

**BEFORE THE JUDICIAL PANEL
ON MULTIDISTRICT LITIGATION**

_____)	
IN RE NHL CONCUSSION LITIGATION)	
_____)	MDL Docket No. _____
_____)	
_____)	

**DEFENDANT NATIONAL HOCKEY LEAGUE’S MOTION TO TRANSFER RELATED
ACTIONS FOR COORDINATED PRETRIAL PROCEEDINGS
PURSUANT TO 28 U.S.C. § 1407**

Pursuant to Rule 6.2(a) of the Rules of Procedure of the Judicial Panel on Multidistrict Litigation, defendant National Hockey League (“NHL”) respectfully moves the Panel for an order pursuant to 28 U.S.C. § 1407 transferring the actions listed on the attached schedule to the United States District Court for the District of Columbia for coordinated pretrial proceedings before the Honorable Ketanji Brown Jackson. In support of its motion, NHL states the following:

1. Three class-action complaints have recently been filed against defendant NHL in federal-district courts seeking to hold the NHL liable for concussion-related injuries that current and/or former players have allegedly suffered or may suffer in the future.

2. The first such action was a class-action case filed in the U.S. District Court for the District of Columbia by Gary Leeman and 12 other putative representatives, on behalf of themselves and a proposed nationwide class. That case was filed on November 25, 2013.

3. Since that time, two additional cases proposing overlapping classes have been filed: *LaCouture v. NHL*, No. 1:14-cv-02531-SAS (S.D.N.Y. filed Apr. 9, 2014), and *Christian v. NHL*, No. 0:14-cv-01140-SRN-JSM (D. Minn. filed Apr. 15, 2014).

4. The actions proposed for transfer all “[i]nvolve one or more common questions of fact” as required by 28 U.S.C. § 1407(a). Therefore, coordination of the actions before a single court will conserve judicial resources, reduce the costs of litigation, prevent potentially inconsistent pretrial rulings, eliminate duplicative discovery, and permit the cases to proceed to trial more efficiently.

5. The three actions are at a very early stage of litigation. They were all filed between November 25, 2013 and April 15, 2014. Service has not yet been effected in two of the suits, and no responsive pleadings have been filed in any of the three cases. The *Leeman* court has held an initial status conference and issued a scheduling order for the NHL’s motion to dismiss.

6. The United States District Court for the District of Columbia is the most appropriate forum for coordinated pretrial proceedings in this litigation because the first action was filed there; it has the necessary expertise and resources to efficiently manage this litigation; it has a favorable docket; and it is a very accessible forum.

For the foregoing reasons and those set forth in the accompanying memorandum, defendant NHL respectfully requests that the Panel transfer the actions identified on the attached schedule to the United States District Court for the District of Columbia for coordinated pretrial proceedings.

Dated: April 25, 2014

Respectfully submitted,

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**BEFORE THE JUDICIAL PANEL
ON MULTIDISTRICT LITIGATION**

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IN RE NHL CONCUSSION LITIGATION))
_____)) MDL Docket No. _____
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**DEFENDANT NATIONAL HOCKEY LEAGUE’S MEMORANDUM OF LAW IN
SUPPORT OF MOTION TO TRANSFER RELATED ACTIONS FOR COORDINATED
PRETRIAL PROCEEDINGS PURSUANT TO 28 U.S.C. § 1407**

Pursuant to Rule 6.2(a) of the Rules of Procedure of the Judicial Panel on Multidistrict Litigation, defendant the National Hockey League (“NHL”) respectfully submits this memorandum in support of its motion for an order transferring *LaCouture v. NHL*, No. 1:14-cv-02531-SAS (S.D.N.Y. filed Apr. 9, 2014), and *Christian v. NHL*, No. 0:14-cv-01140-SRN-JSM (D. Minn. filed Apr. 15, 2014), to the U.S. District Court for the District of Columbia (preferably before the Honorable Ketanji Brown Jackson) for coordinated pretrial proceedings with *Leeman v. NHL*, No. 1:13-cv-01856-KBJ (D.D.C. filed Nov. 25, 2013), a substantially similar case that is already pending before Judge Jackson in that district. Given the complexity of these three putative class action cases, which involve 25 named plaintiffs and implicate the laws of 18 states, the District of Columbia and five Canadian provinces, coordination of the *LaCouture*, *Christian* and *Leeman* actions for pretrial proceedings pursuant to 28 U.S.C. § 1407 is necessary to eliminate duplicative discovery, avoid conflicting pretrial rulings, conserve the resources of the judiciary, and otherwise promote the just and efficient resolution of these actions.

BACKGROUND

The NHL has been named as a defendant in three putative class actions pending in federal courts in the District of Columbia, New York and Minnesota. Plaintiffs in each of these

cases seek to hold the NHL liable for concussion-based injuries they have allegedly suffered or may suffer in the future. (See *Leeman* Am. Compl. ¶¶ 1-19; *LaCouture* Am. Compl. ¶¶ 6-8; *Christian* Compl. ¶¶ 1-2.) The *Leeman* action is brought by **13 named plaintiffs** from seven jurisdictions on behalf of “all former NHL players who retired on or before February 14, 2013 and who have suffered brain trauma and/or injuries as a result of concussive and subconcussive impacts inflicted on them while playing in the NHL.” (*Leeman* Am. Compl. ¶ 150.) The *LaCouture* action is brought by **nine named plaintiffs** from four different jurisdictions on behalf of all current and former NHL players. (*LaCouture* Am. Compl. ¶ 242.) And the *Christian* action is brought by **three named plaintiffs** from two different jurisdictions on behalf of “[a]ll living NHL hockey players, their spouses and dependents, and the estates of deceased NHL players, who retired, formally or informally, from playing professional hockey with the NHL or any member club, and who are not seeking active employment as players with any NHL member club.” (*Christian* Compl. ¶¶ 25-27, 187.)

The named plaintiffs in these cases played for NHL teams in 16 different states, the District of Columbia and Canada, and the proposed classes implicate the laws of 18 states, the District of Columbia and five Canadian provinces. The plaintiffs in each of the putative class actions allege that the NHL has been on notice that concussive impacts can lead to long-term injury for almost a century. (See *Leeman* Am. Compl. ¶¶ 58-81; *LaCouture* Am. Compl. ¶¶ 84-109; *Christian* Compl. ¶¶ 2, 123-129.) In addition, all of the complaints allege that the NHL has promoted a culture of violence to generate profits at the expense of player safety. (See *Leeman* Am. Compl. ¶¶ 95-102; *LaCouture* Am. Compl. ¶¶ 30-69; *Christian* Compl. ¶¶ 10, 77-79.) The complaints also allege that the NHL took affirmative actions that increased the risk of injury to players. (See *Leeman* Am. Compl. ¶ 124; *LaCouture* Am. Compl. ¶¶ 196-201; *Christian* Compl.

¶¶ 137-140.) All the complaints further allege that the NHL voluntarily assumed a duty to warn its players about the risks associated with concussions. (*See, e.g., Leeman* Am. Compl. ¶¶ 103-111; *LaCouture* Am. Compl. ¶¶ 172, 252; *Christian* Compl. ¶¶ 112-122.) And each Complaint alleges that the NHL failed to effectively or timely implement reforms that would have more adequately protected players from the long-term effects of head trauma. (*See, e.g., Leeman* Am. Compl. ¶¶ 126-135; *LaCouture* Am. Compl. ¶¶ 220-229; *Christian* Compl. ¶¶ 157-171.)

Plaintiffs in all three cases assert claims for, *inter alia*, fraudulent concealment and negligence. (*See Leeman* Am. Compl. ¶¶ 183-196, 241-248; *LaCouture* Am. Compl. ¶¶ 251-255, 262-267; *Christian* Compl. ¶¶ 222-234, 243-256.) Plaintiffs in all three cases also seek relief in the form of medical monitoring and compensatory damages. (*See Leeman* Am. Compl. ¶¶ 165-182, Prayer for Relief; *LaCouture* Am. Compl., Prayer for Relief; *Christian* Compl. ¶¶ 195-221, Prayer for Relief.)¹ A schedule of the three presently-filed related actions and the complaints in those actions are attached as Appendix A.

ARGUMENT

The *Leeman*, *LaCouture* and *Christian* actions involve overlapping putative classes and complex factual allegations regarding supposed concussive injuries that allegedly resulted from defendant NHL's conduct. For the reasons set forth below, the NHL believes that the actions should be centralized for coordinated pretrial proceedings, and that the U.S. District Court for the District of Columbia is the most appropriate venue for an MDL proceeding in these matters.

¹ None of the purported classes described in the constituent complaints would satisfy the requirements of Federal Rule of Civil Procedure 23, because resolution of the claims would require individualized factual and legal inquiries. Nonetheless, because the contours of the proposed classes – and therefore the ultimate resolution of the class certification decision – overlap, the NHL seeks centralization of these actions before a single district court for pretrial proceedings.

I. COORDINATION OF PRETRIAL PROCEEDINGS IS NECESSARY TO ACHIEVE THE OBJECTIVES OF 28 U.S.C. § 1407.

28 U.S.C. § 1407 authorizes the Panel to transfer two or more cases pending in different districts for coordinated pretrial proceedings when: (1) the cases involve “one or more common questions of fact”; (2) transfer “will be for the convenience of parties and witnesses”; and (3) transfer “will promote the just and efficient conduct of such actions.” 28 U.S.C. § 1407(a).

Here, all three criteria are satisfied.

First, each of the cases involves one or more common questions of fact because they seek to certify similar classes of all current and/or former NHL players, involve similar allegations and assert many of the same claims. The Panel has previously observed that the existence of overlapping putative classes, coupled with common allegations, satisfies the “common questions of fact” requirement set forth in section 1407. *See, e.g., In re NFL Players’ Concussion Injury Litig.*, 842 F. Supp. 2d 1378, 1379 (J.P.M.L. 2012) (coordinating four actions that “share[d] factual issues arising from allegations against the NFL stemming from injuries sustained while playing professional football, including damages allegedly resulting from the long-term effects of concussions,” because centralization would “eliminate duplicative discovery,” “prevent inconsistent pretrial rulings” and “conserve the resources of the parties, their counsel and the judiciary”); *In re NCAA Student-Athlete Concussion Injury Litig.*, MDL No. 2492, 2013 U.S. Dist. LEXIS 178576, at *2-4 (J.P.M.L. Dec. 18, 2013) (centralizing actions by former football players that shared “common factual questions concerning the NCAA’s knowledge of the risks of concussions in football players and its policies governing the protection of players from such injuries”); *In re First Nat’l Collection Bureau, Inc., Tel. Consumer Prot. Act (TCPA) Litig.*, MDL No. 2527, 2014 U.S. Dist. LEXIS 47931, at *2 (J.P.M.L. Apr. 8, 2014) (coordinating three class “actions[, which] share[d] factual questions relating to allegations that FNCB placed debt

collection calls to plaintiffs' cellular telephones using an automated system, without the plaintiffs' consent"); *In re IDT Corp. Calling Card Terms Litig.*, 278 F. Supp. 2d 1381, 1381 (J.P.M.L. 2003) (establishing MDL proceeding for two class actions that "involve[d] common questions of fact" where the actions were "overlapping putative class actions brought on behalf of purchasers of telephone calling cards [fraudulently] marketed by common and/or affiliated defendants"); *In re H & R Block Mortg. Corp. Prescreening Litig.*, 435 F. Supp. 2d 1347, 1348 (J.P.M.L. 2006) (finding that "three actions involve[d] common questions of fact, and that centralization under Section 1407" was warranted where litigation involved "claims on behalf of, respectively, a putative class of Indiana and Wisconsin residents" and "these classes overlap with the putative nationwide class that the California plaintiff seeks to represent"); *In re Virgin Mobile Initial Pub. Offering (IPO) Sec. Litig.*, 542 F. Supp. 2d 1372, 1373 (J.P.M.L. 2008) (ordering centralization of four overlapping class actions because each case contained similar allegations of false and misleading statements in connection with Virgin Mobile's initial public offering).

Here, the similarities between the *LaCouture*, *Leeman* and *Christian* actions are unmistakable. Each of these overlapping classes alleges that the NHL has been on notice that concussive impacts can lead to long-term injury for almost a century. (*See, e.g., Leeman* Am. Compl. ¶¶ 58-81; *LaCouture* Am. Compl. ¶¶ 84-109; *Christian* Compl. ¶¶ 37-69.) The complaints all further allege that the NHL failed to disclose those risks to NHL players. (*See, e.g., Leeman* Am. Compl. ¶¶ 114-123; *LaCouture* Am. Compl. ¶¶ 7, 219, 240, 263; *Christian* Compl. ¶¶ 126-136.) In addition, all of the complaints allege that the NHL has promoted a culture of violence to generate profits at the expense of player safety. (*See, e.g., Leeman* Am. Compl. ¶¶ 95-102; *LaCouture* Am. Compl. ¶¶ 30-69; *Christian* Compl. ¶¶ 10, 77-79.) All the

complaints claim, for example, that the NHL encouraged – or failed to adequately prevent – fighting among players. (*See, e.g., Leeman* Am. Compl. ¶¶ 127, 147; *LaCouture* Am. Compl. ¶¶ 3, 32-51; *Christian* Compl. ¶¶ 80-97.) Further, the complaints claim that the NHL took affirmative actions – for example, replacing flexible glass with rigid glass in 1996 – that supposedly increased the risk of injury to players. (*See, e.g., Leeman* Am. Compl. ¶ 124; *LaCouture* Am. Compl. ¶¶ 196-201; *Christian* Compl. ¶¶ 137-140.) In addition, each Complaint alleges that the NHL assumed a duty to warn its players about the risks associated with concussions and protect the health and safety of its players. (*See, e.g., Leeman* Am. Compl. ¶¶ 103-111; *LaCouture* Am. Compl. ¶¶ 172, 252; *Christian* Compl. ¶¶ 112-122.) In short, there can be no dispute that each case is predicated on substantially similar allegations, making them prime candidates for pretrial centralization. Accordingly, the first factor weights strongly in favor of coordinating the actions for pretrial proceedings.

Second, transfer will be for the convenience of the witnesses and parties. Plaintiffs in these cases will likely seek much of the same discovery from the NHL pertaining to its alleged knowledge of the effect of concussive impacts on brain injury and its alleged failure to disclose or act on that knowledge – and will likely seek to depose the same fact witnesses and experts. In addition, the NHL will likely file similar dispositive motions in the three cases (addressing, *inter alia*, statutes of limitations and preemption of plaintiffs’ claims under federal labor law), and the parties will likely advance similar positions for and against class certification in all three actions. Thus, transfer will streamline discovery and motion practice in the three cases, “ensur[ing] . . . the just and expeditious resolution of [the] actions to the overall benefit of the parties[.]” *In re H & R Block*, 435 F. Supp. 2d at 1349 (coordinating three class actions to “ensure[] that pretrial proceedings will be conducted in a streamlined manner”); *see also, e.g., In re Listerine Total*

Care Mouthwash Mktg. & Sales Practices Litig., 764 F. Supp. 2d 1354, 1355 (J.P.M.L. 2011) (“Centralization [of three class actions] will eliminate duplicative discovery; prevent inconsistent pretrial rulings, including with respect to class certification; and conserve the resources of the parties, their counsel, and the judiciary.”); *In re POM Wonderful LLC Mktg. & Sales Practices Litig.*, 753 F. Supp. 2d 1372, 1373 (J.P.M.L. 2010) (similar); *In re Canon U.S.A., Inc., Digital Cameras Prods. Liab. Litig.*, 416 F. Supp. 2d 1369, 1371 (J.P.M.L. 2006) (granting motion to coordinate two putative class actions to “ensure[] that pretrial proceedings will be conducted in a streamlined manner leading to the just and expeditious resolution of all actions to the overall benefit of the parties”). Accordingly, the second factor weighs in favor of pretrial centralization too.

Third and finally, transfer will promote the “just and efficient conduct of these actions” by obviating the need for multiple judges to rule on the same motions and avoiding inconsistent rulings on dispositive motions and class certification. Having one judge oversee all of these issues will ensure that they are addressed in a uniform and consistent manner. *See, e.g., In re H & R Block*, 435 F. Supp. 2d at 1349 (“transfer [of three class actions] under Section 1407 has the salutary effect of placing [the cases] before a single judge who can formulate a[n] [efficient] pretrial program”). This is particularly important because the plaintiffs in these actions seek certification of overlapping putative classes that implicate the laws of numerous states and five Canadian provinces – and will thus require many pretrial legal rulings. As the Panel noted in an analogous circumstance, “[a]lthough only [a small number of class] actions are now pending, they are brought on behalf of nearly identical putative nationwide classes, and there is a risk of inconsistent rulings on class certification.” *In re Toys “R” Us – Del., Inc., Fair & Accurate Credit Transactions Act (FACTA) Litig.*, 581 F. Supp. 2d 1377 (J.P.M.L. 2008) (granting motion

to transfer two actions).² Indeed, the Panel has “consistently held that transfer of actions under Section 1407 is appropriate, if not necessary, where the possibility of inconsistent class determinations exists.” *In re Sugar Indus. Antitrust Litig.*, 395 F. Supp. 1271, 1273 (J.P.M.L. 1975); accord *In re Plumbing Fixtures*, 308 F. Supp. 242, 244 (J.P.M.L. 1970) (“[A] potential for conflicting or overlapping class actions presents one of the strongest reasons for transferring such related actions to a single district for coordinated or consolidated pretrial proceedings which will include an early resolution of such potential conflicts.”); see also *In re AIG Workers Comp. Ins. Policyholder Litig.*, MDL No. 2519, 2014 U.S. Dist. LEXIS 47932, at *3 (J.P.M.L. Apr. 7, 2014) (centralizing four class actions will “prevent inconsistent pretrial rulings, including with respect to class certification”). Because the proposed classes in the three cases substantially overlap and because they raise similar choice-of-law, statute-of-limitations and preemption issues, there is a distinct possibility of inconsistent determinations.

Coordination is also appropriate because the three putative class actions “involve facts of sufficient intricacy that could spawn challenging procedural questions and pose the risk of inconsistent and/or conflicting judgments.” *In re H & R Block*, 435 F. Supp. 2d at 1349; see also *In re Aetna, Inc., Out-Of-Network “UCR” Rates Litig.*, 609 F. Supp. 2d 1370, 1371 (J.P.M.L. 2009) (granting motion to transfer two class actions brought by plaintiffs on behalf of nationwide classes involving “complex . . . questions of fact”); *In re Petroleum Prods. Antitrust Litig.*, 393 F. Supp. 1091, 1092 (J.P.M.L. 1975) (“The complaints in these two [class] actions are substantially similar and prima facie raise extremely complex factual issues involving the structure and business practices of the petroleum industry.”); *In re Gen. Tire & Rubber Co. Sec.*

² Notably, the Panel has coordinated small numbers of class actions even where they did *not* involve overlapping classes. See *In re Glaceau VitaminWater Mktg. & Sales Practices Litig.*, 764 F. Supp. 2d 1349, 1351 (J.P.M.L. 2011) (coordinating three actions involving common factual questions arising out of defendants’

Litig., 429 F. Supp. 1032, 1034 (J.P.M.L. 1977) (“An analysis of the complaints in these actions reveals that they share common factual questions concerning intricate events and methods of operation and that these questions are sufficiently complex to warrant transfer under Section 1407.”). After all, they involve plaintiffs who played NHL hockey over the course of decades under varying circumstances, including evolving science and medical knowledge, and successive collective bargaining agreements.

Moreover, the three cases present highly complex issues related to choice of law given the large number of plaintiffs and potentially applicable laws involved. Indeed, as noted above, plaintiffs’ claims will require analysis of the laws of at least 18 states, the District of Columbia and five Canadian provinces. Centralization would undoubtedly facilitate the resolution of these “complex common questions,” “promot[ing] the just and efficient conduct of the litigation.” *In re Propulsid Prods. Liab. Litig.*, MDL No. 1355, 2000 U.S. Dist. LEXIS 11651, at *2-3 (J.P.M.L. Aug. 7, 2000) (granting motion to centralize two overlapping class actions brought by plaintiffs allegedly injured by Propulsid).

In sum, coordination of the three NHL concussion cases would “eliminate duplicative discovery; prevent inconsistent pretrial rulings, including with respect to class certification; and conserve the resources of the parties, their counsel, and the judiciary.” *In re Listerine*, 764 F. Supp. 2d at 1355; *In re Aetna*, 609 F. Supp. 2d at 1371 (similar). For all of these reasons, transfer should be granted.³

misrepresentations regarding their VitaminWater product, even though “they do not allege overlapping putative classes”).

