopathy. *Acta Neuropathologica* (2016) 131: 75-86.

REQUEST NO. 11:

Documents and Communications related to any finding or assertion by You that:

- a. Zeidel's CTE pathology caused any clinical symptoms Zeidel purportedly experienced;
- b. CTE pathologies of other hockey players, including NHL Players, caused any clinical symptoms those players purportedly experienced; and
- c. Other athletes' CTE pathologies caused any clinical symptoms those players purportedly experienced.

RESPONSE TO REQUEST NO. 11:

Boston University objects to this Request on the grounds that the production of the information requested would require the University to violate confidentiality agreements, the privacy of research participants, and federal funding restrictions. This includes multiple Certificates of Confidentiality issued by the National Institute of Neurological Disorders and Stroke (NINDS) as referenced in RESPONSE TO REQUEST NO. 2.

Subject to and without waiving the General Objections incorporated herein by reference, Boston University hereby states that on or about October 26, 2015, it produced documents relating to individual research subjects whose next of kin have authorized the release of such information. Boston University objects to the production of any further documents concerning the study of

individuals whose families declined to authorize the release of such information, or pertaining to research subjects whose participation in funded research studies were conditioned upon assurances of confidentiality.

Several of the peer-reviewed publications listed in the attached document entitled “Relevant Peer Reviewed Publications and Reviews of Boston University CTE Center” relate to and/or discuss CTE pathologies found in athletes and former athletes that sustained concussive and/or subconcussive impacts while playing sports. This list may not be exhaustive of all potentially relevant scientific articles authored or co-authored by members of the Boston University faculty affiliated with the CTE Center. All publications are available through publicly accessible sources. The University has attempted to indicate next to each citation the REQUEST NO. to which each paper broadly relates (unless specifically cited within a response) and hereby produces copies of the most frequently cited original research publications and review articles relevant to the Requests.

REQUEST NO. 12:

Documents and Communications related to the biological mechanism supporting any purported causal link between the CTE pathologies of Zeidel, other hockey players, including NHL Players, or other athletes and any clinical symptoms those players purportedly experienced.

RESPONSE TO REQUEST NO. 12:

Several of the peer-reviewed publications listed in the attached document entitled “Relevant Peer Reviewed Publications and Reviews of Boston University CTE Center” relate to and/or discuss CTE pathologies found in athletes and former athletes that sustained concussive

and/or subconcussive impacts while playing sports. This list may not be exhaustive of all potentially relevant scientific articles authored or co-authored by members of the Boston University faculty affiliated with the CTE Center. All publications are available through publicly accessible sources. The University has attempted to indicate next to each citation the REQUEST NO. to which each paper broadly relates (unless specifically cited within a response) and hereby produces copies of the most frequently cited original research publications and review articles relevant to the Requests.

REQUEST NO. 13:

Documents and Communications related to the methodology You use to support any finding or assertion that the CTE pathologies of Zeidel, other hockey players, including NHL Players, or other athletes caused any clinical symptoms those players purportedly experienced, as well as any Documents demonstrating any changes to such a methodology.

RESPONSE TO REQUEST NO. 13:

Each of the original research publications cited in the preceding Responses includes a methods section that describes the methodologies followed for the specific study reported.

REQUEST NO. 14:

Death certificates and autopsy reports, including any general autopsy or neuropathology reports of Zeidel, other hockey players, including NHL Players, and other athletes examined by You in connection with research related to CTE.

RESPONSE TO REQUEST NO. 14:

Subject to and without waiving the General Objections incorporated herein by reference, Boston University hereby states that on or about October 26, 2015, it produced documents relating to individual research subjects whose next of kin have authorized the release of such information. Boston University objects to the production of any further documents concerning the study of the brains of individuals whose families declined to authorize the release of such information, or pertaining to research subjects whose participation in funded research studies were conditioned upon assurances of confidentiality. Notwithstanding and without waiving these objections, attached are additional records of the four subjects whose files were previously produced.

REQUEST NO. 15:

Medical records of Zeidel, other hockey players, including NHL Players, and other athletes examined by You and/or other affiliated entities, such as CLF, including: (i) clinical records; (ii) medical histories or summaries; and (iii) interviews conducted with family members or acquaintances.

RESPONSE TO REQUEST NO. 15:

Subject to and without waiving the General Objections incorporated herein by reference, Boston University hereby states that on or about October 26, 2015, it produced documents relating to individual research subjects whose next of kin have authorized the release of such information. Boston University objects to the production of any further documents concerning the study of the brains of individuals whose families declined to authorize the release of such information, or pertaining to research subjects whose participation in funded research studies were conditioned

upon assurances of confidentiality. Notwithstanding and without waiving these objections, attached are additional records of the four subjects whose files were previously produced.