³ Given the long line of federal caselaw recognizing the impropriety of personal-injury and medical-monitoring class actions, these three putative class actions are more accurately described as 25 personal-injury cases, further demonstrating the propriety of MDL treatment. *In re NuvaRing Prods. Liab. Litig.*, 572 F. Supp. 2d 1382, 1383 (J.P.M.L. 2008) (coordinating eleven personal-injury actions that shared factual questions relating to the manufacture, sale and safety profile of the NuvaRing contraceptive); *In re Levaquin Prods. Liab. Litig.*, 560 F. Supp. 2d 1384, 1385 (J.P.M.L. 2008) (coordinating fifteen actions involving allegations that the antibiotic Levaquin caused tendon rupture and that the warnings provided by defendants informing Levaquin users of this risk were

II. THE U.S. DISTRICT COURT FOR THE DISTRICT OF COLUMBIA IS THE MOST APPROPRIATE FORUM FOR THIS MULTIDISTRICT PROCEEDING.

If transfer is granted, the most appropriate forum for this MDL proceeding would be the U.S. District Court for the District of Columbia. Several of the factors the Panel considers in selecting MDL forums favor the D.D.C., including that: (1) it is the district in which the first action was filed; (2) the District of Columbia is a convenient location; and (3) the district has a favorable docket.

First, as noted above, the first case subject to this motion, *Leeman*, was filed in the D.D.C., before Judge Ketanji Brown Jackson. *See Leeman v. NHL*, No. 1:13-cv-01856-KBJ (D.D.C. filed Nov. 25, 2013). The Panel has often looked to the location of the first-filed action in deciding where to situate an MDL proceeding. *See In re DirecTV, Inc., Early Cancellation Fee Mktg. & Sales Practices Litig.*, 655 F. Supp. 2d 1369, 1370 (J.P.M.L. 2009) (situating MDL in district court where four actions were already pending, “including the first-filed action”); *In re Airline Baggage Fee Antitrust Litig.*, 655 F. Supp. 2d 1362, 1363 (J.P.M.L. 2009) (similar); *In re Sepracor Inc. Fair Labor Standards Act (FLSA) Litig.*, 629 F. Supp. 2d 1356, 1356 (J.P.M.L. 2009) (“We are persuaded that the District of Arizona is an appropriate transferee forum for this litigation, because the first-filed action is pending there and discovery is well underway in that action.”).

Second, the U.S. District Court for the District of Columbia is “a geographically convenient forum,” *In re Papst Licensing Digital Camera Patent Litig.*, 528 F. Supp. 2d 1357 (J.P.M.L. 2007), particularly given the geographic diversity of the plaintiffs and likely witnesses in these cases. The named plaintiffs reside in numerous states across the country and in Canada. Relevant documents and witnesses will therefore be spread out across the country, with no real

inadequate).

center of gravity. Counsel in the cases are similarly spread out in various states around the country, including Arizona, California, Florida, Maryland, Minnesota, New York and Washington, D.C. The District of Columbia is one of the most easily accessible forums in the country, with three major airports and a train station serving the city. (The courthouse is a five-minute cab ride from Union Station and 15 minutes from Reagan National Airport.) It would be convenient and cost-efficient for all parties and counsel to litigate a coordinated proceeding in an easily accessible location such as Washington, D.C.

Third, the U.S. District Court for the District of Columbia has a favorable docket for taking on an MDL proceeding, particularly when compared with the Southern District of New York and the District of Minnesota. In 2013, a total of 2,725 cases were filed in the District Court for the District of Columbia. *See* Federal Court Management Statistics, *available at* <http://www.uscourts.gov/Statistics/FederalCourtManagementStatistics.aspx>. By contrast, during the same time period, a total of 4,167 cases were filed in the District of Minnesota, where *Christian* is pending, and 12,093 cases were filed in the Southern District of New York, where *LaCouture* is pending. *See id.* The D.D.C. also ranks more favorably with respect to civil filings per judge. The D.D.C. is only the 86th-busiest district court in the country by civil filings per judge, while the District of Minnesota is the 11th-busiest District and the Southern District of New York is the 46th-busiest. *Id.* Moreover, there are just six pending MDL proceedings in the federal court for the District of Columbia, and none before Judge Jackson. *See* http://www.jpml.uscourts.gov/sites/jpml/files/Pending_MD_L_Dockets_By_District-April-15-2014.pdf. Thus, the D.D.C. will be better able to accommodate coordinated pretrial proceedings in this litigation. *See In re Groupon, Inc. Mktg. & Sales Practices Litig.*, MDL No. 2238, 2011 U.S. Dist. LEXIS 60512, at *3-4 (J.P.M.L. June 2, 2011) (choosing transferee forum based on

the fact that it was an “underutilized” district that was “located in an accessible metropolitan area”).

For all of these reasons, the U.S. District Court for the District of Columbia is the most appropriate forum for an MDL proceeding.

CONCLUSION

For the foregoing reasons, defendant National Hockey League respectfully requests that the Panel transfer the *LaCouture* and *Christian* actions to the U.S. District Court for the District of Columbia for coordinated pretrial proceedings with the *Leeman* action.

Dated: April 25, 2014

Respectfully submitted,

s/John H. Beisner

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**BEFORE THE JUDICIAL PANEL
ON MULTIDISTRICT LITIGATION**

_____))
IN RE NHL CONCUSSION LITIGATION))
_____))

SCHEDULE OF ACTIONS

<u>Plaintiffs</u>	<u>Defendants</u>	<u>Div/City</u>	<u>Civil Action No.</u>	<u>Judge</u>
D.D.C.				
Gary Leeman, Bradley Aitken, Darren Banks, Curt Bennett, Richard Dunn, Warren Holmes, Robert Manno, Blair James Stewart, Morris Titanic, Richard Vaive, Bruce Bell, Scott Parker, Bernie Nicholls, Bob Bourne	National Hockey League, National Hockey League Board of Governors	Washington, DC	1:13-cv-01856-KBJ	Judge Ketanji Brown Jackson
D. Minn.				
David Christian, Reed Larson, William Bennett	National Hockey League	DMN	0:14-cv-01140-SRN-JSM	Judge Susan Richard Nelson

<u>Plaintiffs</u>	<u>Defendants</u>	<u>Div/City</u>	<u>Civil Action No.</u>	<u>Judge</u>
S.D.N.Y.				
Dan LaCouture, Dan Keczmer, Jack Carlson, Richard Brennan, Brad Maxwell, Michael Peluso, Tom Younghans, Allan Rourke, Scott Bailey	National Hockey League	Foley Square	1:14-cv-02531-SAS	Judge Shira A. Scheindlin

**BEFORE THE JUDICIAL PANEL
ON MULTIDISTRICT LITIGATION**

_____)
IN RE NHL CONCUSSION LITIGATION)
_____)

CERTIFICATE OF SERVICE

I, John H. Beisner, hereby certify that the foregoing Notice of Related Actions was served via first-class mail, postage pre-paid, on April 25, 2014, upon the parties listed below.

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Dated: April 25, 2014

Respectfully submitted,

s/ John H. Beisner
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*Counsel for Defendant National Hockey
League*

JURY,TYPE-B

**U.S. District Court
District of Columbia (Washington, DC)
CIVIL DOCKET FOR CASE #: 1:13-cv-01856-KBJ**

LEEMAN et al v. NATIONAL HOCKEY LEAGUE et al
Assigned to: Judge Ketanji Brown Jackson
Cause: 28:1332 Diversity-(Citizenship)

Date Filed: 11/25/2013
Jury Demand: Plaintiff
Nature of Suit: 360 P.I.: Other
Jurisdiction: Diversity

Plaintiff

GARY LEEMAN

represented by **Joseph F. Murphy**
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Plaintiff

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Plaintiff

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Plaintiff

RICHARD VAIVE
TERMINATED: 12/27/2013

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SCOTT PARKER

on their behalf and others similarly situated

represented by **Stephen G. Grygiel**

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Defendant

**NATIONAL HOCKEY LEAGUE
 BOARD OF GOVERNORS**

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Joseph Baumgarten
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Date Filed	#	Docket Text
11/25/2013	<u>1</u>	COMPLAINT against National Hockey League, National Hockey League Board of Governors with Jury Demand (Fee Status:Filing Fee Waived) filed by Warren Holmes, Darren Banks, Robert Manno, Morris Titanic, Bradley Aitken, Blair James Stewart, Curt Bennett, Gary Leeman, Richard Vaive, Richard

		Dunn. (Attachments: # <u>1</u> Summons, # <u>2</u> Summons, # <u>3</u> Civil Cover Sheet) (Slutkin, Andrew) (Entered: 11/25/2013)
11/25/2013	<u>2</u>	MOTION for Leave to Appear Pro Hac Vice :Attorney Name- Steven D. Silverman, :Firm- Silverman Thompson Slutkin & White, :Address- 201 N. Charles St., Suite 2600, Baltimore, MD 21201. Phone No. - (410) 385-2225. Fax No. - (410) 547-2432 by Bradley Aitken, Darren Banks, Curt Bennett, Richard Dunn, Warren Holmes, Gary Leeman, Robert Manno, Blair James Stewart, Morris Titanic, Richard Vaive (Attachments: # <u>1</u> Declaration, # <u>2</u> Text of Proposed Order)(Slutkin, Andrew) (Entered: 11/25/2013)
11/25/2013		Case Assigned to Judge Ketanji Brown Jackson. (md,) (Entered: 11/26/2013)
11/26/2013	<u>3</u>	ELECTRONIC SUMMONS (2) ISSUED as to NATIONAL HOCKEY LEAGUE, NATIONAL HOCKEY LEAGUE BOARD OF GOVERNORS. (Attachments: # <u>1</u> Summons 2nd, # <u>2</u> Notice of Consent, # <u>3</u> Consent Form) (md,) (Entered: 11/26/2013)
11/27/2013		MINUTE ORDER granting <u>2</u> Motion for Leave to Appear Pro Hac Vice. Steven D. Silverman is admitted pro hac vice in this matter. Signed by Judge Ketanji Brown Jackson on 11/27/2013. (lckbj1) (Entered: 11/27/2013)
12/03/2013	<u>4</u>	MOTION for Leave to Appear Pro Hac Vice :Attorney Name- Joseph F. Murphy Jr., :Firm- Silverman Thompson Slutkin & White, :Address- 201 N. Charles St., Suite 2600, Baltimore, MD 21201. Phone No. - (410) 385-2225. Fax No. - (410) 547-2432 by BRADLEY AITKEN, DARREN BANKS, CURT BENNETT, RICHARD DUNN, WARREN HOLMES, GARY LEEMAN, ROBERT MANNO, BLAIR JAMES STEWART, MORRIS TITANIC (Attachments: # <u>1</u> Declaration, # <u>2</u> Text of Proposed Order)(Sinclair, William) (Entered: 12/03/2013)
12/03/2013		MINUTE ORDER granting <u>4</u> Motion for Leave to Appear Pro Hac Vice. Joseph F. Murphy Jr. is admitted pro hac vice in this matter. Signed by Judge Ketanji Brown Jackson on 12/3/2013. (lckbj1) (Entered: 12/03/2013)
12/27/2013	<u>5</u>	NOTICE of Voluntary Dismissal re Richard Vaive <i>Without Prejudice Pursuant to 41(a)(1)(A)(i)</i> (Slutkin, Andrew) (Entered: 12/27/2013)
02/19/2014	<u>6</u>	AMENDED COMPLAINT ***AMENDED CLASS ACTION COMPLAINT*** against All Defendants with Jury Demand filed by WARREN HOLMES, DARREN BANKS, ROBERT MANNO, MORRIS TITANIC, BRADLEY AITKEN, BLAIR JAMES STEWART, CURT BENNETT, GARY LEEMAN, RICHARD DUNN, BRUCE BELL, SCOTT PARKER, BERNIE NICHOLLS, BOB BOURNE. (Attachments: # <u>1</u> Red-Lined Version of Amended Complaint) (Slutkin, Andrew) (Entered: 02/19/2014)
02/19/2014	<u>7</u>	MOTION for Leave to Appear Pro Hac Vice :Attorney Name- Stephen G. Grygiel, :Firm- Silverman Thompson Slutkin & White, LLC, :Address- 201 N. Charles Street, 26th Floor, Baltimore, MD 21201. Phone No. - 410-385-2225. Fax No. - 410-547-2432 by BRADLEY AITKEN, DARREN BANKS, BRUCE BELL, CURT BENNETT, BOB BOURNE, RICHARD DUNN, WARREN HOLMES, GARY LEEMAN, ROBERT MANNO, BERNIE NICHOLLS, SCOTT PARKER, BLAIR JAMES STEWART, MORRIS TITANIC

		(Attachments: # <u>1</u> Declaration, # <u>2</u> Text of Proposed Order)(Slutkin, Andrew) (Entered: 02/19/2014)
02/20/2014		MINUTE ORDER granting <u>7</u> Motion for Leave to Appear Pro Hac Vice. Stephen G. Grygiel is hereby admitted pro hac vice in this matter. Signed by Judge Ketanji Brown Jackson on 2/20/2014. (lckbj1) (Entered: 02/20/2014)
02/21/2014	<u>8</u>	MOTION for Extension of Time to <i>File for Class Certification</i> *** by BRADLEY AITKEN, DARREN BANKS, CURT BENNETT, BOB BOURNE, Bruce Bell, RICHARD DUNN, WARREN HOLMES, GARY LEEMAN, ROBERT MANNO, BERNIE NICHOLLS, SCOTT PARKER, BLAIR JAMES STEWART, MORRIS TITANIC (Attachments: # <u>1</u> Text of Proposed Order) (Slutkin, Andrew) (Entered: 02/21/2014)
02/21/2014	<u>9</u>	MOTION to Amend/Correct *** <i>Motion for Extension of Time to File Class Certification (4 pages)</i> *** by BRADLEY AITKEN, DARREN BANKS, CURT BENNETT, BOB BOURNE, Bruce Bell, RICHARD DUNN, WARREN HOLMES, GARY LEEMAN, ROBERT MANNO, BERNIE NICHOLLS, SCOTT PARKER, BLAIR JAMES STEWART, MORRIS TITANIC (Attachments: # <u>1</u> Text of Proposed Order)(Slutkin, Andrew) (Entered: 02/21/2014)
02/21/2014		MINUTE ORDER granting, for good cause shown, <u>8</u> Motion for Extension of Time to File Class Certification, <u>9</u> Motion to Amend/Correct. Plaintiffs' Motion for Class Certification due by 8/20/2014. Signed by Judge Ketanji Brown Jackson on 2/21/2014. (lckbj1) (Entered: 02/21/2014)
03/18/2014	<u>10</u>	NOTICE of Appearance by Jessica Davidson Miller on behalf of NATIONAL HOCKEY LEAGUE (Attachments: # <u>1</u> Certificate of Service)(Miller, Jessica) (Entered: 03/18/2014)
03/18/2014	<u>11</u>	STIPULATION re <u>6</u> Amended Complaint, <i>STIPULATION AND [PROPOSED] ORDER CONCERNING SERVICE OF PROCESS AND SCHEDULING</i> by NATIONAL HOCKEY LEAGUE. (Attachments: # <u>1</u> Text of Proposed Order, # <u>2</u> Certificate of Service)(Miller, Jessica) (Entered: 03/18/2014)
03/18/2014	<u>12</u>	MOTION for Leave to Appear Pro Hac Vice :Attorney Name- JAMES A. KEYTE, :Firm- Skadden, Arps, Slate, Meagher & Flom LLP, :Address- 4 Times Square, New York, NY 10036. Phone No. - (212) 735.3000. Fax No. - (212) 735.2000 by NATIONAL HOCKEY LEAGUE (Attachments: # <u>1</u> Declaration, # <u>2</u> Text of Proposed Order, # <u>3</u> Certificate of Service)(Miller, Jessica) (Entered: 03/18/2014)
03/18/2014	<u>13</u>	MOTION for Leave to Appear Pro Hac Vice :Attorney Name- SHEPARD GOLDFEIN, :Firm- Skadden, Arps, Slate, Meagher & Flom LLP, :Address- 4 Times Square, New York, NY 10036. Phone No. - (212) 735.3000. Fax No. - (212) 735.2000 by NATIONAL HOCKEY LEAGUE (Attachments: # <u>1</u> Declaration, # <u>2</u> Text of Proposed Order, # <u>3</u> Certificate of Service)(Miller, Jessica) (Entered: 03/18/2014)
03/18/2014	<u>14</u>	MOTION for Leave to Appear Pro Hac Vice :Attorney Name- MATTHEW M. MARTINO, :Firm- Skadden, Arps, Slate, Meagher & Flom LLP, :Address- 4 Times Square, New York, NY 10036. Phone No. - (212) 735.3000. Fax No. -

		(212) 735.2000 by NATIONAL HOCKEY LEAGUE (Attachments: # 1 Declaration, # 2 Text of Proposed Order, # 3 Certificate of Service)(Miller, Jessica) (Entered: 03/18/2014)
03/19/2014		MINUTE ORDER granting 12 Motion for Leave to Appear Pro Hac Vice, 13 Motion for Leave to Appear Pro Hac Vice, and 14 Motion for Leave to Appear Pro Hac Vice. Matthew M. Martino, Shepard Goldfein, and James A. Keyte are hereby admitted pro hac vice this matter as counsel for defendant National Hockey League. Signed by Judge Ketanji Brown Jackson on 3/19/2014. (lckbj1) (Entered: 03/19/2014)
03/20/2014		MINUTE ORDER: On March 18, 2014, the parties filed 11 a Joint Stipulation that memorializes an agreement they have reached regarding (1) acceptance of service and waiver of defenses, (2) the schedule for Defendants to respond to the complaint and for any associated briefing, and (3) a stay of all matters pending resolution of any motion to dismiss. The parties request that this Court adopt the proposed order attached to their Joint Stipulation. But the Federal Rules of Civil Procedure mandate that "[a] request for a court order [] be made by motion." See Fed. R. Civ. P. 7(b)(1). Moreover, the schedule that the parties ask this Court to order exceeds the time frames laid out in both the Federal Rules of Civil Procedure for responding to a complaint and this Court's Local Civil Rules for responding to a motion. See Fed. R. Civ. P. 12(a)(1)(A)(i) (answer is due 21 days after service); LCvR 7(b), (d) (oppositions are due within 14 days after service of a motion; replies are due within seven days after service of an opposition). This Court does not to honor stipulations for extensions of time. Rather, a party seeking a Court-ordered extension of time must file a motion that complies with the requirements of Fed. R. Civ. P. 7(b) (1) and 6(b). Likewise, the parties must file a motion in order to request that this Court stay the proceedings and deadlines pending any motion to dismiss and, in that motion, establish why this Court should exercise its discretion to order such a stay. See Clinton v. Jones, 520 U.S. 681, 706 (1997) ("The District Court has broad discretion to stay proceedings as an incident to its power to control its own docket."); LCvR 23.1(b) (court has discretion to extend period for filing a motion for class certification). The parties may elect to file a stipulation that reflects any agreement they have reach regarding service of process and waiver of defenses, and such stipulation will become a part of the record of this case. If the parties desire for this Court to sign any such stipulation or enter an order approving it, they must file a motion making that request along with the text of the stipulation. Signed by Judge Ketanji Brown Jackson on 3/20/2014. (lckbj1) (Entered: 03/20/2014)
03/27/2014	15	Joint MOTION for Extension of Time to File Answer by NATIONAL HOCKEY LEAGUE (Attachments: # 1 Text of Proposed Order)(Miller, Jessica) (Entered: 03/27/2014)
03/27/2014	16	Joint MOTION to Stay by NATIONAL HOCKEY LEAGUE (Attachments: # 1 Text of Proposed Order)(Miller, Jessica) (Entered: 03/27/2014)
03/27/2014	17	Joint MOTION To Approve Stipulation As To Service by NATIONAL HOCKEY LEAGUE (Attachments: # 1 Text of Proposed Order)(Miller, Jessica) (Entered: 03/27/2014)

04/01/2014		MINUTE ORDER granting, for good cause shown 15 Motion for Extension of Time to Answer. Defendants shall answer or otherwise respond to the complaint by 6/19/2014; Plaintiffs' opposition to any motion is due by 9/17/2014; Defendants' reply in support of any motion is due by 10/31/2014. Signed by Judge Ketanji Brown Jackson on 4/1/2014. (lckbj1) (Entered: 04/01/2014)
04/01/2014		MINUTE ORDER granting 17 Motion to Approve Stipulation as to Service. Signed by Judge Ketanji Brown Jackson on 4/1/2014. (lckbj1) (Entered: 04/01/2014)
04/01/2014		MINUTE ORDER setting Status Conference for 4/17/2014 at 11:30 AM in Courtroom 17 before Judge Ketanji Brown Jackson. Signed by Judge Ketanji Brown Jackson on 4/1/2014. (lckbj1) (Entered: 04/01/2014)
04/01/2014		Set/Reset Hearings: Status Conference set for 4/17/2014 at 11:30 AM in Courtroom 17 before Judge Ketanji Brown Jackson. (gdf) (Entered: 04/01/2014)
04/16/2014	18	MOTION for Leave to Appear Pro Hac Vice :Attorney Name- JOSEPH BAUMGARTEN, :Firm- Proskauer Rose LLP, :Address- Eleven Times Square, New York, New York 10036-6522. Phone No. - (212) 969-3000. Fax No. - (212) 969-2900 by NATIONAL HOCKEY LEAGUE (Attachments: # 1 Declaration, # 2 Text of Proposed Order, # 3 Certificate of Service)(Miller, Jessica) (Entered: 04/16/2014)
04/16/2014	19	MOTION for Leave to Appear Pro Hac Vice :Attorney Name- ADAM M. LUPION, :Firm- Proskauer Rose LLP, :Address- Eleven Times Square, New York, New York 10036-6522. Phone No. - (212) 969-3000. Fax No. - (212) 969-2900 by NATIONAL HOCKEY LEAGUE (Attachments: # 1 Declaration, # 2 Text of Proposed Order, # 3 Certificate of Service)(Miller, Jessica) (Entered: 04/16/2014)
04/16/2014		MINUTE ORDER granting 18 Motion for Leave to Appear Pro Hac Vice. Joseph Baumgarten is hereby admitted in this matter pro hac vice as counsel for defendants. Signed by Judge Ketanji Brown Jackson on 4/16/2014. (lckbj1) (Entered: 04/16/2014)
04/16/2014		MINUTE ORDER granting 19 Motion for Leave to Appear Pro Hac Vice. Adam M. Lupion is hereby admitted in this matter pro hac vice as counsel for defendants. Signed by Judge Ketanji Brown Jackson on 4/16/2014. (lckbj1) (Entered: 04/16/2014)
04/17/2014		Minute Entry for proceedings held before Judge Ketanji Brown Jackson: Status Conference held on 4/17/2014. Order to be entered. (Court Reporter Chantal Geneus) (gdf) (Entered: 04/17/2014)
04/17/2014	20	ORDER granting in part 16 Motion to Stay. The pending briefing schedule regarding Defendants' anticipated motion to dismiss is not subject to this stay. See attached order for details. Signed by Judge Ketanji Brown Jackson on 4/17/2014. (lckbj3) (Entered: 04/17/2014)
04/18/2014	21	NOTICE of Appearance by John Herbert Beisner on behalf of NATIONAL

HOCKEY LEAGUE (Attachments: # <u>1</u> Certificate of Service)(Beisner, John) (Entered: 04/18/2014)
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PACER Service Center			
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Description:	Docket Report	Search Criteria:	1:13-cv-01856-KBJ
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IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

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Civil Case No. 13-CV-1856-KBJ

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)
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)
on their behalf and others similarly situated,)
)
 Plaintiffs,)
 v.)
)
NATIONAL HOCKEY LEAGUE)
 1185 Avenue of the Americas,)
 New York, New York 10036)
)
NHL BOARD OF GOVERNORS)
 1185 Avenue of the Americas,)
 New York, New York 10036)
)
 Defendants.)
)

AMENDED CLASS ACTION COMPLAINT

Plaintiffs, by and through undersigned counsel, file this Amended Complaint against Defendants the National Hockey League (“NHL”) and the National Hockey League Board of Governors (“Board”) (collectively “Defendants”) and allege upon facts and information and belief as follows.