REQUEST NO. 16:

Documents and Communications related to any meeting between or among You and/or other affiliated entities, including CLF, with: Julie Grand; Gary Bettman; Brendan Shanahan; Bill Daly; any other representative, employee or consultant of the NHL; any representative, employee or consultant of an NHL team; any representative, employee or consultant of the NHLPA; or any NHL Player or Player Agent.

RESPONSE TO REQUEST NO. 16:

Several Boston University faculty met briefly with Gary Bettman several years ago. There is no documentation related to this meeting. Several Boston University faculty also met briefly with Brendan Shanahan, but no documentation or presentation was delivered. The University previously produced emails related to this meeting. Finally, Dr. Cantu is a consultant with the NHLPA. Faculty in the CTE Center interact with Dr. Cantu frequently, but have not interacted with him in his role as a consultant for the NHLPA.

REQUEST NO. 17:

Communications between or among You and/or other affiliated entities, including CLF, and: (i) any representative, employee or consultant of any NHL team; (ii) any representative, employee or consultant of the NHLPA; or (iii) any NHL Player or Player Agent.

RESPONSE TO REQUEST NO. 17:

See RESPONSE TO REQUEST NO. 16.

REQUEST NO. 18:

Documents related to publications or potential publications (even if not submitted) related to CTE or other long-term neurodegenerative diseases that You prepared for peer-reviewed journals or that You considered for submission, including: (i) abstracts; (ii) presentations; (iii) draft publications; and/or (iv) Communications between or among employees, representatives, and/or consultants of the BU CTE Center and/or other affiliated entities, including CLF, about those Documents, including Communications related to the scope, limitations, conclusions, and/or phraseology used in such publications or potential publications.

RESPONSE TO REQUEST NO. 18:

The peer-reviewed publications listed in the attached document entitled “Relevant Peer Reviewed Publications and Reviews of Boston University CTE Center” relate to and/or discuss CTE. This list may not be exhaustive of all potentially relevant scientific articles authored or co-authored by members of the Boston University faculty affiliated with the CTE Center. All publications are available through publicly accessible sources.

REQUEST NO. 19:

Documents related to publications or draft publications related to CTE or other long-term neurodegenerative diseases You prepared for peer-reviewed journals constituting (i) reviewer comments or questions and (ii) responses to reviewer comments or questions, including Communications related to the scope, limitations, conclusions, and/or phraseology used in such publications or draft publications.



RESPONSE TO REQUEST NO. 19:

The peer-reviewed publications listed in the attached document entitled “Relevant Peer Reviewed Publications and Reviews of Boston University CTE Center” relate to and/or discuss CTE. This list may not be exhaustive of all potentially relevant scientific articles authored or co-authored by members of the Boston University faculty affiliated with the CTE Center. All publications are available through publicly accessible sources.

Respectfully submitted,



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DATED: January 11, 2017

CERTIFICATE OF SERVICE

I hereby certify that a true copy of the above document was served upon the following via electronic mail and FedEx:

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\_\_\_\_\_  
Lawrence S. Elswit

**Yolanda Sherman**

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**From:** ecf-notice@mnd.uscourts.gov  
**Sent:** Thursday, January 19, 2017 7:40 PM  
**To:** mnecfnotifications@mnd.uscourts.gov  
**Subject:** Activity in Case 0:14-md-02551-SRN-JSM IN RE: National Hockey League Players' Concussion Injury Litigation Declaration in Support

**This is an automatic e-mail message generated by the CM/ECF system. Please DO NOT RESPOND to this e-mail because the mail box is unattended.**

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**U.S. District Court**

**U.S. District of Minnesota**

### **Notice of Electronic Filing**

The following transaction was entered by Connolly, Daniel on 1/19/2017 at 6:40 PM CST and filed on 1/19/2017

**Case Name:** IN RE: National Hockey League Players' Concussion Injury Litigation  
**Case Number:** [0:14-md-02551-SRN-JSM](#)  
**Filer:** National Hockey League  
**Document Number:** [670](#)

#### **Docket Text:**

**Declaration of Daniel J. Connolly in Support of [666] MOTION to Compel *Production of Documents from the Boston University CTE Center* filed by National Hockey League. (Attachments: # (1) Exhibit(s) A, # (2) Exhibit(s) B, # (3) Exhibit(s) C, # (4) Exhibit(s) D, # (5) Exhibit(s) E)(Connolly, Daniel)**

#### **0:14-md-02551-SRN-JSM Notice has been electronically mailed to:**

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**0:14-md-02551-SRN-JSM Notice has been delivered by other means to:**

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**Document description:**Main Document

**Original filename:**n/a

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**Document description:**Exhibit(s) A

**Original filename:**n/a

**Electronic document Stamp:**

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**Document description:**Exhibit(s) B

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**Document description:**Exhibit(s) C

**Original filename:**n/a

**Electronic document Stamp:**

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**Document description:**Exhibit(s) D

**Original filename:**n/a

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**Document description:**Exhibit(s) E

**Original filename:**n/a

**Electronic document Stamp:**

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