INTRODUCTION

1. This action arises from the pathological and debilitating effects of brain injuries caused by concussive and sub-concussive impacts sustained by former NHL players during their professional careers.

2. Every blow to the head is dangerous. Both repeated concussions and sub-concussions cause permanent brain damage. During practice and games, a player can sustain

close to one thousand or more hits to the head in one season without any documented incapacitating concussion. Such repeated blows result in permanently-impaired brain function.

3. Unbeknownst to Plaintiffs, scientific evidence has linked brain injuries to long-term neurological problems for decades. While every blow to the head is dangerous, Plaintiffs did not know, and were not told by the NHL, about the dangers of repeated brain trauma.

4. Defendants have known or should have known of this growing body of scientific evidence and its compelling conclusion that hockey players who sustain repetitive concussive events, sub-concussive events and/or brain injuries are at significantly-greater risk for chronic neuro-cognitive illness and disabilities both during their hockey careers and later in life.

5. Eighty-five years ago, pathologist Harrison Martland published his seminal study in the Journal of the American Medical Association linking sub-concussive blows suffered by boxers to injuries ranging from mild concussions to degenerative brain disease.

6. Scientists and doctors in the United States and across the world have since published scores of peer-reviewed articles in well-established medical and scientific journals conclusively establishing the link between brain injuries and sub-concussive/concussive blows suffered by, among others, hockey players.

7. Despite this mounting evidence of which Defendants knew or should have been aware, they took no remedial action to prevent their players from unnecessary harm until 1997 when the NHL created a concussion program (the “Concussion Program”) ostensibly to research and study brain injuries affecting NHL players.

8. In 1997 – the first year of the Concussion Program – the NHL initiated baseline brain testing for its players and required its team doctors and trainers to maintain records of all

players believed to have suffered concussions. This data was then used to study concussions from 1997 through 2004.

9. During this study period, the NHL voluntarily inserted itself into the scientific research and discussion concerning the link between brain injuries sustained by NHL players and short-term and long-term impairment of the brain by publicly maintaining that the Concussion Program was analyzing the concussion data. Yet the NHL took no action to reduce the number and severity of concussions among its players during that period and Plaintiffs relied on the NHL's silence to their detriment.

10. By voluntarily inserting itself into this research and public discourse, the NHL gratuitously undertook a responsibility: (a) to make truthful statements; (b) to initiate rules, protocols or programs to deal with the mounting evidence of brain injuries among former players and the incidence of concussions and sub-concussive events among present players; (c) not to continue complacently with the same conduct that nurtured violent head trauma while advancing the NHL's financial and political interests; and (d) to inform all former players, and then-current players, of the risks of concussive events, sub-concussive events and/or brain injuries.

11. After voluntarily assuming a duty to investigate, study, and truthfully report to the NHL players, including the Plaintiffs, the medical risks associated with hockey and brain injuries, the Concussion Program did nothing until 2011 – fourteen years after it started – when it finally issued a report. That report, however, discussed only the number of concussions in the NHL for the regular seasons from 1997-2004, seven years before it came out.

12. Despite the mountain of evidence connecting hockey to brain injuries, NHL Commissioner Gary Bettman subsequently stated that more study on the issue is necessary. In

short, the NHL chooses to ignore the medical findings of its own studies, other sports or the general practice of medicine regarding brain injuries and hockey.

13. Moreover, the NHL itself did nothing to protect its players from unnecessary harm until 2010 – thirteen years after the Concussion Program started – when it modified its so-called Rule 48 regarding body checking, a modification that according to a 2013 article published by University of Toronto researchers had essentially no effect on the rate of concussions suffered by NHL players during the three seasons in which the proposed safety measure was in place.

14. Clean, fair body checking is one thing. Hits to the head are quite another, as the NHL's disciplinary rulings point out. For example, in an October 4, 2011 interview, NHL Senior Vice President of Player Safety, Brendan Shanahan, explained in detail why Ryan Malone was not suspended for a body check of Chris Campolli under Rule 48.1. Even though the check involved a hit to the head, Mr. Shanahan took pains to explain the difference between a body check and a hit to the head and why Malone's contact with Campolli fell under the former category of contact.

15. Between 1996 and 2011 when the NHL was reportedly looking at the data, many NHL players were forced to retire due to the lingering effects caused by concussions. Some of them include: 1996 – Brett Lindros and Dean Chynoweth; 1997 – Stanley Cup Champion Nick Kypreos and Dennis Vaske; 1998 – Hall of Famer Pat LaFontaine; 1999 – Stanley Cup Champions Geoff Courtnall and Jeff Beukeboom; 2001 – Olympian Peter Svoboda; 2002 – Gino "Chief," "The Enforcer" Odjick; 2003 – Stanley Cup Champion and Hall of Famer Mike Richter; 2004 – Steve Moore, who suffered career-ending injuries when brutally attacked by Todd Bertuzzi, and Hall of Famer and Conn Smythe Trophy Winner Scott Stevens; 2005 –

Olympian and Stanley Cup Champion Adam Deadmarsh; 2006 – All Star Keith Primeau; 2007 – Matthew Barnaby and perennial All-Star and Hart Memorial Trophy winner Eric Lindros; and 2011 – Stanley Cup Champion Marc Savard.

16. Defendants’ active and purposeful concealment of the severe risks of brain injuries exposed players to unnecessary dangers they could have avoided had Defendants provided them with truthful and accurate information and taken appropriate action to prevent needless and avoidable harm. Many of the players, including Plaintiffs, sustained repetitive brain injuries while in the NHL and now suffer from latent or manifest neuro-degenerative disorders and diseases, all of which, in whole or in part, were caused by Defendants’ acts and/or omissions.

17. Defendants caused or contributed to the injuries and increased risks to Plaintiffs through their acts and omissions by, among other things: (a) historically ignoring the true risks of concussive events, sub-concussive events and/or brain injuries suffered by NHL hockey players; (b) failing to disclose the true risks of repetitive brain injuries to NHL players; (c) refusing meaningfully to address the issue of brain injuries despite a growing body of medical opinion establishing such a linkage and their own study of the issue; and (d) refusing to amend its rules and procedures and equipment requirements effectively to protect its players, including Plaintiffs.

18. Defendants persist in this conduct to date by, among other things, refusing to ban fighting, refusing permanently to ban players who, after investigation and a fair hearing, have been shown to have intentionally hit another player in the head, and by continuing to permit teams to employ hockey players whose main role is to fight or violently hit players on the other team (“Enforcers”). The Defendants’ acceptance of violence and cranial mayhem stands in stark

contrast to Olympics and National Collegiate Athletics Association (“NCAA”) hockey. The NCAA banned fighting as far back as 1988 and a player who fights is disqualified from further participating in that game and is suspended for the next game. For the next disqualification, that player is suspended for the next two games. And so on.

19. The time has come for the NHL to elevate long-term player safety over profit and tradition, especially as neither the NHL, nor the game, will suffer as a result. To quote the legendary Ken Dryden, former All-Star goalie for the Montreal Canadiens, six-time Stanley Cup champion, former president of the Toronto Maple Leafs, former member of the Canadian Parliament, and NHL Hall of Famer: “Lose fighting, and you lose the fight in the game? No, it’s the reverse.” Further: “The model for an NHL without fighting is right there in front of us ... the playoffs,” in which “enforcers don’t play [because] teams and coaches can’t afford anything stupid and unpredictable” and players play their best, cleanest hockey. *See* Ken Dryden, *Case for Fighting in Hockey Continues to Get Weaker and Weaker*, *Globe & Mail*, Nov. 2, 2013.

JURISDICTION AND VENUE

20. This Court has original jurisdiction pursuant to 28 U.S.C. § 1332(d)(2) because the proposed class consists of more than one hundred persons, the overall amount in controversy exceeds \$5,000,000 exclusive of interest, costs, and attorney’s fees, and at least one Plaintiff is a citizen of a State different from one Defendant. The claims can be tried jointly in that they involve common questions of law and fact.

21. This Court has personal jurisdiction over Defendants because they do business in the District of Columbia, operate a franchise, the Washington Capitals, in this District, and derives substantial revenue from their contacts with the District of Columbia.

22. Venue is proper pursuant to 28 U.S.C. § 1391(b)(1) because Defendants are entities with the capacity to sue and be sued under their common names and reside, as that term is defined at 28 U.S.C. §§ 1391(c)(2) and (d), in this District where they operate a franchise.

PARTIES

I. THE CLASS REPRESENTATIVES HAVE SUFFERED SERIOUS INJURIES.

23. Plaintiff Bradley Aitken is a representative for the putative class as defined herein. As of the commencement of this action, he is a resident of Ontario, Canada. Mr. Aitken played center and was an Enforcer for the Pittsburgh Penguins from 1987-88 and in 1990 and for the Edmonton Oilers in 1991. Mr. Aitken sustained repeated head trauma and suffered multiple concussions and sub-concussive impacts as a result of his playing professional hockey in the NHL. Since his retirement, he has suffered from injuries associated with such concussions and sub-concussive impacts, including but not limited to depression, personality change, memory loss, lack of concentration, severe headaches, and post-traumatic head syndrome.

24. Plaintiff Darren Banks is a representative for the putative class as defined herein. As of the commencement of this action, he is a resident of Nevada. Mr. Banks played left wing and was an Enforcer for the NHL's Boston Bruins from 1992-94. He suffered multiple concussions and sub-concussive impacts as a result of his playing professional hockey in the NHL. Since his retirement, he has suffered from injuries associated with such concussions and sub-concussive impacts, including but not limited to post-traumatic head syndrome and post-traumatic headaches.

25. Plaintiff Curt Bennett is a representative for the putative class as defined herein. As of the commencement of this action, he is a resident of Hawaii. Mr. Bennett played forward for the St. Louis Blues in 1970 and 1972 and from 1977-79; the New York Rangers in 1972, and

the Atlanta Flames from 1972-77 and 1979-80. Mr. Bennett suffered multiple concussions and sub-concussive impacts as a result of playing professional hockey in the NHL. Since his retirement, he has suffered from injuries associated with such concussions and sub-concussive impacts, including but not limited to cephalgia, visual problems, tinnitus, lightheadedness, memory loss, bilateral hearing loss, post-traumatic head syndrome, and cognitive deficit.

26. Plaintiff Richard Dunn is a representative for the putative class as defined herein. As of the commencement of this action, he is a resident of New York. Mr. Dunn was a defenseman for the Buffalo Sabres from 1977-82 and 1985-89 and the Calgary Flames from 1982-83. Mr. Dunn suffered multiple sub-concussive impacts as a result of his playing professional hockey in the NHL. Since his retirement, he has suffered from injuries associated with such sub-concussive impacts, including but not limited to blurred vision, memory loss, post-traumatic headaches, and cognitive deficit.

27. Plaintiff Warren Holmes is a representative for the putative class as defined herein. As of the commencement of this action, he is a resident of Texas. Mr. Holmes played center for the Los Angeles Kings from 1981-84. He suffered multiple concussions and sub-concussive impacts as a result of playing professional hockey in the NHL. Since his retirement, he has suffered from injuries associated with such concussions and sub-concussive impacts, including but not limited to post-traumatic head syndrome, sleep disorder, and memory loss.

28. Plaintiff Gary Leeman is a representative for the putative class as defined herein. As of the commencement of this action, he is a resident of Ontario, Canada. Mr. Leeman played defenseman and then forward for the Toronto Maple Leafs from 1983-92, the Calgary Flames from 1992-93; the Montreal Canadiens from 1993-94; the Vancouver Canucks in 1994-95, and the St. Louis Blues in 1996. Mr. Leeman suffered multiple concussions and sub-concussive

impacts as a result of playing professional hockey in the NHL. Since his retirement, he has suffered from injuries associated with such concussions and sub-concussive impacts, including but not limited to post-traumatic head syndrome, headaches, memory loss, and dizziness.

29. Plaintiff Robert Manno is a representative for the putative class as defined herein. As of the commencement of this action, he is a resident of Ontario, Canada. Mr. Manno was a defenseman for the Vancouver Canucks from 1976-81; the Toronto Maple Leafs from 1981-82; and the Detroit Red Wings from 1983-85. Mr. Manno suffered multiple concussions and sub-concussive impacts as a result of playing professional hockey in the NHL. Since his retirement, he has suffered from injuries associated with such concussions and sub-concussive impacts, including but not limited to post-traumatic head syndrome, memory loss, and a lack of concentration.

30. Plaintiff Blair James Stewart is a representative for the putative class as defined herein. As of the commencement of this action, he is a resident of Texas. Mr. Stewart played center and left wing for the Detroit Red Wings from 1973-75; the Washington Capitals from 1975-79, and the Quebec Nordiques from 1979-80. Mr. Stewart suffered multiple concussions and sub-concussive impacts as a result of playing professional hockey in the NHL. Since his retirement, he has suffered from injuries associated with such concussions and sub-concussive impacts, including but not limited to post-traumatic head syndrome, post-traumatic headaches, and sleep disorder.

31. Plaintiff Morris Titanic is a representative for the putative class as defined herein. As of the commencement of this action, he is a resident of New York. Mr. Titanic played left wing for the Buffalo Sabres from 1974-76. Mr. Titanic suffered multiple concussions and sub-concussive impacts as a result of his playing professional hockey in the NHL. Since his

retirement, he has suffered from injuries associated with such concussions and sub-concussive impacts, including but not limited to memory loss, tinnitus, post-traumatic headaches, post-traumatic head syndrome, and cognitive deficit.

32. Plaintiff Bruce Bell is a representative for the putative class as defined herein. As of the commencement of this action, he is a resident of Lethbridge, Alberta. Mr. Bell was a defenseman for the Quebec Nordiques, St. Louis Blues, New York Rangers, and Edmonton Oilers from 1984-90. He was named to the NHL All-Rookie Team in 1985. In 1987, his career was cut short by a devastating hit from Toronto's Wendel Clark. Video of the hit can be found at <http://www.youtube.com/watch?v=nGRheKIGbq0>. Since his retirement, he has suffered from injuries associated with such concussions and sub-concussive impacts, including but not limited to memory loss, tinnitus, post-traumatic headaches, post-traumatic head syndrome, and cognitive deficit.

33. Plaintiff Bernie Nicholls is a representative for the putative class as defined herein. As of the commencement of this action, he is a resident of Texas. Mr. Nicholls played center for the Los Angeles Kings, New York Rangers, Edmonton Oilers, New Jersey Devils, Chicago Blackhawks, and San Jose Sharks from 1981-98 and was a three-time All Star. He scored a total of 1209 points over the course of his career and is one of only eight players in NHL history to score 70 goals in one season and one of five players to score 150 points in a season. Since his retirement, he has suffered from injuries associated with such concussions and sub-concussive impacts, including but not limited to memory loss, tinnitus, post-traumatic headaches, post-traumatic head syndrome, and cognitive deficit.

34. Plaintiff Bob Bourne is a representative for the putative class as defined herein. As of the commencement of this action, he is a resident of Kelowna, British Columbia. Mr.

Bourne played center for the New York Islanders and the Los Angeles Kings from 1974-88. On November 25, 2006, he was inducted into the Islanders' Hall of Fame. Since his retirement, he has suffered from injuries associated with such concussions and sub-concussive impacts, including but not limited to memory loss, tinnitus, post-traumatic headaches, post-traumatic head syndrome, and cognitive deficit.

35. Plaintiff Scott Parker is a representative for the putative class as defined herein. As of the commencement of this action, he is a resident of Colorado. Mr. Parker played right wing for the Colorado Avalanche and San Jose Sharks from 1998-2008. Since his retirement, he has suffered from injuries associated with such concussions and sub-concussive impacts, including but not limited to memory loss; deficits with memory, attention, concentration and processing speed; tinnitus, post-traumatic headaches; post-traumatic head syndrome, and cognitive deficit.

II. THE STATUTE OF LIMITATIONS IS TOLLED.

36. As a result of their playing professional hockey in the NHL, all of the aforementioned Plaintiffs experienced brain trauma and/or injury such as concussions, post-concussion syndrome, second-impact syndrome, and/or long-term brain damage. Since their retirement, each Plaintiff has experienced neurological symptoms, including but not limited to those described above. Plaintiffs' symptoms arise from injuries that are latent and have developed and continue to develop over time. Each Plaintiff is also at increased risk of latent brain injury and, therefore, is in need of medical monitoring.

37. Plaintiffs were not warned about the dangers of returning to play after suffering a concussive or sub-concussive impact.

38. Plaintiffs were not warned about the risk of long-term injury due to hockey-related concussions.

39. Those failures on the part of Defendants constitute substantial factors in causing Plaintiffs' current injuries.

40. Defendants, in the course of their business, omitted material key facts about the effects of head injuries that prevented Plaintiffs from discovering a link between their premature return to action and head injuries.

41. Defendants are under a continuing duty to disclose the true character, quality, and nature of the after-effects of concussive events, sub-concussive events and/or brain injuries. Because the Defendants concealed the true character, quality and nature of these injuries, they are estopped from relying on any statute of limitation defense.

42. The applicable statute of limitations is tolled because Defendants' fraudulent concealment of the dangers and adverse effects of head injuries prevented Plaintiffs from learning of or properly appreciating the hazards to their health.

III. DEFENDANTS ARE RESIDENTS OF THIS JUDICIAL DISTRICT.

43. Defendant NHL, which maintains its offices at 1185 Avenue of the Americas, New York, New York, 10036, is an unincorporated association consisting of separately-owned and independently-operated professional hockey teams that operate out of many different cities and states within this country and Canada. The NHL is engaged in interstate commerce in the business of, among other things, promoting, operating, organizing, and regulating the major professional hockey league in the United States.

44. As an unincorporated association of member teams, the NHL is a resident of each state in which its member teams reside, including the District of Columbia where the NHL operates the Washington Capitals.

45. Defendant NHL Board of Governors is the ruling and governing body of the NHL. The current Board is the successor in interest to each previous iteration of the Board. Each team appoints a Governor and two alternates to the Board. The current chairman is Boston Bruins owner Jeremy Jacobs. The NHL Board of Governors exists to establish the policies of the NHL and to uphold its constitution. Some of its responsibilities include reviewing and approving any rule changes to the game and hiring and firing of the NHL commissioner.

GENERAL ALLEGATIONS APPLICABLE TO ALL COUNTS

I. LITERATURE HAS LINKED SPORTS AND CONCUSSIONS FOR DECADES.

46. Beginning in the 1920s, respected, peer-reviewed publications have chronicled the ever-increasing links that doctors and scientists have made between brain injuries and participation in certain sports, including hockey.

A. Athletes Can Sustain Different Types of Brain Injuries.

47. The medical community generally recognizes four types of sports-related brain injuries: (a) concussion and sub-concussive events; (b) post-concussion syndrome; (c) second-impact syndrome; and (d) long-term brain damage.

48. Concussion, the first type of injury, is a term used interchangeably with mild traumatic brain injuries (“MTBI”). This injury consists of trauma to the head and a resulting transient loss of normal brain function. Loss of normal brain function can include dozens of symptoms, including dizziness, headache, blurred vision, and nausea.

49. Dr. Robert Cantu of the American College of Sports Medicine, a widely-respected authority on brain injuries, first defined different grades of concussions in 1986, which he later updated in 2001. The three common “grades” are:

- Grade 1: brain injury with no loss of consciousness and post-traumatic amnesia from 0 – 30 minutes;
- Grade 2: loss of consciousness for less than five minutes or post-traumatic amnesia for 30 minutes to 24 hours; and
- Grade 3: loss of consciousness of greater than five minutes or amnesia for greater than 24 hours.

50. Post-concussion syndrome, which may last days to years after someone suffers a concussion, generally involves depression, irritation, poor concentration, memory loss, mood swings, headaches, impaired speech and/or balance, dizziness, seizures, blurred vision, or general malaise.

51. As with concussions/MTBI, only rest can resolve these symptoms.

52. Second-impact syndrome occurs when an athlete still healing from a prior concussion experiences a second, force-related event to the brain. Second-impact syndrome can lead to comas, permanent brain-function loss, or death.

53. Long-term brain damage includes Alzheimer’s disease, dementia, and chronic traumatic encephalopathy (“CTE”).

54. CTE, a catastrophic disease once associated only with boxers, results when a toxic protein, Tau, accumulates in the brain, kills brain cells, and leads to severe depression or dementia. CTE can only be confirmed through an autopsy.

55. In January 2010, the Boston University School of Medicine Center for the Study of Traumatic Encephalopathy (“BUSM”) announced for the first time that a former hockey player, New York Ranger Reggie Fleming, had been diagnosed with CTE.

56. Subsequently, Rick Martin, best known for being part of the Buffalo Sabres' French Connection, was diagnosed with CTE. Martin was the first documented case of a hockey player not known as an Enforcer to have developed CTE. Martin is believed to have developed the disease primarily from a severe concussion he suffered in 1977 while not wearing a helmet.

57. Within months of Martin's death, the deaths of four hockey Enforcers – Derek Boogaard from a combination of painkillers and alcohol; Rick Rypien, an apparent suicide; Wade Belak, who like Rypien had reportedly suffered from depression; and Bob Probert, best known as one-half of the "Bruise Brothers" with then-Red Wing teammate Joey Kocur, all of whom had a record of fighting, blows to the head and concussions – led to more concerns about CTE and hockey. BUSM doctors subsequently confirmed that Boogaard and Probert had CTE.

B. The Medical Community Made the Link Between Sports and Brain Injuries 85 Years Ago.

58. In 1928, pathologist Harrison Martland described the clinical spectrum of abnormalities found in "almost 50 percent of [boxers] ... if they ke[pt] at the game long enough" in his seminal article, Punch Drunk, published in the October 13, 1928 issue of the Journal of the American Medical Association. Martland's study was the first to link sub-concussive blows and "mild concussions" to degenerative brain disease.

59. In 1948, the New York legislature created the Medical Advisory Board of the New York Athletic Commission to establish mandatory rules to prevent or minimize health risks to boxers. After a three-year study, the Medical Advisory Board recommended, among other things: (a) an accident survey committee to study ongoing accidents and deaths in boxing rings; (b) two physicians at ring-side for every bout; (c) post-bout medical follow-up exams; (d) a 30-day period of no activity following a knockout and a medical follow-up for the boxer, all of which was designed to avoid the development of "punch drunk syndrome," also known at the

time as “traumatic encephalopathy;” (e) a physician’s prerogative to recommend that a boxer surrender temporarily his license if the physician notes that he suffers significant injury or knockout; and (f) a medical investigation of boxers who suffer knockouts numerous times.

60. The recommendations were later codified as rules of the New York State Athletic Commission.

61. In or about 1952, the Journal of the American Medical Association published a study of encephalopathic changes in professional boxers. *See* Ewald W. Busse & Albert J. Silverman, *Electroencephalographic Changes in Professional Boxers*, 149 J. Am. Med. Ass’n 1522-25 (1952).

62. In 1962, Drs. Serel & Jaros looked at the heightened incidence of chronic encephalopathy in boxers and characterized the disease as a “Parkinsonian” pattern of progressive decline. *See* M. Serel & O. Jaros, *The Mechanisms of Cerebral Concussion in Boxing and Their Consequences*, 3 World Neurology 351-58 (1962).

63. A 1963 study by Drs. Mawdsley & Ferguson found that some boxers sustain chronic neurological damages as a result of repeated head injuries. This damage manifested in the form of dementia and impairment of motor function. *See* C. Mawdsley & F. R. Ferguson, *Neurological Diseases in Boxers*, 2 Lancet 795-801 (1963).

64. In 1973, Drs. Corsellis, Bruton, & Freeman-Browne studied the neurological impact of boxing. This study outlined the neuro-pathological characteristics of Dementia Pugilistica, including loss of brain cells, cerebral atrophy, and neuro-fibrillary tangles. *See* J. A. Corsellis, C. J. Bruton & D. Freeman-Browne, *The Aftermath of Boxing*, 3 Psychol. Med. 270-303 (1973).

65. A 1975 study by Drs. Gronwall & Wrightson looked at the cumulative effects of concussive injuries in non-athletes and found that those who suffered two concussions took longer to recover than those who suffered from a single concussion. The authors noted that these results could be extrapolated to athletes given the common occurrence of concussions in sports. See D. Gronwell & P. Wrighton, *Delayed Recovery of Intellectual Function After Minor Head Injury*, 2 Lancet 605-09 (1974).

66. In the early 1980s, the University of Virginia's Department of Neurosurgery published studies on patients who sustained MTBI and observed long-term damage in the form of unexpected cognitive impairment. The studies were published in neurological journals and treatises within the United States. See, e.g., R. W. Rimel, B. Giordani, J. T. Barth, T. J. Boll & J. A. Jane, *Disability Caused by Minor Head Injury*, 55 Neurosurgery 848-49 (1981).

67. In 1982, the University of Virginia and other institutions conducted studies on college football teams that showed that football players who suffered MTBI also suffered pathological short-term and long-term damage. With respect to concussions, the same studies showed that a person who sustained one concussion was more likely to sustain a second, particularly if that person was not properly treated and removed from activity so that the concussion symptoms were allowed to resolve.

68. From the early 1950s to the mid-1990s, numerous additional studies were published in medical journals including the *Journal of the American Medical Association* (JAMA), *Neurology*, *New England Journal of Medicine* (NEJM), and *Lancet* warning of the dangers of single concussions, multiple concussions, and/or head trauma from multiple concussions. These studies collectively established that repetitive head trauma in contact sports, including hockey, has potentially dangerous long-term effects on brain function; encephalopathy

(Dementia Pugilistica) is caused by repeated sub-concussive and concussive blows to the head; with respect to mild head injury in athletes who play contact sports, there is a relationship between neurologic pathology and length of the athlete's career; immediate retrograde memory issues occur following concussions; mild head injury requires recovery time without risk of subjection to further injury; head trauma is linked to dementia; and minor head trauma can lead to neuro-pathological and neuro-physiological alterations, including neuronal damage, reduced cerebral blood flow, altered brainstem evoked potentials and reduced speed of information processing.

69. In June 2010, scientific evidence linked multiple concussions to yet another degenerative brain disease, Amyotrophic Lateral Sclerosis ("ALS"), commonly referred to as "Lou Gehrig's Disease."

C. Since the Early 1990s, the Medical Community and Others Have Focused on Brain Injuries Suffered by Hockey Players.

70. By 1991 the NCAA and individual college teams' medical staffs, along with many pre-college groups, had disseminated information and adopted criteria to protect hockey players even remotely suspected of having sustained concussions. Many NHL players (and especially those from Canada), however, never play in the NCAA, instead going straight from junior leagues to the NHL. Although the number of NHL players with some NCAA experience has been growing, that number topped 300 for the first time in 2011-12, comprising only 31% of NHL players.

71. In the last decade, four "International Symposia on Concussion in Sport" have convened. Attendees at these prestigious conferences have included American doctors who are experts on the brain and concussions. The conferences took place in Vienna (2001), Prague (2004) and twice in Zurich (2008 and 2012).

72. Flowing from the 2001 conference were two reports focused specifically on hockey. The first, titled *Procedures After Minor Traumatic Brain Injury mTBI In Ice Hockey to Prevent Neurological Sequelae*, noted that since 1986, doctors worldwide had observed “an alarming increase in the rate of MTBI in ice hockey despite improved protective gear.” In the NHL specifically, the proportion of MTBI had increased from 2 percent in the 1989-90 season to 8 percent in 1999-2001 seasons. The report recommended that “any confused player with or without amnesia should be taken off the ice and not be permitted to play again for at least 24 hours.”

73. The second report, titled *Concussion Experience: Swedish Elite Ice Hockey League*, noted that in “the beginning of the 1980s, very few physicians engaged in treating ice hockey players were aware of the seriousness of” concussions. Studies of Sweden’s elite ice hockey league from the 1980s onward showed an “alarming” increase in the number of concussions being suffered by the players that the authors attributed to “[t]oday’s ice hockey [being] faster and more physical.” The authors also noted “a need for further research in order to find the accurate way to prevent and treat these injuries.”

74. The 2004 conference coined the phrase “when in doubt, sit them out” while repeating the 2001 conference’s recommendation that players who show any signs of concussions should not be allowed to return to play in the current game or practice. The 2004 conference adopted a step by step return to play procedure.

75. The 2004, 2008, and 2012 conferences contained detailed protocols on examining a player believed to have suffered a concussion. The 2008 conference recommended that a doctor conduct the assessment of whether a player had a concussion or not. At the 2012 conference, an abstract was presented on *Acute Clinical Signs and Outcome of Concussion in*

National Hockey League Players, which concluded that concussions “can produce a spectrum of acute on-ice clinical signs.”

76. Members of the NHL Concussion Program attended all four conferences.

77. In North America, researchers have also focused on hockey and brain injuries. For the 2009-10 season, Dr. Paul Echlin followed two junior hockey clubs to assess their incidence of concussions. The report concluded that 25 percent of the players on the teams experienced at least one concussion in a 52-game season. Twenty-nine per cent of those players endured recurring concussions. Dr. Echlin stated that concussions occurring in hockey may be seven times higher than reported in the-then current literature.

78. In addition, the Mayo Clinic has sponsored two “Conferences on Concussions in Hockey,” the first in 2010 and the second in 2013. Recommendations made at the first conference influenced the NHL to penalize targeted hits to the head and change its medical protocols to require an off-ice player evaluation. The 2013 recommendations focused on eliminating hockey fights in the NHL by requiring immediate ejections for fighting.

79. The 2010 conference proved influential in establishing standards for concussion evaluation and treatment, persuading USA Hockey and Hockey Canada to raise the minimum age for body checking to 13 and broadening concussion education among players and coaches.

80. At the 2013 conference, Dr. Michael Stuart, a director of the Mayo Clinic Sports Medicine Center and chief medical officer for USA Hockey, noted two recent fights, one on September 22, when Buffalo’s Corey Tropp sustained a concussion, and the other on October 1, when Montreal’s George Parros was knocked unconscious. Those injuries underscored presenters’ demands for significant modifications in rules regarding hits to the upper body and head and a complete end to fighting.

81. As Ken Dryden said at the 2013 conference, “[s]cience has responded to the game on the ice. Now, it’s time for the game to respond to the science.”

II. AS THE “FACE OF THE GAME” AND SELF-APPOINTED SAFETY ARBITER, THE NHL MUST PROTECT ITS PLAYERS FROM UNNECESSARY HARM.

A. Defendants Govern and Promote Professional Hockey and the NHL Is the Most Recognizable Professional Hockey League in the World.

82. Enormously successful and financially able to protect its primary asset – the players – the NHL generates approximately \$3,300,000,000 in gross income per year and oversees America’s most popular hockey league, acting as a trade association for the benefit of the 30 independently-operated teams. The NHL’s average attendance per game in 2012-13 was 17,760, 97% of capacity.

83. According to WR Hambrecht + Co. Sports Finance Group’s report, *The U.S. Professional Sports Market & Franchise Value Report 2012* (“Hambrecht Report”), which details numerous statistics demonstrating the NHL’s increasing prosperity, the mean five-year Compound Annual Growth Rate (“CAGR”) for all 30 NHL teams was 5.9%. Only three of the 30 teams posted a negative CAGR. A number posted strong five-year-CAGR gains: Pittsburgh Penguins, 14.7 percent; Montreal Canadiens, 14.1 percent; Chicago Blackhawks, 12.7 percent; Washington Capitals, 12.1 percent; New York Rangers, 10.6 percent; Calgary Flames, 10.3 percent; Toronto Maple Leafs, 9.4 percent; Vancouver Canucks, 9.3 percent; San Jose Sharks, 7.8 percent; Edmonton Oilers, 7.7 percent; Boston Bruins, 6.7 percent.

84. Further, the Hambrecht Report states that while “many teams continue to struggle financially,” “[t]he average NHL franchise’s value has increased by 62.1% since 2000, with a 4.3% CAGR over the last ten years.” The mean five-year CAGR in NHL revenues was 8.1 percent, with no team posting a negative five-year revenue CAGR.

85. The NHL has, since its inception in the first half of the twentieth century, governed and promoted professional hockey and as referenced in detail herein, was created and established to act as the governing body of the highest-level professional league in North America.

86. The NHL generates substantial revenue from marketing sponsorships, licensing merchandise, and selling national broadcasting rights to the games. The teams share a percentage of the League's overall revenue.

87. The NHL earns billions of dollars from its telecasting deals with, *inter alia*, NBC and its own NHL Network and, in Canada, CBC, TSN and MDS.

88. The NHL in 2011 negotiated a television deal with NBC for 10 years and \$2,000,000,000, or \$6,600,000 per team per year, from the United States market alone. In Canada, the NHL recently secured the largest media rights deal in league history on November 26, 2013 with Rogers Communications. The new Canadian broadcast and multimedia rights agreement will last 12 years starting in the 2014-15 season and will pay the NHL \$5,232,000,000 (Canadian).

89. A June 24, 2013 article by Christopher Botta, entitled *Stanley Cup Finals: League Expects to Add \$1 Billion in Revenue*, reports that Keith Wachtel, NHL Senior Vice President of Integrated Sales and Marketing, "pointed out that 40 percent of NBC and NBC Sports Network advertisers are NHL partners."

90. The September 9-15, 2013, report on *Leagues and Governing Bodies in Street & Smith's Sports Business Journal* contained an article entitled *NHL Fleshes Out Three-Year Plan* by Christopher Botta ("Botta Article") that further confirms the NHL's strong financial position:

In a memo dated September 5 and obtained by SportsBusiness Journal, NHL Chief Operating Officer John Collins notified all league employees of the goals,

initiatives and staff changes that start with the 2013-14 season. Collins writes in the memo, “By the end of this three-year period, we expect annual gross national revenue will approach [an increase of] \$1 billion, accounting for nearly 20 percent of league-wide hockey-related revenue (HRR).”

91. Putting the NHL’s financial fortunes and ability to safeguard its prime asset, the players, into perspective, the Botta Article states that the “league ... sees the next decade as an opportunity for unprecedented financial growth. It previously has taken the league six seasons (from 2006 to 2012) to add \$1 billion in national revenue; the NHL now is declaring it will match that total in the next three seasons.”

92. From yet another perspective, the Botta Article states:

Having gross national revenue – derived from national deals including sponsorship, media and licensing – at 20% of HRR, which includes all revenue, is notable growth as well. In 2005-06, Collins’ first year with the NHL and a year after the lockout that canceled the entire 2004-05 season, the league’s gross national revenue accounted for 7 percent of HRR.

93. Over many decades, the NHL’s influence has expanded through its use of the media. For example, through NHL films, www.NHL.com, and video games, the NHL has promoted its brand of hockey via every mass communication medium available, making the NHL the most recognizable hockey league in the world.

94. In the Sochi 2014 Winter Olympics, the NHL suspended the season as it has done for decades to allow its marquee players to represent national teams, further spreading its influence around the globe.

B. Through Its Mass Media Appeal, the NHL Has Promoted a Culture of Violence.

95. For decades, the NHL has benefitted from its culture of violence. Films such as *Slapshot*, *The Last Gladiators*, *Goon*, *Youngblood* and others reflect this NHL-inspired culture and the NHL does nothing to dissuade the dissemination of its image as the modern Roman

Coliseum. The public statements of Don Cherry and the use of highlights on such sites as www.hockeyfights.com and his video series *Don Cherry's Rock'em, Sock'em Hockey* are further examples of this violence-centered culture promoted by the NHL.

96. NHL Films, an agent and instrumentality of the NHL devoted to producing promotional films, has created numerous highlight features that focus solely on the hardest-hits that take place on the ice. These featured videos are marketed and sold to advance the NHL's culture of violence as entertainment.

97. In addition, NHL-sponsored video games include fighting and vicious body checking. Video game players also add virtual Enforcers to their team rosters to ensure their players will not be intimidated by the simulated violent tactics of the opposition. For example, the NHL has licensed EA Sports to produce *NHL 14*, released on September 10, 2013 and which features a completely re-vamped fighting system called the "Enforcer Engine" that EA Sports built from its boxing-game technology. Those new features include (a) Enforcers coming to the aid of downed superstars and initiating fights; (b) "physics-based punch targeting" that make blows more realistic; and (c) real-time facial damage such that bruising and black eyes remain throughout the game.

98. *NHL 14* producer Sean Ramjarsingh told the Canadian Press in an interview: "When I look back at NHL 13, I feel like we fell short a little bit on the aggression piece of it." He also said that with *NHL 14*, "it was all about capturing the big hits, real fights and unbelievable speed and skill of hockey."

99. Indeed, the removal of fighting from the video game "NHL Hockey 94" prompted this now-popular exchange in the 1996 movie *Swingers*:

Trent: "I wish they still had fights in this game, so I could bitch slap Wayne [Gretzky]."

Mike: “What! They don’t have fighting anymore”

Trent: “Doesn’t that suck?”

Mike: “Why’d they get rid of the fighting? It was the best part of the old version.”

Sue: “I think kids were hittin’ each other or somethin’, man.”

Trent: “Yeah, but you know what, Mike? You can make their heads bleed in this one.”

Mike: “Make somebody’s head bleed...”

Sue: “No man, we’re in the playoffs.”

Trent: “I’m gonna make Wayne Gretzky’s head bleed for super-fan #99 over here.”

100. This exchange reflects the pervasive culture of violence in the NHL, in which NHL players are encouraged to play despite an injury, in part because failure to do so creates the risk of losing playing time, a starting position, demotion to the minors and the abrupt end to a career.

101. Within this culture, the NHL purposefully profits from the violence it promotes.

102. This attitude has existed for decades and continues to the present date, with players lauded, hired, retained and compensated for their “head hunting” and fighting skills.

C. While at the Same Time Promoting a Culture of Violence by Which it Profits, the NHL Has Voluntarily Become the Arbiter of Player Safety.

103. For decades, the NHL undertook and repeatedly confirmed a duty of care to its players by voluntarily instituting programs purportedly to support player health and safety on and off the ice.

104. For decades, the NHL’s players and their families looked to Defendants, which had publicly undertaken to promote player health and safety, for guidance on these issues and to intervene in matters of player safety, to recognize issues of player safety, and to be truthful on the issue of player safety.

105. Since its inception, the NHL received and paid for advice from medical consultants regarding health risks associated with playing hockey, including the health risks

associated with concussive and sub-concussive injuries. Such ongoing medical advice and knowledge placed the NHL in a position of superior knowledge to the players. Combined with Defendants' heavy influence over the game's rules and their ability to determine policies governing the game, Defendants at all relevant times were in a position to influence and dictate how the game would be played and to define the risks to which players would be exposed.

106. As a result, Defendants unilaterally assumed a duty to act in the best interests of the health and safety of NHL players, to provide truthful information to NHL players regarding risks to their health, and to take all reasonable steps necessary to ensure the safety of players.

107. The NHL's voluntary actions and authority throughout its history show that as early as the 1920s, it shouldered the duty to make the game of professional hockey safer for the players and to keep the players informed of safety information they needed to know.

108. The NHL's historical actions have continued through the decades. For example, in 1979, John Ziegler, then-NHL-Commissioner, imposed the mandatory rule that all hockey players wear helmets (the Olympics had mandated helmets in 1970 and goaltender face masks in 1972). At the time the rule was created, approximately 70 percent of NHL players were wearing helmets, many as a result of the 1968 death of Bill Masterson from head trauma during an NHL game. The 1979 rule, however, grandfathered all then-current players from the mandated helmet rule; the last person to play without a helmet, Craig MacTavish, retired in 1996.

109. Similarly reflecting the NHL's assumption of the duty of protecting player safety, beginning with the 2013-14 season, the NHL, in connection with the NHL-NHLPA Competition Committee, required all players to wear visors except players who had played 26 or more NHL games prior to the visor mandate. Although the mandatory visor rule came out of the Competition Committee, NHL Deputy Commissioner Bill Daly had been on the record declaring

the NHL was in favor of a mandatory visor rule, even though the NHLPA was not. The title of a March 6, 2013 article by Matt Brigidi in SB Nation makes the point: *NHL in favor of mandatory visor rule; NHLPA is not*. A March 7, 2013 article by Katie Strang in ESPNNewYork.com, entitled *Visor Debate in NHL Rages On*, quotes Mr. Daly as saying: “We have consistently been in favor of a rule mandating visors. The [NHL]PA has consistently been in favor of maintaining ‘Player Choice,’ coupled with continued education and sensitization.”

110. As a result of its position of authority and as a repository of historical and current information about head injuries, the NHL knew how to protect its players from dangerous circumstances and took unilateral, but insufficient, measures to do so.

111. Thus, since its inception and continuing into the present, Defendants have been in, and continuously affirmed their acceptance of, a position that affords them a special relationship to NHL players. Defendants thus owed and owe a duty of reasonable care that includes the obligation to keep NHL players informed of neurological risks and to inform NHL players truthfully, and not to mislead them, about the risks of permanent neurological damage that can occur from MTBI incurred while playing hockey.

III. NOTWITHSTANDING DECADES OF EVIDENCE ON BRAIN INJURIES AND ITS ROLE AS SAFETY ARBITER, DEFENDANTS DID NOT ACT UNTIL 1997.

112. For decades, Defendants have been aware or should have been aware that multiple blows to the head can lead to long-term brain injury, including but not limited to memory loss, dementia, depression, and CTE and its related symptoms.

113. Having permitted and even encouraged “tossing the mitts,” bare-knuckle, on-ice fighting from the NHL’s inception to the present, Defendants knew or should have known that the nearly century-old data from boxing was particularly relevant to professional hockey. And

given the higher speed of skating compared to running, Defendants also knew or should have known that the decades-long data from football was particularly relevant to professional hockey.

114. Despite their unilateral duty and power to govern player conduct on and off the ice, Defendants have for decades ignored, turned a blind eye to, and actively concealed, the risks to players of repetitive sub-concussive and concussive head impacts, which can and do result in players being knocked unconscious or having “their bell rung” so that they are in a conscious but disoriented state.

115. Rather than take immediate measures to protect NHL players from these known dangers, from the time it first knew of these problems through the 1990s, Defendants did nothing.

116. Finally, in 1997, NHL Commissioner Gary Bettman agreed to fund a committee to study the issue of head injury in the NHL. The NHL voluntarily proceeded to form a “Concussion Program” to study the issue that voluntarily undertook the responsibility of studying the effects of concussions and sub-concussive injury on NHL players.

117. With the Concussion Program, the NHL voluntarily inserted itself into the private and public discussion and research on an issue that goes to the core safety risk for players who participate at every level of the game. Through its voluntary creation of the Concussion Program, the NHL affirmatively assumed a duty to use reasonable care in the (a) study of concussions and post-concussion syndrome in NHL players; (b) study of any kind of brain trauma relevant to the sport of hockey; (c) use of information developed; and (d) publication of data and/or pronouncements from the Concussion Program.

IV. INSTEAD OF PROTECTING ITS PLAYERS, THE NHL SAT ON THE BENCH FOR ANOTHER 14 YEARS.

118. Rather than exercise reasonable care in these duties, the NHL immediately engaged in a long-running course of fraudulent and negligent conduct to maintain and improve its economic advantage, which included failing to make any statements of substance on the issue while claiming to need more data and delaying for 14 years the publication of a report that did not mention MTBI and was designed to: (a) ignore accepted and valid neuroscience regarding the connection between repetitive traumatic concussive events, sub-concussive events and/or brain injuries, and degenerative brain disease such as CTE, and (b) confirm and reinforce a climate of silence by which the NHL implied that truthful and accepted neuroscience on the subject was inconclusive and subject to doubt.

119. The NHL's unparalleled status in the world of hockey imbued its silence on the issue with a unique authoritativeness as a source of information to players. Plaintiffs therefore reasonably relied on the NHL's silence on this vital health issue as an indication that concussions were either not dangerous or were less dangerous than they in fact are.

120. The NHL publicized the Concussion Program as being independent from the NHL, consisting of a combination of "independent" doctors and researchers.

121. The Concussion Program was not independent. It consisted of persons already affiliated with the NHL.

122. From 1997 until the present, the Concussion Program has produced one report, released on May 17, 2011, that discussed the incidence of concussions in seasons ending in 2004. To date, the Concussion Program has taken no public position on the long-term effects of concussions. The NHL continues to respond to inquiries on the subject by saying that further research is required.

123. Plaintiffs relied to their detriment on the NHL's silence, which ignores the findings of the independent scientists who had studied the issue including Drs. Guskiewicz, Cantu, Omalu, and Bailes regarding the causal link between multiple head injuries and concussions and cognitive decline.

V. AT THE SAME TIME THEY WERE SUPPOSEDLY STUDYING BRAIN INJURIES, DEFENDANTS MADE CHANGES TO THE GAME THAT ADVERSELY AFFECTED THEIR PLAYERS.

124. In 1996, the NHL changed the glass in all of its arenas from the flexible glass historically used to rigid glass. Despite immediate complaints from players that hitting the rigid glass was like hitting a brick wall, the NHL did not fully return to flexible glass until 2011. During that 15-year period (during which the Concussion Program was operating), Defendants were reluctant to incur the cost of replacement that would have helped reduce the incidence of brain injuries suffered by their players.

125. In 2005, despite knowing that it would result in more concussions, which it already knew was a problem, the NHL decided to make its game faster and more appealing by penalizing "clutch and grab" hockey whereby players hook and hold each other to slow down the game. The game did in fact speed up and became more popular, resulting in increased revenue as reflected in the Hambrecht Report. However, the change also meant there were more high speed collisions. From 1997 until 2008, an average of 76 players per year suffered a concussion on the ice. For the 2011-2012 season, 90 players suffered a concussion on the ice at a loss of 1,779 man games.

VI. FINALLY IN 2010, THE NHL PURPORTS TO RECOGNIZE THE HEAD INJURY PROBLEM BUT TAKES SUBSTANTIALLY INEFFECTIVE ACTION TO PROTECT ITS PLAYERS.

126. The first significant rule change designed to ameliorate the incidence of concussions did not occur until 2010, when Rule 48 was amended to make body checking with the head a penalty. The Olympics had outlawed checking to the head/neck area in 2002.

127. In 2011, Rule 41 was changed to permit penalization of players who fail to avoid or minimize contact with a defenseless opponent along the boards but gave the referee vast discretion, permitting the referee not to call a penalty if the contacted player had, in the referee's view, put himself in a vulnerable position.

128. That same year, Rule 48 was again amended to make all intentional hits to the head a penalty. Almost all the other hockey leagues around the world had adopted a similar rule years earlier.

129. A report entitled *Bodychecking Rules and Concussion in Elite Hockey*, published in 2013 ("2013 Report"), concluded that the changes in Rule 48 have had a negligible effect on the incidence of NHL concussions.

130. Not until 2011 did the NHL require a doctor, rather than a trainer, to examine players for a concussion after an on-ice head trauma. The trainers usually performed these examinations on the bench or on the ice in the arena. As of March 16, 2011, the NHL changed its concussion protocols to require an examination off the ice and bench, in a location referred to as a "quiet room," by a doctor. But this examining doctor need not be a neurosurgeon. The affected player could return to the ice if he was symptom free, returned to his brain baseline and passed the SCAT2 test, notwithstanding that the general medical standard for return from concussion had been set as early as 2001, and by the Prague convention in 2004, as "when in

doubt, sit them out” – a mandate to prevent a concussed player from returning to the game.

131. In 2011, the NHL created a Department of Player Safety, which proposes rule changes to enhance safety, reviews safety issues relating to equipment and environment and suspends players as a disciplinary matter. To date, player suspensions seem to be the Department’s only recommendation since its inception. The NHL does not ban players, even repeat offenders, for hits to the head.

132. On July 23, 2013, the NHL changed its concussion protocols to require that a concussed player could not return to the same game in which the concussion occurred, finally adopting the 2004 standard. This change occurred following a number of incidents in which high-profile players returned to a game and then missed significant playing-time after the game with severe post-concussions effects.

133. To date, the NHL does not require a neurosurgeon to be available at its games.

134. Many experts agree that the number of NHL concussions are still significantly under-reported.

135. In addition to the visor rule described above, the NHL has recently mandated the use of “soft” shoulder pads. At the same time, the NHL adopted a rule penalizing players who remove their helmets in an on-ice fight. However, Rule 46.1 stills allows on ice fighting. Bill Daly, the NHL’s Deputy Commissioner, was quoted on October 9, 2013 as saying that “[r]ule changes that impact and reduce the role of fighting in the game have been, and I expect will continue to be, made over time, as and when they are deemed appropriate. The mandatory visor rule and the rule prohibiting the removal of helmets during fights were two such rules that were implemented just this past summer. I do not expect that we will change our traditional approach to how rules are changed and implemented in the game at any time in the foreseeable future.”

VII. DEFENDANTS HAVE DONE TOO LITTLE, TOO LATE.

136. In 2008, Boston University's Dr. Ann McKee (who performed the Fleming autopsy in 2010) stated that "the easiest way to decrease the incidence of CTE [in contact sport athletes] is to decrease the number of concussions." Dr. McKee further noted that "[t]here is overwhelming evidence that [CTE] is the result of repeated sublethal brain trauma."

137. Defendants knew or should have known of that evidence for decades.

138. Defendants knew or should have known that for decades, legions of hockey players, including some of the game's stars, such as Eric Lindros, have been forced to retire because of concussions.

139. Defendants knew or should have known that the biometrics of their players were changing; their players were getting bigger, faster and stronger, resulting in their collisions becoming more forceful, their contact more fierce and their fights fraught with greater peril.

140. Defendants knew or should have known that the change from flexible to rigid glass would have an adverse impact on their players.

141. Defendants knew or should have known that getting rid of clutch and grab hockey would speed up the game and further increase the force, velocity and danger of on-ice collisions.

142. In spite of these multiple and unmistakable red flags about brain injuries and head trauma, all of which Defendants knew or should have known, they failed to act timely or meaningfully to reduce the risk of such injuries and trauma.

143. Why Defendants (and the NHL Concussion Program) failed to share accurate information and take appropriate actions seems comprehensible only as an economic cost-benefit decision, even factoring in the loss of stars, some temporarily such as Sidney Crosby and some permanently such as Eric Lindros. Defendants have known or should have known for decades

that multiple blows to the head can lead to long-term brain injury, including memory loss, dementia, depression, and CTE and its related symptoms and that their players were retiring and dying due to concussions and MTBI. Instead, Defendants' silence and insistence on the need for more data has misled players, coaches, trainers, and the public and impliedly spread disinformation.

144. Changing the glass and speeding up the game at the same time the NHL was purportedly reviewing brain injuries shows Defendants were not serious about eliminating head injuries and brain trauma as quickly and fully as possible.

145. Defendants have essentially refused for decades to address the issues of concussions and sub-concussive events and their long-term effects on NHL players. Their passivity under the guise of "we are looking at it" is willful and wanton and exhibits a reckless disregard for the safety of their players. At a minimum, Defendants acted with callous indifference to the duty they voluntarily assumed to the Plaintiffs and players.

146. As a direct result of this fraudulent concealment, former players have for many decades been led to believe that the symptoms of early-onset dementia, ALS, loss of memory, headaches, confusion, and the inability to function were not caused by events occurring while they played in the NHL. And as a result of this willful and malicious conduct, these former players have been deprived of medical treatment, incurred expenses, lost employment, and suffered humiliation and other damages.

147. Only in the past few years, despite decades of previous research, has the NHL belatedly and still reluctantly adopted rules, albeit ineffective ones, to protect its players from unnecessary head injuries. For decades until the present, the NHL has refused to outlaw fighting and all hits to the head despite significant medical evidence that to do so would substantially

reduce the incidence of concussions in professional hockey. Only 28 percent of the reported concussions in the 2013 Report were the result of a called penalty while 64.2 percent of the total concussions were caused by unpenalized checking. A legal check to another player's body can still result in the checked player's head hitting the ice, boards or glass, resulting in a concussion. Checks to the head, which the 2013 Report states will continue under Rule 48, pose even more direct concussion risks.

148. For these reasons, on August 21, 2013, 66 percent of the delegates at the Canadian Medical Association meeting in Calgary voted to "condemn the complacency of the NHL in regards to violence in hockey."

CLASS ACTION ALLEGATIONS

149. Plaintiffs adopt by reference all allegations contained in the paragraphs above, as if fully set forth herein.

150. The class consists of all former NHL players who retired on or before February 14, 2013 and who have suffered brain trauma and/or injuries as a result of concussive and sub-concussive impacts inflicted on them while playing in the NHL.

151. Plaintiffs bring this action on behalf of themselves and all other similarly-situated individuals pursuant to Fed. R. Civ. P. 23.

152. The questions of law and fact in this action are common to all members of the Class.

153. There are questions of law and fact that are not only common to the Class, but which predominate over any questions affecting only individual Class members. The predominating common questions include, but are not limited to:

- Whether Defendants knew that athletes who sustain repetitive concussive events, sub-concussive events and/or brain injuries are at significantly greater risk for chronic neuro-cognitive illness and disabilities during their hockey careers;
- Whether Defendants should have known that athletes who sustain repetitive concussive events, sub-concussive events and/or brain injuries are at significantly greater risk for chronic neuro-cognitive illness and disabilities during their hockey careers;
- Whether Defendants knew that athletes who sustain repetitive concussive events, sub-concussive events and/or brain injuries are at significantly greater risk for chronic neuro-cognitive illness and disabilities later in life;
- Whether Defendants should have known that athletes who sustain repetitive concussive events, sub-concussive events and/or brain injuries are at significantly greater risk for chronic neuro-cognitive illness and disabilities later in life;
- Whether the NHL assumed a voluntary duty through the creation of its Concussion Program to inform its players of the risks of concussive events, sub-concussive events and/or brain injuries;
- Whether the Defendants breached their duties to the players, including, without limitation, the duty properly to study, objectively to analyze, and then to inform players about the frequency, and seriousness, of the risks of concussive events, sub-concussive events and/or brain injuries;
- Whether the Defendants' breaches were a substantial cause of Plaintiffs' damages;
- Whether the Defendants' breaches were a proximate cause of Plaintiffs' damages;
- Whether Defendants actively and purposely concealed information from their players regarding the severe risks of concussive events, sub-concussive events and/or brain injuries;
- Whether that active and purposeful concealment caused Plaintiffs' damages;
- Whether Defendants caused or contributed to Plaintiffs' damages by historically ignoring the true risks of concussive events, sub-concussive events and/or brain injuries suffered by NHL hockey players;
- Whether Defendants caused or contributed to Plaintiffs' damages by failing to disclose the true risks of repetitive concussive events, sub-concussive events and/or brain injuries to NHL players;

- Whether Defendants caused or contributed to Plaintiffs' damages by refusing to address the issue of concussive events, sub-concussive events and/or brain injuries despite a growing body of evidence establishing a link between sports and such injuries;
- Whether Defendants caused or contributed to Plaintiffs' damages by refusing to amend the NHL's rules and procedures and equipment requirements to effectively protect its players; and
- Whether Defendants' acts and/or omissions were wanton, willful and/or malicious.

154. Plaintiffs' claims are typical of the claims of the respective Class members.

155. Plaintiffs/Class Representatives will fairly and adequately protect the interests of the Class. The interests of the named Plaintiffs and of all other members of the Class are identical and the named Plaintiffs are cognizant of their duties and responsibilities to the Class. Plaintiffs' counsels' combined substantial experience in class action, personal injury and/or professional liability proceedings enable Plaintiffs' counsel to adequately represent the Class' interests.

156. The Class consists of thousands of individuals and is thus so numerous that joinder of all members is impracticable.

157. This action should proceed as a class action under Fed. R. Civ. P. 23(b)(1) because separate actions by individual members of the class would create a risk of adjudications with respect to individual class members that, as a practical matter, would be dispositive of the interests of other members not parties to the individual adjudications or would substantially impair or impede their ability to protect their interests.

158. Alternatively, this action should proceed as a class action under Fed. R. Civ. P. 23(b)(2) because the NHL has acted on grounds that apply generally to the proposed Class so

that final injunctive relief or corresponding declaratory relief is appropriate respecting the class as a whole.

159. Alternatively, this action should proceed as a class action under Fed. R. Civ. P. 23(b)(3) in that questions of law or fact common to the Class predominate over any questions affecting individual Plaintiffs and class action treatment is superior to other available methods for the fair and efficient adjudication of this controversy between the Class and Defendants.

160. No member of the Class has a substantial interest in individually controlling the prosecution of a separate action but if he does, he may exclude himself from the Class upon the receipt of notice under Fed. R. Civ. P. 23(c).

161. This class action can be managed without undue difficulty because the Class Representatives will vigorously pursue the interests of the Class by virtue of, and as evidenced by, their actions in initiating this proceeding.

CAUSES OF ACTION

COUNT I **ACTION FOR DECLARATORY RELIEF – LIABILITY**

162. Plaintiffs adopt by reference all allegations contained in the paragraphs above, as if fully set forth in this Count.

163. There is a case and controversy among Plaintiffs on the one hand and Defendants on the other. Plaintiffs have suffered injuries in fact, physical, mental and economic, traceable to Defendants' actions and inactions and redressable by a favorable decision in this case.

164. Pursuant to 28 U.S.C. § 2201, Plaintiffs seeks a declaration as to the following:

a. that Defendants knew or should have known, at all times material, that the repeated, traumatic and unnecessary head impacts the Plaintiffs endured while playing NHL hockey were likely to expose them to substantially-increased risks of neuro-degenerative

disorders and diseases, including but not limited to CTE, Alzheimer's disease and similar cognitive-impairing conditions;

b. that based on the NHL's voluntary undertaking to study the issue of MBTI, the Defendants had a duty to advise Plaintiffs of that heightened risk;

c. that the NHL willfully and intentionally concealed material information from, and misled Plaintiffs concerning, that risk; and

d. that Defendants recklessly endangered Plaintiffs.

COUNT II **MEDICAL MONITORING**

165. Plaintiffs adopt by reference all allegations contained in the paragraphs above, as if fully set forth in this Count.

166. Plaintiffs experienced repetitive traumatic brain impacts during their respective NHL careers that significantly increased their risk of developing neuro-degenerative disorders and diseases, including but not limited to CTE, Alzheimer's disease, and other similar cognitive-impairing conditions.

167. Repetitive brain injuries during NHL practices and games have a microscopic and latent effect on the brain. Repetitive exposure to accelerations to the head causes deformation, twisting, shearing, and stretching of neuronal cells, causing multiple forms of damage, including the release of small amounts of chemicals within the brain such as the Tau protein. Among other things, the gradual build-up of Tau – sometimes over decades – causes CTE, which is the same phenomenon as boxer's encephalopathy (or "punch drunk syndrome") studied and reported by Harrison Martland in 1928.

168. Defendants' actions and inactions as described in this Complaint exponentially and unjustifiably increased the hazards and risks of hockey as played in the NHL, including both

practices and game play. These repetitive head accelerations to which the Plaintiffs have been exposed present risks of latent but long-term debilitating chronic illnesses to which Plaintiffs would not have been exposed had the Defendants discharged their duty, among other things, to: systematically compile, analyze and report to players about the effects of head trauma and brain injuries; seek to ensure helmets, visors, and other equipment was optimally configured to prevent concussions and sub-concussive impacts; urge timely rules changes outlawing hits to the head; mandate that officials enforce rules banning hits to the head; and permanently ban or otherwise severely discipline players who commit hits to the head. Absent Defendants' negligence, fraud, and/or misrepresentations, Plaintiffs' exposure to the risks of harm as described above (including but not limited to) the release of biological substances into their respective brains would have been materially lower.

169. Accordingly, the repetitive head impacts sustained by NHL players in games and practices exposed them, including the Plaintiffs, to subtle and repetitive changes within the brain on the cellular level. For that reason, the environment within which NHL players have sustained repetitive head impacts exposed them to substantive hazards.

170. Depending on the operation of a scientifically-established range of identifiable factors, including the amount of the exposure to repetitive head impacts and the release of Tau protein, the player/victim will develop a range of subtle to significant, including debilitating, neuro-cognitive changes.

171. The latent injuries which develop over time and manifest later in Plaintiffs' and other players' lives include but are not limited to varying forms of neuro-cognitive disability, intellectual decline, personality change, mood swings, rage, and, sometimes, fully-developed encephalopathy.

172. Like the organizers of boxing, the NHL and its governing Board, because they permit and promote on ice fighting, were fully aware of the serious danger of exposing all NHL players to repetitive head impacts, including the repetitive sub-concussive and concussive blows that increase the risk to NHL players of, among other latent injuries, encephalopathy.

173. The Defendants breached their voluntarily-assumed duty to the Plaintiffs by failing to provide NHL players, including the Plaintiffs, with necessary, adequate, and truthful information about the heightened risks of neurological damage that arise from repetitive head impacts during NHL games and practices.

174. As a proximate result of the Defendants' tortious conduct, Plaintiffs have experienced an increased risk of developing serious, latent neuro-degenerative disorders and diseases, including but not limited to CTE, Alzheimer's disease, and/or other and similar cognitive-impairing conditions.

175. The latent brain injuries from which Plaintiffs suffer require specialized testing, accompanied by resultant medical care and pharmacological treatments.

176. The available monitoring regime is specific for individuals such as the Plaintiffs and the class they seek to represent, all of whom are exposed to repetitive head trauma different from that normally recommended in the absence of exposure to this risk of harm.

177. The medical monitoring regime includes, but is not limited to, baseline tests and diagnostic examinations that will assist in diagnosing the adverse health effects associated with hockey-related MBTI. These diagnoses will facilitate the treatment and behavioral and/or pharmaceutical interventions that will prevent or mitigate various adverse consequences of the latent neurodegenerative disorders and diseases associated with the repetitive sub-concussive and concussive injuries that Plaintiffs experienced in the NHL.

178. The available monitoring regime is reasonably necessary according to contemporary scientific principles within the medical community specializing in the diagnosis of head injuries and their potential link to, *inter alia*, memory loss, impulse rage, depression, early-onset dementia, CTE, Alzheimer-like syndromes, and similar cognitive-impairing conditions.

179. Monitoring and testing Plaintiffs, permitting earlier medical intervention than would otherwise occur, will significantly reduce the risk that Plaintiffs will suffer long-term injuries, disease, and losses.

180. Monitoring and testing Plaintiffs will significantly reduce the risk that Plaintiffs will suffer long-term injuries, disease, and losses without adequate treatment.

181. Plaintiffs, therefore, seek an injunction creating a Court-supervised, NHL-funded medical monitoring program that will facilitate the diagnosis and adequate treatment of Plaintiffs for neuro-degenerative disorders and diseases. The medical monitoring should include a trust fund to pay for the medical monitoring and treatment of Plaintiffs as frequently and as intensively as necessary.

182. Plaintiffs have no adequate remedy at law in that monetary damages alone cannot compensate them for the continued risk of developing long-term physical and economic losses due to concussions and sub-concussive injuries. Without Court-approved medical monitoring as described herein, or established by the Court, Plaintiffs will continue to face an unreasonable risk of continued injury and disability.

COUNT III
FRAUDULENT MISREPRESENTATION BY CONCEALMENT

183. Plaintiffs adopt by reference all allegations contained in the paragraphs above, as if fully set forth in this Count.

184. Defendants knew that repetitive head impacts in hockey games and practices created an unreasonable risk of harm to NHL players that was similar or identical to the risk of harm to, for example, boxers who receive repetitive impacts to the head during boxing practices and matches.

185. Defendants have been aware of and understood the significance of the published medical literature dating from as early as the 1920s that a serious risk of short-term and long-term brain injury is associated with the repetitive traumatic impacts to the head to which NHL players are repeatedly exposed.

186. Beginning in the 1920s and continuously through the Class Period, the Defendants knowingly and fraudulently concealed from then-current NHL players and former NHL players the risks of head injuries in NHL games and practices, including but not limited to the risks associated with returning to physical activity too soon after sustaining a sub-concussive or concussive injury.

187. From 1997 through June of 2010, Defendants' fraudulent concealment continued. During that time period, the NHL voluntarily funded its Concussion Program but no reports were produced and no rule changes regarding concussions were made. That failure to change, and the NHL's silence except for statements that more data and research were needed, misrepresented to then current and former NHL players and the general public that there is no link (or an insufficient scientific link) between brain injuries in NHL activities and later-in-life cognitive injury, including CTE and its related symptoms.

188. Given Defendants' superior and unique knowledge and resources, Plaintiffs reasonably looked to and relied on them for guidance on head injuries and concussions.

189. The NHL failed to publish a report, disseminate meaningful information or otherwise take any action regarding its playing rules or medical protocols, all of which concealed, minimized and perpetuated the ever-changing risks of repetitive brain impacts as players became even bigger, stronger and faster and their collisions ever more forceful and more injurious.

190. Defendants knew or should have known that the NHL's then-current players, and its former players, would reasonably rely on Defendants' omissions and/or silence on this health issue.

191. Defendants, therefore, concealed material facts and information and delayed revealing material medical information with the intent to deceive and defraud, which caused Plaintiffs to become exposed to the harm referenced above. Defendants' concerted concealment of the risks to which the players had been exposed on the ice, and the Plaintiffs' and other players' reasonable reliance on that nondisclosure, negated the players' impetus, and delayed their ability, to plan for the future of themselves and their families and to seek appropriate treatment of their latent neurodegenerative conditions.

192. Defendants knew and expected that Plaintiffs would rely on their silence, and Plaintiffs in fact did reasonably rely on that silence during and after their careers.

193. Defendants' actions and/or omissions were committed willfully, maliciously, with intent to injure and damage the Plaintiffs, and with reckless disregard of the players' legal rights.

194. As a direct and proximate result of Defendants' fraudulent conduct, Plaintiffs have suffered physical injury, including but not limited to existing and latent cognitive conditions that create memory loss, diminished cognitive function, non-economic losses, and economic losses.

195. As a direct and proximate result of Defendants' willful concealment, Plaintiffs have suffered and will continue to suffer substantial injuries, emotional distress, pain and suffering, and economic and non-economic damages that are ongoing and continuing in nature.

196. As a result of Defendants' misconduct as alleged herein, Defendants are liable to Plaintiffs for, and Plaintiffs seek, the full measure of damages allowed under applicable law.

COUNT IV
FRAUDULENT MISREPRESENTATION BY NONDISCLOSURE

197. Plaintiffs adopt by reference all allegations contained in the paragraphs above, as if fully set forth in this Count.

198. Defendants knew that repetitive head impacts in hockey games and full-contact practices created a risk of harm to NHL players that was similar or identical to the risk of harm to, for example, boxers who receive repetitive impacts to the head during boxing practices and matches.

199. Defendants have been aware of and understood the significance of the published medical literature dating from as early as the 1920s that there is a serious risk of short-term and long-term brain injury associated with repetitive traumatic impacts to the head to which NHL players are exposed.

200. During that time period, then-current NHL players and former NHL players did not know these facts. Defendants knew that the players were unaware of these facts, knew that the players would reasonably expect to be told these facts, knew that not disclosing these facts could justifiably induce the players to unreasonably expose themselves to head injuries in NHL games and practices, including the risks associated with returning to physical activity too soon after sustaining a sub-concussive or concussive injury, and intended to deceive the players.

201. From 1997 through June of 2010, Defendants continued to withhold these material facts. During that time period, the NHL voluntarily funded its Concussion Program but no reports were produced and no rule changes regarding concussions were made and that failure to change and the NHL's silence, except for statements that more data and research were needed, misrepresented to then-current and former NHL players and the general public that there is no link (or an insufficient scientific link) between brain injuries in NHL activities and later-in-life cognitive injury, including CTE and its related symptoms.

202. Given Defendants' superior and unique knowledge and resources, Plaintiffs reasonably looked to Defendants for guidance on head injuries and concussions.

203. The NHL failed to publish a report or take any action regarding its playing rules or medical protocols, all of which concealed, minimized and perpetuated the ever-changing risks of repetitive brain impacts as players became even bigger, stronger and faster and the collisions ever more forceful.

204. Defendants knew or should have known that its then-current players, and its former players, would reasonably rely on their omissions and/or silence on this health issue.

205. Defendants, therefore, withheld or omitted facts and information and delayed revealing material medical information with the intent to deceive and defraud, which caused Plaintiffs to become exposed to the harm referenced above. The NHL's concerted omission of the risks to which players had been exposed on the ice delayed their ability to plan for the future of themselves and their families and to seek appropriate treatment of their latent neurodegenerative conditions.

206. Defendants knew and expected that Plaintiffs would rely on their silence, and Plaintiffs in fact did reasonably rely on their silence during and after their careers.

207. Defendants' actions and/or omissions were committed willfully, maliciously, with intent to injure and damage the Plaintiffs, and with reckless disregard of the players' legal rights.

208. As a direct and proximate result of Defendants' fraudulent conduct, Plaintiffs have suffered physical injury, including but not limited to existing and latent cognitive conditions that create memory loss, diminished cognitive function, non-economic losses, and economic losses.

209. As a direct and proximate result of Defendants' nondisclosure, Plaintiffs have suffered and will continue to suffer substantial injuries, emotional distress, pain and suffering, and economic and non-economic damages that are ongoing and continuing in nature.

210. As a result of Defendants misconduct as alleged herein, Defendants are liable to Plaintiffs for, and Plaintiffs seek, the full measure of damages allowed under applicable law.

COUNT V
FRAUD

211. Plaintiffs adopt by reference all allegations contained in the paragraphs above, as if fully set forth in this Count.

212. Defendants knew or should have known that repetitive head impacts in hockey games and full-contact practices created a risk of harm to NHL players that was similar or identical to the risk of harm to boxers who receive the same or similar repetitive impacts to the head during boxing practices and matches.

213. Defendants knew that the risks of brain injury could be reduced by implementing changes to the game, including but not limited to: (a) continuing to use flexible glass; (b) the active monitoring of players for signs of MTBI; (c) the employment of a neurologist on the sidelines; (d) return-to-play rules consistent with proper medical management of MTBI; (e) requiring doctors, not trainers, to evaluate players off the bench and ice immediately following a

concussive incident; and (f) banning conduct which results in concussive events, sub-concussive events and/or brain injuries, including but not limited to fighting and body checking.

214. Defendants, however, withheld the information it knew about the risks of head injuries in the game from then-current NHL players and former NHL players and ignored the known risks to all NHL players.

215. Plaintiffs further allege, pursuant to Fed. R. Civ. P. 11(b)(3), that Defendants deliberately delayed implementing the changes to the game Defendants knew could reduce players' exposure to the risk of life-altering head injuries because those changes would be expensive to implement, would require sustained-player education, officiating training and public-relations efforts and would reduce the League's profitability. Defendants continue to allow and market violence, fighting and hits to the head, activities proven to increase the incidence of head trauma for its players.

216. Defendants have or should have been aware of and understood the significance of the published medical literature dating from as early as the 1920s that there is a serious risk of short-term and long-term brain injury associated with repetitive traumatic impacts to the head to which NHL players are exposed.

217. Defendants did not timely reveal the information they knew or should have known from medical knowledge available for decades and failed to act, with the exception of mandatory helmets in 1979 and baseline brain testing in 1997.

218. From 2010 until the present, the NHL's rules and medical protocol changes have been superficial and ineffective in preventing concussions and their resulting injuries. The NHL's continued refusal to ban fighting and hits to the head, especially given the medical evidence regarding the high correlation between the rotational acceleration present in such

contacts and the incidence of concussions, is a continuing fraudulent action against Plaintiffs and other former NHL players.

219. Given the Defendants' superior and unique knowledge and resources, Plaintiffs reasonably looked to the NHL for guidance on head injuries and concussions.

220. The Defendants failed to publish a report or take any action regarding its playing rules or medical protocols, all of which concealed, minimized and perpetuated the ever-changing risks of repetitive brain impacts as players became even bigger, stronger and faster and the collisions ever more forceful.

221. During that time, Defendants knowingly and fraudulently concealed from then-current NHL players and former NHL players the risks of head injuries in NHL games and practices, including the risks associated with returning to physical activity too soon after sustaining a sub-concussive or concussive injury.

222. Defendants, however, withheld this information from then-current NHL players and former NHL players and ignored the known risks to all NHL players.

223. During their playing days and after their retirement from the NHL, the Plaintiffs justifiably and reasonably relied on Defendants' omissions and failure to act to their detriment.

224. The Plaintiffs were damaged by Defendants' misconduct. They have suffered and will continue to suffer substantial injuries, emotional distress, pain and suffering, and economic and non-economic damages that are ongoing and continuing in nature.

225. As a result of Defendants' fraud, Defendants are liable to Plaintiffs for, and Plaintiffs seek, the full measure of damages allowed under applicable law.

COUNT VI
NEGLIGENT MISREPRESENTATION

226. Plaintiffs adopt by reference all allegations contained in the paragraphs above, as if fully set forth in this Count.

227. A special relationship exists between Defendants and the Plaintiffs sufficient to impose a duty on Defendants to disclose accurate information to the Plaintiffs.

228. Defendants long knew that repetitive head impacts in hockey games and practices created a risk of harm to NHL players that was similar or identical to the risk of harm to boxers who receive repetitive impacts to the head during boxing practices and matches and football players during games and practices.

229. Defendants were aware of and understood the significance of the published medical literature demonstrating the serious risk of both short-term and long-term adverse consequences from the kind of repetitive traumatic impacts to the head to which NHL players were exposed.

230. Defendants, however, withheld this information from NHL players and ignored the risks to NHL players.

231. Continuing to the present, Defendants have insisted that more data is needed before any scientifically-proven link between repetitive traumatic head impacts and later-in-life cognitive/brain injury, including CTE and its related symptoms, can be established, a material representation of fact and the current state of medical knowledge.

232. Defendants, therefore, misrepresented the dangers the Plaintiffs faced in returning to action after sustaining a head injury and the long-term effects of continuing to play hockey after a head injury.

233. Plaintiffs justifiably relied on Defendants' silence and refusal to act in believing that the long-term risks of permanent harm from playing professional hockey were minimal or non-existent.

234. Plaintiffs' reliance on Defendants' silence was reasonable, given Defendants' superior and unique vantage point on these issues.

235. Defendants' silence, their protocol of returning players to the game after an on-ice evaluation by a trainer, not a doctor, and their refusal to change any of the rules of play supported the misrepresentations that concussions and long-term medical harm resulting from them were not a serious issue for hockey and that present NHL players were not at an increased risk of short-term and long-term adverse consequences if they returned too soon to an NHL games or practices after suffering head trauma and, therefore, that former players had not been exposed to such increased risk during their time in the NHL.

236. Defendants made these misrepresentations and actively concealed true information at a time when they knew, or should have known, because of their superior position of knowledge that Plaintiffs faced serious health problems if they returned to a game too soon after sustaining a concussion.

237. Defendants knew or should have known the misleading nature of their silence and refusal to act when they decided to do nothing.

238. Defendants made the misrepresentations and actively concealed information knowing that Plaintiffs would and did rely on the misrepresentations or omissions in, among other things, how the Plaintiffs addressed the concussive and sub-concussive injuries they sustained.

239. As a direct and proximate result of Defendants' negligent misrepresentations, Plaintiffs have suffered and continue to suffer serious personal injury, including neuro-cognitive brain disease and associated damages including mental disability, loss of income, pain and suffering, emotional distress, and loss of consortium.

240. As a result of Defendants' misconduct, Defendants are liable to Plaintiffs for, and Plaintiffs seek, the full measure of damages allowed under applicable law.

COUNT VII
NEGLIGENCE THROUGH JANUARY 2013

241. Plaintiffs adopt by reference all allegations contained in the paragraphs above, as if fully set forth in this Count.

242. Defendants voluntarily assumed a duty to provide a reasonably-safe playing and practice environment for Plaintiffs.

243. Defendants' failure to adequately address the continuing health risks associated with concussive events, sub-concussive events and/or brain injuries that NHL players sustained during this period constituted a breach of their duty to these players, which has resulted in long term neuro-cognitive problems and disabilities to former NHL players, including the Plaintiffs.

244. During this time, Defendants' continuing perpetration of the dangerous myth that NHL players are so tough that they can readily withstand, without risk of serious and permanent injuries, "getting their bell rung," "suffering dings" or temporarily losing consciousness while playing constitutes negligence. The perpetration of misleading and false statements and a philosophy of invincibility nurtured and publicized by Defendants throughout this time constitutes continuing negligent conduct which Defendants have never essentially stopped perpetrating.

245. The failure of Defendants to publicize within the League, to active players and to retired players, the mounting evidence in the scientific literature of the evolving and chronic neuro-cognitive problems amongst former players caused then-current players and retired players to believe that their physical and psychological problems (as described herein) were neither serious nor related to hockey. These acts and/or omissions caused Plaintiffs to ignore the need for necessary treatment. Likewise, these omissions and commissions had the institutional effect of reducing interest in helmet safety research, avoiding changes in rule-playing to minimize head injury, avoiding the need to promulgate rules affecting the return to play rules when concussive events are detected, and establishing programs to educate players about the risks of sub-concussive and concussive long-term risk to their health.

246. The foregoing behavior proximately caused Plaintiffs' injuries and/or damages.

247. The Plaintiffs have sustained serious injuries and damages as a result of Defendants' negligence.

248. As a result of Defendants' negligence, Defendants are liable to Plaintiffs for, and Plaintiffs seek, the full measure of damages allowed under applicable law.

PRAYER FOR RELIEF

249. WHEREFORE, the Plaintiffs pray for judgment as follows:

a. Declaratory relief requested pursuant to 28 U.S.C. § 2201 against Defendants;

b. Granting an injunction and/or other equitable relief against Defendants and in favor of Plaintiffs for the requested medical monitoring;

c. Awarding Plaintiffs compensatory damages against Defendants;

d. Awarding Plaintiffs punitive damages against Defendants;

- e. Awarding Plaintiffs such other relief as may be appropriate; and
- f. Granting Plaintiffs their prejudgment interest, costs and attorneys' fees.

DEMAND FOR JURY TRIAL

Plaintiffs demand a trial by jury on all issues so triable in this Complaint.

Date: February 19, 2014

SILVERMAN|THOMPSON|SLUTKIN|WHITE|LLC

By: _____ /s/

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CV

U.S. District Court
U.S. District of Minnesota (DMN)
CIVIL DOCKET FOR CASE #: 0:14-cv-01140-SRN-JSM

Christian et al v. National Hockey League
Assigned to: Judge Susan Richard Nelson
Referred to: Magistrate Judge Janie S. Mayeron
Demand: \$5,000,000
Cause: 28:1332 Diversity-Personal Injury

Date Filed: 04/15/2014
Jury Demand: Plaintiff
Nature of Suit: 360 P.I.: Other
Jurisdiction: Diversity

Plaintiff

David Christian

*on behalf of themselves and all others
similarly situated*

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similarly situated*

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V.

Defendant

National Hockey League

Date Filed	#	Docket Text
04/15/2014	<u>1</u>	COMPLAINT against National Hockey League. (Filing fee \$ 400 receipt number 0864-3943936.) Filed by David Christian, William Bennett, Reed Larson. Filer requests summons issued. (Attachments: # <u>1</u> Civil Cover Sheet) (Zimmerman, Charles) (Entered: 04/15/2014)
04/15/2014	2	TEXT ONLY ENTRY: Notice re: Non-Admitted Attorney We have received documents listing Hart L. Robinovitch, Bradley C. Buhrow as counsel of record. If he or she wishes to be listed as an attorney of record in this case, he or she must be admitted to the bar of the U.S. District Court of Minnesota in accordance with <u>Local Rule 83.5 (a), (b) and (c)</u> or temporarily admitted pro hac vice in accordance with <u>Local Rule 83.5 (d) or (e)</u> . For more admissions information and forms, please see the Attorney Forms Section of the courts website at http://www.mnd.uscourts.gov/FORMS/court_forms.shtml#attorneyforms . (AKL) (Entered: 04/15/2014)
04/15/2014	3	TEXT ONLY ENTRY: CLERK'S NOTICE OF INITIAL CASE ASSIGNMENT. Case assigned to Judge Susan Richard Nelson per Master List and referred to Magistrate Judge Janie S. Mayeron. Please use case number 14cv1140 SRN/JSM. (AKL) (Entered: 04/15/2014)
04/15/2014	<u>4</u>	Summons Issued as to National Hockey League. (AKL) (Entered: 04/15/2014)

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04/24/2014 12:27:29			
PACER Login:	sa0186	Client Code:	000770/39 Brian Baggetta
Description:	Docket Report	Search Criteria:	0:14-cv-01140-SRN-JSM
Billable Pages:	5	Cost:	0.50

UNITED STATES DISTRICT COURT
DISTRICT OF MINNESOTA

DAVID CHRISTIAN, REED LARSON,
and WILLIAM BENNETT on behalf of
themselves and all others similarly situated,

Plaintiffs,

v.

National Hockey League,

Defendant.

Case No. _____

COMPLAINT

JURY TRIAL DEMANDED

Plaintiffs, by and through their attorneys, for this Complaint against Defendant the National Hockey League (“NHL”), named above hereby allege as follows:

INTRODUCTION

1. This case seeks financial compensation, injunctive relief, and medical monitoring, based on the long-term chronic injuries, financial losses, expenses, and intangible losses suffered and to be suffered by Plaintiffs and the Class as a result of the NHL’s tortious and fraudulent misconduct.

2. This action arises from the pathological and debilitating effects of brain injuries caused by concussive and sub-concussive impacts suffered by former professional hockey players while in the NHL. For many decades, evidence has linked repetitive mild traumatic brain injuries to long-term neurological problems in many sports, including hockey. The NHL was aware of this evidence and the risks associated with repetitive traumatic brain injuries, but deliberately ignored the information to the detriment of the Plaintiffs and others who participated in hockey in the NHL.

3. NHL hockey is one of the most brutal competitive sports in existence. As the elite league of hockey, the NHL features the biggest, strongest, and fastest players in the world. In NHL hockey, the play of the game itself, with its thundering checks and devastating blows delivered by skating players, swinging sticks, and flying pucks, is a constant source of concussions and sub-concussive head injuries. But this is not the only source of head injuries. Fist fighting has been a core component of NHL hockey since the League's inception in 1917. There are even specific players on NHL member team rosters, often called "enforcers" or "goons," whose sole role on the team is to fist fight and otherwise physically intimidate other players on the ice.

4. By continuing to allow fist fighting as a routine part of the game, the NHL's message to its players and the public is clear: forceful blows to the face and head are not serious injuries in any context.

5. Despite the violent nature of games in the NHL, including the presence of bare knuckle fist fighting as a normal and accepted part of the game, Plaintiffs, for years, remained uninformed regarding the scientific evidence linking brain injuries to long-term neurological problems. This scientific evidence has been mounting for decades. However, Plaintiffs were not informed by the NHL how dangerous repeated brain trauma truly was.

6. In 2002, Dr. Bennet Omalu, a forensic pathologist and neuropathologist in Pittsburgh, Pennsylvania, became the first doctor to identify a brain condition termed "Chronic Traumatic Encephalopathy" or "CTE." Dr. Omalu discovered the condition, marked by dark brown protein staining on the brain, when studying the brain of Mike

Webster, a retired National Football League player and member of the NFL Hall of Fame who died at age 50 after years of severe depression and dementia that had reduced him to a state of homelessness.

7. By 2007, Dr. Omalu had identified CTE in the brains of four deceased former NFL players. He determined the brain damage he found in the players was the same condition found in punch-drunk boxers.

8. By 2009, the first retired NHL player was diagnosed with CTE. Neuropathologists at Boston University diagnosed retired NHL player Reg Fleming as the first hockey player known to have the disease. This discovery was announced in December 2009, six months after Fleming's death.

9. The NHL knew or should have known of this growing body of scientific evidence establishing that hockey players who sustain repetitive concussive events are at significantly greater risk for chronic neuro-cognitive illness and disabilities both during their NHL careers and later in life.

10. Despite having this knowledge, the NHL, for decades, failed to inform or protect its players from repetitive traumatic brain injuries, including concussive and subconcussive head injuries, and the devastating long-term effects of those injuries. Rather than inform its players regarding the risks of head injuries, the NHL openly encouraged severely injurious conduct such as fist fighting as a regular part of the game.

11. In 1997, the NHL created a concussion program (the "Concussion Program") to engage in the research and study of the brain injuries that NHL players were suffering.

12. Through the Concussion Program the NHL instituted basic testing for its players and required team doctors and trainers to maintain records of all players believed to have suffered concussions. These records were used by the NHL to study the brain injuries sustained by its players.

13. From 1997 through 2004 the NHL researched the link between brain injuries sustained by NHL players and the short and long term impairment of the brain. During this time period, however, the NHL took little action to reduce the number and severity of concussions among its players.

14. Through the Concussion Program, the NHL inserted itself into the research and public discourse concerning the short and long term impairment of the brain that results from repetitive concussive and sub-concussive blows.

15. Despite the mountain of evidence connecting hockey to brain injuries, as well as its own Concussion Program research, the NHL did nothing until 2011 when it finally issued a report. This report, however, did nothing more than indicate the number of reported concussions suffered by NHL players from 1997 through 2004, concluding that more research and study was needed on the issue.

16. In essence, the NHL, through silence, has chosen largely to ignore the medical findings of its own studies, other sports and the general practice of medicine regarding brain injuries and hockey.

17. Through its silence, and by allowing blatantly injurious conduct such as fist fighting, the NHL voiced its position that hockey-related concussions were not serious

injuries and should not prevent players from returning to play. The NHL players, including Plaintiffs, relied on this silence to their detriment.

18. The NHL's common policy and practice for all players, for decades, was to minimize brain injury and encourage players to return to play shortly after suffering a concussion. A well known adage among NHL hockey players, past and present, has for years been "it's a long way from your heart." This well-known adage among NHL players meant that if you got hit in your head, you could and should still play because it is a long way from your heart, which is the only thing that can truly harm you if injured.

19. These misperceptions regarding the true nature of head injuries suffered on the ice has resulted in devastating consequences faced by Plaintiffs and other former NHL players in the Class.

20. Plaintiffs' head injuries, and the serious ongoing health consequences resulting from them, were directly caused and exacerbated by the negligence, fraud, and other misconduct of the Defendant. Until very recently, the NHL has actively sought to suppress and obscure the truth about the long-term effect of concussions suffered while practicing and playing hockey for the NHL.

21. To this day, the NHL misinforms its players regarding the serious nature of head injuries, including by allowing fist fighting to remain in the game. By allowing grown men of considerable size and strength to punch each other in the face and head repeatedly, and then return to play almost immediately, the NHL continues to send the explicit message that suffering a blow to the head is not a serious injury.

22. Defendant's efforts to obscure the truth about the cause, treatment, and consequences of hockey-related head injuries has caused players who suffered concussions to be misdiagnosed, not to receive proper treatment, and to continue practicing and playing with these serious injuries.

23. The NHL persists in this conduct to date by, among other things, refusing to ban fighting and vicious body checking and by continuing to employ enforcers and goons, whose sole role on the team is to fist fight and otherwise physically intimidate other players on the ice.

24. As a result of Defendant's misconduct described herein, the Plaintiffs and the Class of retired NHL players, and their spouses and dependents, have suffered substantial injury, including economic loss, and interference with their ability to live a normal life. Defendant is liable for negligence, fraud, and loss of consortium.

PARTIES

25. David Christian is a resident of Chaska, Minnesota. Mr. Christian played right wing for the Winnipeg Jets from 1979-83, for the Washington Capitals from 1983-90, for the Boston Bruins from 1990-91, for the St. Louis Blues from 1991-92, and for the Chicago Blackhawks from 1992-94. Mr. Christian suffered multiple serious head traumas during his NHL career that were improperly diagnosed and treated.

26. Reed Larson is a resident of Edina, Minnesota. Mr. Larson played defense in the NHL for the Detroit Red Wings from February 1977 to March 1987, for the Boston Bruins from 1987-1989, and for the Edmonton Oilers, the New York Islanders, and the

Minnesota North Stars from 1989-1990. Mr. Larson suffered multiple serious head traumas during his NHL career that were improperly diagnosed and treated.

27. William Bennett is a resident of Cranston, Rhode Island. Mr. Bennett played left wing for the Boston Bruins from 1978-79 and for the Hartford Whalers from 1979-80. Mr. Bennett suffered multiple serious head traumas during his NHL career that were improperly diagnosed and treated.

28. Defendant National Hockey League (“NHL”) is an unincorporated association with its headquarters and principal place of business located at 1185 Avenue of the Americas, New York, New York 10036. The National Hockey League is engaged in interstate commerce in the business of, among other things, operating the major professional hockey league in the United States and Canada. The National Hockey League is not, and has not, been the employer of the Plaintiffs, who were employed during their respective careers in professional hockey by the independent clubs indicated above. The NHL regularly conducts business in all of the states and Canadian provinces in which its 30 member teams reside.

29. The NHL caused or contributed to the injuries and increased risks alleged herein through its acts and omissions in failing to disclose the true risks of repeated traumatic brain and head impacts in NHL hockey, and failing to take appropriate steps to prevent and mitigate repeated traumatic brain and head impacts in the NHL and the latent neurodegenerative disorders and diseases caused by these impacts. The NHL assumed a duty of care to its players and thus had an obligation not to carry out its duty non-negligently.

JURISDICTION AND VENUE

30. Jurisdiction is based on 28 U.S.C. § 1332(d)(2). At least one Plaintiff is diverse from one defendant. The amount in controversy exceeds \$5,000,000.00, exclusive of interest and costs.

31. Defendant is subject to the *in personam* jurisdiction of this Court, and venue is therefore proper herein pursuant to 28 U.S.C. § 1391, because Defendant did (and does) business within the State of Minnesota, and has had continuous and systematic contacts with the State of Minnesota. Upon information and belief, Defendant also advertised in this District, made material omissions and negligent misrepresentations in this District, and acted negligently toward players in this District.

FACTUAL ALLEGATIONS

32. According to the Center for Disease Control and Prevention (“CDC”), “A concussion is a type of traumatic brain injury, or TBI, caused by a bump, blow, or jolt to the head that can change the way your brain normally works.” The CDC notes that, “Health care professionals may describe a concussion as a ‘mild’ brain injury because concussions are usually not life-threatening. Even so, their effects can be serious.” Concussions or sub-concussive blows may be referred to medically as “mild traumatic brain injuries” or “MTBI.”

33. The CDC advises “Athletes with a concussion should never return to sports or recreation activities the day of the injury and until a health care professional, experienced in evaluating for concussion says they are symptom-free and it’s OK to return to play.”

34. Concussion symptoms include headache, blurry vision, nausea, dizziness, sensitivity to noise or light, balance problems, and difficulty thinking, concentrating, and remembering new information. With rest, these symptoms can resolve in a few hours or a few weeks, and typically between five to ten days. Even then, further time is necessary for concussion to heal fully, as chemicals in the brain need to return to balance, even after symptoms resolve. Even a minor second impact during this critical time could be extremely dangerous.

35. The seriousness of concussions and the risk to athletes has been well documented and published for well over seventy-five years. Concussions, sub-concussive blows to the head, and premature return-to-sport practices have caused memory loss, headaches, sleeplessness, depression, cognitive difficulties, debilitating confusion, and even early-onset dementia, Alzheimer's disease, Parkinson's disease and ALS.

36. For decades, the NHL has been aware that multiple blows to the head can lead to long-term brain injury.

The Mounting Evidence Concerning the Risks Associated with Concussions in Sports, Including NHL Hockey

37. In 1928, pathologist Harrison Martland published the first case of "Punch Drunk" syndrome in the Journal of the American Medical Association (the "Martland study"). The Martland study also described the clinical spectrum of abnormalities found in "almost 50 percent of fighters [boxers] . . . if they ke[pt] at the game long enough."

38. The Martland study was the first to link sub-concussive blows and “mild concussions” to degenerative brain disease.

39. In 1937, the American Football Coaches Association published a report warning that players who suffer a concussion should be removed from sports demanding personal contact.

40. In 1948, the New York State Legislature created the Medical Advisory Board of the New York Athletic Commission for the specific purpose of creating mandatory rules for professional boxing designed to prevent or minimize the health risks to boxers. After a three year study, the Medical Advisory Board recommended, among other things: (a) an accident survey committee to study ongoing accidents and deaths in boxing rings; (b) two physicians at ring-side for every bout; (c) post-bout medical follow-up exams; (d) a 30-day period of no activity following a knockout and a medical follow up for the boxer, all of which was designed to avoid the development of “punch drunk syndrome,” also known at the time as “traumatic encephalopathy”; (e) a physician’s prerogative to recommend that a boxer surrender temporarily his boxing license if the physician notes that the boxer suffered significant injury or knockout; and (f) a medical investigation of boxers who suffer knockouts numerous times.

41. The recommendations were codified as rules of the New York State Athletic Commission.

42. In 1952, the Journal of the American Medical Association published a study of encephalopathic changes in professional boxers. That same year, an article published in the *New England Journal of Medicine* discussed a three-strike rule for

concussions in football - recommending that players cease to play football after receiving their third concussion.

43. In 1962, Drs. Serel & Jaros looked at the heightened incidence of chronic encephalopathy in boxers and characterized the disease as a “Parkinsonian” pattern of progressive decline.

44. A 1963 study by Drs. Mawdsley & Ferguson published in *Lancet* found that some boxers sustain chronic neurological damages as a result of repeated head injuries. This damage manifested in the form of dementia and impairment of motor function.

45. A 1967 study by Drs. Hughes & Hendrix examined brain activity impacts from football by utilizing EEG to read brain activity in game conditions, including after head trauma.

46. In 1969, a report by the Royal College of Physicians of London confirmed the danger of chronic brain damage occurring in boxers as a result of their career.

47. Additionally, in 1969 (and then again in the 1973 book entitled *Head and Neck Injuries in Football*), a paper published in the *Journal of Medicine and Science in Sports* by a leading medical expert in the treatment of head injuries recommended that any concussive event with transitory loss of consciousness requires the removal of the football player from play and requires monitoring.

48. In 1973, Drs. Corsellis, Bruton, & Freeman-Browne studied the physical neurological impact of boxing. This study outlined the neuropathological characteristics

of “Dementia Pugilistica,” including loss of brain cells, cerebral atrophy, and neurofibrillary tangles.

49. In 1973, Neurosurgeon R.C. Schneider first described a disabling and sometimes deadly condition involving the second impact concussion occurring before symptoms of a first concussion resolve. The study revealed that a re-injury to the already-concussed brain triggers swelling that the skull cannot accommodate. This phenomenon was termed “second-impact syndrome” in 1984 by Dr. R.L. Sanders.

50. In 1975, Drs. Gronwall & Wrightson looked at the cumulative effects of concussive injuries in non-athletes and found that those who suffered a second concussion took longer to recover than those who suffered from their first concussion. The authors noted that these results applied to athletes, given the common occurrence of concussions in sports.

51. In 1982, *Canadian Medical Association Journal* published an article titled “Return to athletic competition following concussion.” The article concluded:

The basic recommendation is that return to training and competition should be deferred until all associated symptoms such as headaches have completely resolved. The decision to return must take into account the nature of the sport, the athlete’s level of participation and the cumulative effect of previous concussions. Some athletes will have to avoid any further participation in their sport.

52. In 1986, the *Physician and Sports medicine* journal published an article by Dr. Robert Cantu titled “Guidelines for return to contact sports after cerebral concussion.” Cantu established a system to grade the severity of concussions and corresponding guidelines for when players should return to play.

53. The forgoing references are by no means exhaustive. Physicians and academics have exhaustively studied and reported the danger of concussions suffered both inside and outside of sports over the past eight decades.

54. Between 1952 and 1994, numerous additional studies were published in medical journals including the Journal of the American Medical Association, Neurology, the New England Journal of Medicine, and Lancet warning of the dangers of single concussions, multiple concussions, and sports-related head trauma from multiple concussions. These studies collectively established that:

- a. repetitive head trauma in contact sports has potential dangerous long-term effects on brain function;
- b. encephalopathy (dementia pugilistica) is caused in boxers by repeated sub-concussive and concussive blows to the head;
- c. acceleration and rapid deceleration of the head that results in brief loss of consciousness in primates also results in a tearing of the axons (brain cells) within the brainstem;
- d. with respect to mild head injury in athletes who play contact sports, there is a relationship between neurologic pathology and length of the athlete's career;
- e. immediate retrograde memory issues occur following concussions;
- f. mild head injury requires recovery time without risk of subjection to further injury;
- g. head trauma is linked to dementia;
- h. a player who suffers a concussion requires significant rest before being subjected to further contact; and
- i. minor head trauma can lead to neuropathological and neurophysiological alterations, including neuronal damage, reduced cerebral blood flow,

altered brainstem evoked potentials and reduced speed of information processing.

55. In 1999, the National Center for Catastrophic Sport Injury Research at the University of North Carolina conducted a study involving eighteen thousand (18,000) collegiate and high school football players. The research showed that once a player suffered one concussion, he was three times more likely to sustain a second in the same season.

56. A 2000 study, which surveyed 1,090 former NFL players, found that more than sixty (60) percent had suffered at least one concussion, and twenty-six (26) percent had suffered three (3) or more, during their careers. Those who had sustained concussions reported more problems with memory, concentration, speech impediments, headaches, and other neurological problems than those who had not been concussed.

57. It is not plausible that the NHL was unaware of this body of literature. In fact, NHL Commissioner Gary Bettman recently stated, “We have, on our own, a long history, going back to 1997, of taking concussions very seriously.” He added, “We spend a lot of time, money and effort working with the players’ association on player safety.” CNN, *NHL facing ‘concussion’ lawsuit*, Int’l Ed., Nov. 26, 2013, <http://www.cnn.com/2013/11/26/sport/nhl-lawsuit-concussion-10-players/index.html>.

The Medical Community Has Focused on Brain Injuries Suffered by Hockey Players

58. Since 2001, there have been four “International Symposia on Concussions in Sport.” These conferences took place in Vienna (2001), Prague (2004), and twice in

Zurich (2009 and 2012). Attendees included American doctors who are experts on the brain and concussions.

59. The 2001 Vienna symposium included two reports focusing specifically on hockey. “Procedures After Minor Traumatic Brain Injury MTBI in Ice Hockey to Prevent Neurological Sequelae” noted that since 1986, doctors worldwide had observed “an alarming increase in the rate of MTBI in ice hockey despite improved protective gear.” In the NHL the proportion of MTBI had increased from 2% in the 1989-1990 season to 8% in the 1999-2001 seasons. This report recommended that “any confused player with or without amnesia should be taken off the ice and not be permitted to play again for at least 24 hours.”

60. The second Vienna symposium report was titled “Concussion Experience: Swedish Elite Ice Hockey League,” focused on the seriousness of concussions in ice hockey. The report noted an alarming increase in the number of concussions among players in the 1980s, which the authors of the report attributed to “[t]oday’s ice hockey [being] faster and more physical.”

61. In 2004, neurological experts met in Prague to discuss recommendations for the improvement of safety and health of athletes who suffer concussive injuries in sports, including ice hockey, based on current research. These experts recommended that a player should not be returned to play while symptomatic, and coined the phrase, “when in doubt, sit them out.” This echoed similar medical protocol established at a Vienna conference in 2001.

62. A 2006 publication stated that “[a]ll standard U.S. guidelines, such as those first set by the American Academy of Neurology and the Colorado Medical Society, agree that athletes who lose consciousness should never return to play in the same game.”

63. Additionally, an abstract was presented at a 2012 conference titled “Acute Clinical Signs and Outcome of Concussion in National Hockey League Players,” which concluded that concussions can produce a spectrum of acute on-ice clinical signs.

64. Various conferences on the subject of sports-related concussions produced detailed protocols on examining a player believed to have suffered a concussion. Members of the NHL Concussion Program attended many of these conferences, including all four of the International Symposia on Concussions in Sport.

65. Recently, the Mayo Clinic sponsored two “Conferences on Concussions in Hockey,” one in 2010 and the other in 2013. Recommendations at the first conference led the NHL to penalize targeted hits to the head and change its medical protocols to require a player evaluation.

66. At the 2013 Conference, Dr. Michael Stuart, a director of the Mayo Clinic Sports Medicine Center and chief medical officer for USA Hockey, noted two recent fights in the NHL that resulted in players receiving concussive head injuries. Recommendations made at that 2013 conference focused on eliminating fights, such as those noted by Dr. Michael Stuart, from the NHL by requiring immediate ejections for fighting.

67. As described above, the NHL has known for decades that MTBI can and does lead to long-term brain injury, including, but not limited to, memory loss, dementia, depression, and related symptoms.

68. Rather than take immediate measures to protect its players from these known dangers, the NHL for decades failed to disseminate to then-current and former NHL players relevant health information it possessed regarding the significant risks associated with MTBI.

69. In recent years, the serious, long-term effect of concussions has jumped to the forefront amid reports of a stream of premature deaths involving retired NHL players – many under tragic circumstances. Examples include Wade Belak (suicide); Derek Boogaard (drug overdose); Rick Rypien (suicide); Reg Fleming (heart attack), Bob Probert (heart attack), and Rick Martin (heart attack). These tragic deaths have cast doubt on the cause of other retired player deaths and incidents of volatile behavior among retired NHL players. The presence of CTE in these players (officially found in all but Wade Belak and Rick Rypien, for whom it is unknown whether their brains were analyzed for CTE) appeared irrespective of the players’ ages or whether or not they were “enforcers”.

The NHL Is the Premier Professional Hockey League in the World

70. The NHL generates in excess of \$3.3 billion in gross income per year.

71. The NHL oversees North America’s most popular hockey league, acting as an association for its thirty independently-operated clubs. The NHL’s average attendance per game in 2012-13 was 17,760. Each team plays 82 games in the NHL’s regular

season, in addition to a pre-season schedule for all teams and a post-season schedule for 16 playoff teams.

72. The NHL has, since its inception, has been the primary governor and promoter of professional hockey. It was created and established to act as the governing body of the sport.

73. The NHL generates revenue mostly through marketing sponsorships, licensing merchandise, ticket sales, and selling national and regional broadcasting rights to games. The teams share a percentage of the League's overall revenue.

74. The NHL earns billions of dollars from telecasting deals with, among other partners, NBC and its own NHL Network, and in Canada, CBC, TSN, RDS, and Rogers Communications. The NHL recently entered into a 12-year, \$5.2 billion agreement with Rogers Communications for the NHL's broadcast and multimedia rights in Canada.

75. In 2011 the NHL negotiated a 10 year, \$2 billion television deal with NBC, worth \$6.6 million per team per year for the United States market alone. In Canada, the NHL's expiring deal with CBC is expected to considerably exceed the current multi-year \$100,000,000 deal.

76. Over many decades, the NHL's influence has expanded through its use of the media. For example, through NHL Original Productions, www.NHL.com, NHL Network, NHL GameCenter, NHL Center Ice, and video games, the NHL has promoted its brand of hockey via every mass communication medium available, making the NHL the most recognizable hockey league in the world.

The NHL Has Promoted Violence through the Media, and Has Profited From this Violence at the Expense of Its Players

77. For decades, the NHL has developed and promoted a culture of violence within the sport of hockey.

78. Part of the NHL's strategy has been to promote violence by, among other things, glorifying the violent aspects of the game, including, but not limited to, the brutal and ferocious body checks and the vicious fist fights that occur on the ice.

79. The NHL's approach to player safety can correctly be called cavalier, as the NHL supports and promotes a highly calculated, profit-driven philosophy, which is spearheaded by the promotion of the NHL's hyper-aggressive style of play that leads directly to players suffering traumatic brain injuries.

The NHL's Rulebook Expressly Condones Fist Fighting on the Ice

80. The NHL's true view regarding violence and head injuries is seen clearly in its stance on fist fighting in the game. While the NHL has increased penalties for fighting in very recent years, fighting is still allowed and the NHL rulebook makes clear the NHL views fighting as a proper, condoned activity on the ice if done within expansive parameters.

81. There is an entire section in the NHL rulebook dedicated to defining what the NHL views as acceptable fighting. The rule is called Rule 46 – Fighting.

82. Rule 46 makes clear that fighting is allowed in hockey. According to Rule 46.14, any player who engages in a fist fight on the ice will be penalized 5 minutes and allowed to return to the same game.

83. While allowing fighting, other subsections of Rule 46 now indicate that the NHL will punish certain conduct slightly more harshly. For instance Rule 46.2 is titled “Aggressor” and pertains to any “player who continues to throw punches in an attempt to inflict punishment on his opponent who is in a defenseless position or who is an unwilling combatant.” Aggressors are assessed a major penalty (a five minute penalty to the team) and a game misconduct (the “Aggressor” is thrown out of the game but can be immediately replaced on the ice). This rule essentially states that a player can fist fight, but has to stop if the other player does not want to fight or if one player “has clearly won the fight but he continues throwing and landing punches in a further attempt to inflict punishment and/or injury on his opponent who is no longer in a position to defend himself.”

84. The language of Rule 46.2 clearly acknowledges that any player who fights does so for the intention of inflicting “punishment and/or injury on his opponent[.]” The rule does not penalize two willing combatants, but only those players who fight unwilling persons or persons who have already lost the fight and upon whom the aggressor “*continues* throwing and landing punches in a *further* attempt to inflict punishment and/or injury.”

85. The NHL’s Rule 46.11 is called “Instigator” and assesses additional penalties against a player who “by his actions or demeanor demonstrates any/some of the following criteria: distance traveled; gloves off first; first punch thrown; menacing attitude or posture; verbal instigation or threats; conduct in retaliation to a prior game (or season) incident; obvious retribution for a previous incident in the game or season.

86. If a player is deemed an “Instigator”, the rules require he be assessed a 2 minute minor penalty and a 10 minute misconduct penalty, in addition to the standard 5 minute major penalty. The rule does not require an “Instigator” be determined on every fight. In actuality, “Instigator” penalties are rarely assessed in NHL games.

87. The NHL has also implemented a series of rules that impose harsher punishments upon players who do not fight acceptably in the League’s eyes. For instance, if a player is an “Instigator” while wearing a protective face visor, Rule 46.6 states that player to be assessed “an additional unsportsmanlike conduct penalty.” This rule plainly states that if a player starts a fight, they have to be prepared to be punched in the face freely in return, and without mitigating the damage with a protective visor.

88. Rule 46.13 bars players from removing their jerseys “prior to participating in an altercation” or who wears a jersey “that has been modified.” The purpose for this rule is to address the reality that when NHL players fist fight, they grab each others’ jerseys and wrestle until a clean shot to the face can be achieved. If a player does not wear a jersey or wears a tear-away jersey, that player would have an advantage because he could not be grabbed and restrained from delivering fist blows to his opponent’s face and head. Rule 46.13’s language and inclusion within the “Fighting” rules makes clear it was implemented to address this scenario.

89. Similar to other rules barring unfair equipment advantages in fights, the NHL’s Rule 46.15 imposes an additional “match penalty” (the player is kicked out and ordered to the dressing room for the remainder of that game, but can be replaced on the ice after 5 minutes) upon any player who puts tape or other material on his hands and

then cuts an opponent during an altercation. This rule also imposes a Match Penalty upon any player who sucker punches an acceptable player. Here again, the NHL states its endorsement of fighting if done within what it considers to be acceptable bounds.

90. The NHL also has implemented Rule 46.12 – Instigator in Final Five Minutes of Regulation Time (or Anytime in Overtime). This rule imposes an additional game misconduct penalty to anyone deemed to be “the instigator of an altercation in the final five (5) minutes of regulation time or at any time in overtime[.]” This rule was implemented to stop teams from sending “goons” or “enforcers” onto the ice to start fights after they had already determined the game was lost or to otherwise affect the outcome of the game. Here again, the NHL expressly states its belief that fist fighting is a proper part of the game if done within what it considers to be acceptable bounds.

91. In Rule 46.16, the NHL has imposed a game misconduct penalty “at the discretion of the referee” upon any player who joins a fight between two players that is already in progress. With this rule, the NHL makes clear its belief that fist fighting is acceptable if kept between two combatants.

92. In one of its more blatant statements in support of fighting on the ice, the NHL has created Rule 46.9, titled “Fighting Other Than During the Periods of the Game.” With this rule, the NHL imposes a game misconduct, monetary fines, and other possible “supplementary discipline.” This rule makes clear that the NHL accepts fighting during a game and requires harsher punishment for any fist fighting between players that does *not* occur during a game. In other words, the NHL treats players more leniently for fighting *during* a game than if they were to start a fight in the corridor, in the parking lot,

or on the ice after the end of the game (perhaps out of frustration at having lost the game). This rule expressly states the NHL's position that fist fighting is a normal, acceptable part of the game of NHL hockey.

93. The NHL's Rule 46 contains several other rules that set the NHL's view of acceptable boundaries for fist fighting on the ice. Nowhere does the NHL make any attempt to bar fighting altogether. The end result of allowing fist fighting between grown professional athletes is the plain statement that suffering severe blows to the face and head are not serious injuries. Players, coaches, and fans receive the NHL's message that if enduring a punch to the face by a physically imposing professional athlete is routine acceptable, then *any* blow to the head must be viewed similarly. Any player who hits his head on the cross bar, takes a shoulder to the head, or whose head is driven into the boards would be viewed as cowardly or weak for raising the issue of a head injury while his teammate is at the same time receiving multiple punches to the head within the rules of the game.

94. Other sports do not condone fist fighting as the NHL does, and have essentially eliminated fighting from their games.

95. In college hockey, a player caught fighting is thrown out of the game and the next game. The player's team is assessed with a five minute major penalty. These punishments have essentially eliminated fighting from college hockey.

The National Basketball Association ("NBA") imposes severe penalties upon players who fist fight. Any player who engages in fist fighting at any point in a game is "ejected

immediately” and is subject to a fine and/or suspension by the Commissioner. The NBA further states in its rulebook’s “Comments on the Rules” section:

Violent acts of any nature on the court will not be tolerated. Players involved in altercations will be ejected, fined, and/or suspended.

There is absolutely no justification for fighting in an NBA game. The fact that you may feel provoked by another player is not an acceptable excuse. If a player takes it upon himself to retaliate, he can expect to be subject to appropriate penalties.

These rules have essentially eliminated fist fighting from the NBA.

96. The National Football League (“NFL”) prohibits all players from striking any other player with fists. Any player who flagrantly punches another player is ejected from the game and his team is assessed a 15 yard penalty. These punishments have essentially eliminated fist fighting in the NFL.

97. While it is clear that fighting can be eliminated from the sport with appropriate punishments, the NHL has refused to ban fighting. By allowing fighting, the NHL continues to perpetuate its message to players, coaches, and fans that blows to the head should not be considered serious injuries.

The NHL Minimizes the Seriousness of Head Injuries Through the Media

98. The NHL’s philosophy regarding head injuries is also exemplified by NHL Original Products—an agent and instrumentality of the NHL devoted to producing promotional films for the NHL.

99. NHL Original Products has created numerous features that focus on the hardest-hits that take place on the ice. These features advance the NHL’s culture of violence as entertainment.

100. For instance, the NHL promotes the HBO Documentary, *Broad Street Bullies*, on its Philadelphia Flyers affiliated website. The trailer for the film, viewable on flyers.nhl.com, features clip after clip of fighting and violent head shots, accompanied by voice-over testimonials extolling the virtues of winning through “intimidation” over talent. Some viewers, when clicking on the link “Watch trailer,” will first be directed toward a public service announcement featuring a man in a white coat, providing a 15-second comment regarding the dangers of head injuries.

101. A simple search of either “hits” or “fights” on www.nhlfilmsarchives.com reveals numerous highlights and compilations of the violent hits and fights that have taken place in the NHL over the years. Whether affiliated with the NHL or not, nhlfilmsarchive.com exists, and the NHL allows its intellectual property to be used and its violent footage to be featured.

102. In addition, if a person were to visit www.nhl.com during the regular season they would see enforcers and fisticuffs in the main news story rotation on a nightly basis.

103. The NHL Network produces a weekly program segment called “Top 10 Hits of the Week.” Those clips are archived for viewing on the nhl.com website. Individual teams also show in-game replays of violent hits, with the marquee “Hit of the Game” above the jumbo television screens.

104. Additionally, the NHL has sponsored video games that include fighting and vicious body checking. Versions of NHL-licensed video games have allowed gamers—primarily children—to engage in boxing-style fights among players and in some

instances, fight or check players so gruesomely that blood pours from the player's head while he lays motionless on the ice.

105. Through its savvy media outlets, the NHL is able to promote the most violent aspects of the NHL and urge players at every level of the game to disregard the results of violent head impacts. The NHL has created a culture in which the "toughest" players are glorified for their ability to dish out and endure severe violence on the ice. In fact, this culture has spawned roster positions on most NHL teams for players whose specific roles as enforcers and goons are to engage in violent and oftentimes reckless behavior on the ice. Glorifying the violent aspects of the sport has also instituted a culture in which NHL players are encouraged to play despite injury, including serious head injury.

106. Within this culture, the NHL purposefully profits from the violence they promote.

107. The NHL's clear position in allowing fist fighting and affirmatively promoting violence as a routine part of the game has perpetuated its position that blows to the head are not serious injuries. Players know that failure to play through such an injury creates the risk of losing playing time, a starting position, demotion to the minors and possibly an abrupt end to a career.

108. This attitude has existed for decades and continues to the present date, with players lauded for their body checking, fighting skills, and "toughness" for playing through concussions.

The NHL Assumed a Duty of Care Regarding Player Safety, a Duty to Disclose the True Dangers of Concussions and Subconcussive Blows to the Head

109. From its inception in 1997, the NHL Concussion Program initiated research and purportedly instituted programs to support player health and safety on and off the ice.

110. On information and belief, since its inception, the NHL received and paid for advice from medical consultants regarding health risks associated with playing hockey, including the health risks associated with concussive and sub-concussive injuries.

111. This ongoing medical advice and knowledge places the NHL in a position of superior knowledge to the players.

112. On top of being in a position of superior knowledge, the NHL had the power to set rules and determine policies in NHL games. As such, the NHL, at all relevant times, was in an influential position and had the sole ability to dictate how the game of hockey would be played and to define the risks to which players would be exposed.

113. The NHL owed a common law duty to Plaintiffs to provide accurate information about the risks associated with concussion, including the risk of playing after experiencing a concussion or sub-concussive blow to the head. This duty arose out of the NHL's voluntary decision to assume it.

114. The NHL consistently and historically assumed the duty of being the guardian of player health and safety. The NHL has admitted that it has "always" assumed the duty to manage player safety. League Deputy Commissioner Bill Daly has

publicly stated, “[The NHL is] completely satisfied with the responsible manner in which the league and the players’ association have managed player safety over time, including with respect to head injuries and concussions. . . . This is something that we have always treated as important and will continue to treat as important.”

115. The NHL has initiated the assumption of this duty by adopting rules related to injuries and head trauma in players.

116. Since the 1920s, the NHL assumed a duty to make the game safer for players by establishing rules to protect the health and safety of players. Some of the rules adopted over the decades manifested the NHL’s assumption of its duty specifically to protect players from injuries, and many relate to head injuries. These rules include:

- a. 1915 – NHL predecessor National Hockey Association made fighting a foul;
- b. 1923 – NHL made deliberately injuring or disabling an opponent a match foul, resulting in a fine and ejection;
- c. 1937 – prohibited the use of pads made of metal or any other material likely to cause injury to a player;
- d. 1950 – required that player’s elbow and shoulder pads include soft outer covering to protect players being injured from elbowing infractions;
- e. 1976 – required fight instigator to receive both a major and game misconduct penalty;
- f. 1979 – mandated helmets for all new players;
- g. 1992 – added penalties to fight instigator rule;
- h. 1992 – added penalties for checking from behind;

- i. 1992 – redefined highsticking to include any use of the stick above waist-height;
- j. 2005 – added penalties for instigating a fight in the last 5 minutes of regulation play or in overtime; and
- k. 2010 – banned blind-side and lateral hits to the head (illegal check to the head).

117. At the time the “helmet” rule was created, approximately 70% of NHL players were wearing helmets as a result of the 1968 death of Minnesota North Stars player Bill Masterson, who died of head trauma suffered during an NHL game at the Met Center in Bloomington, Minnesota. The “helmet” rule, however, grandfathered all then current players from the mandated helmet rule; the last person to play without a helmet retired in 1996.

118. Players and their families looked to the NHL for guidance on issues regarding player health and safety, including head injuries, and expected the NHL to intervene in matters of player safety, to recognize issues of player safety, and to be truthful on the issue of player safety.

119. The NHL unilaterally assumed a duty to act in the best interests of the health and safety of NHL players, to provide truthful information to NHL players regarding risks to their health, and to take all reasonable steps necessary to ensure the safety of players.

120. The NHL’s voluntary actions and authority throughout its history show that the NHL shouldered the duty to make the game of professional hockey safer for the players and to keep the players informed of safety information they needed to know.

121. For decades, the NHL voluntarily instituted programs to support player health and safety on and off the ice.

122. Once it assumed the duty of vanguarding player safety, the NHL was required to fulfill its duty non-negligently. It had the duty to communicate risks directly to players, to keep NHL players informed of neurological risks, to inform NHL players truthfully, and not to mislead NHL players about the risks of permanent neurological damage that can occur from MTBI incurred while playing hockey. The NHL assumed the duty to educate players *directly* regarding the risks associated specifically with hits to the head and their sequelae.

Despite Knowing the Dangers and Risks Associated with Repetitive Head Impacts, the NHL Failed to Act, Even After Forming a Committee to Examine the Issue

123. For decades, the NHL has been aware or should have been aware that multiple blows to the head can lead to long-term brain injury, including but not limited to memory loss, depression, dementia, and its related symptoms.

124. The NHL was aware of or should have been aware of the dangers and risks associated with multiple blows to the head from the nearly century-old data from boxing, which is particularly relevant to professional hockey given the fact the NHL has at all times permitted bare knuckled fist fighting in League games.

125. Additionally, the NHL knew or should have known of the risks of multiple blows to the head from decades-long data from football, which is particularly relevant to professional hockey given the higher speed of skating compared to running.

126. Despite this, the NHL has for decades ignored and actively concealed the risks to players of repetitive sub-concussive and concussive head impacts, which can and do result in players being knocked unconscious or remaining conscious but in a disoriented state.

127. In 1997, the NHL, including NHL Commissioner Gary Bettman, agreed to fund a committee to study the issue of head injuries in the NHL—the “Concussion Program.” This program voluntarily undertook the responsibility of studying the effects of concussions and sub-concussive injuries on NHL players.

128. Through the Concussion Program, the NHL studied and researched the post-concussion signs and symptoms experienced by professional ice-hockey players.

129. Through its voluntary creation of the Concussion Program, the NHL confirmed its longstanding assumption of its duty to use reasonable care in the: (a) study of concussions and post-concussion syndrome in NHL players; (b) study of any kind of brain trauma relevant to the sport of hockey; (c) use of information developed; and (d) publication of data and pronouncements from the Concussion Program.

The NHL Failed to Act After The Inception of Its Concussion Program.

130. After creating the Concussion Program in 1997, the NHL engaged in a course of fraudulent and negligent conduct, which included failing to make any statements of substance on the issues of concussions and post-concussion syndrome in NHL players or any kind of brain trauma relevant to the sport of hockey, all the while claiming to need more data. The NHL delayed the publication of its one report, which was finally released on May 17, 2011. The report made no mention of MTBI and

focused primarily on the rate of concussions in the NHL, the symptoms of concussions, and time loss analysis (defined as the period of competitive playing time lost by an NHL player as a result of a concussion).

131. The report generated by the Concussion Program, 14 years after its inception and 7 years after the study was complete, simply concluded that “[the Concussion Program’s] results suggest that more should be done to educate all involved with the sport about the potential adverse effects associated with continuing to play while symptomatic, failing to report symptoms to medical staff and failure to recognize or evaluate any suspected concussion.”

132. The Concussion Program’s report: (a) ignored the accepted and valid scientific research and studies regarding the connection between repetitive traumatic concussive events, sub-concussive events and/or brain injuries, and degenerative brain disease such as CTE; and (b) solidified the NHL’s silence on the issue, which implied that truthful and accepted neuroscience on the subject was inconclusive and subject to doubt.

133. Given the NHL’s superior position, and the fact that the NHL had a duty to protect its players from known safety risks, the Plaintiffs reasonably relied on the NHL’s words and conduct on the issue of concussions, including allowing bare knuckled fist fighting during routine gameplay, as an indication that head injuries were not to be considered serious injuries.

134. Although the NHL attempted to present the Concussion Program as being independent from the NHL, consisting of a combination of “independent” doctors and

researchers, in reality, the Concussion Program was comprised of persons already affiliated with the NHL.

135. To date, the Concussion Program has taken no public position on the long-term effects of concussions. The NHL continues to respond to inquiries on the subject by saying that further research is required.

136. Plaintiffs relied to their detriment on the NHL's stance on issue of head injuries, which ignores the findings of the independent scientists regarding the causal link between multiple head injuries and concussions and cognitive decline.

The NHL Promoted Authorized Game Conditions that Exacerbated the Head Injury Risks Facing Its Players

137. Beginning in 1996, the NHL changed the glass in all of its arenas from the flexible glass historically used to seamless rigid glass – a design that did not allow players to easily absorb hits as they could with more flexible glass systems.

138. The seamless glass system introduced in 1996 removed the metal dividers between the panes of glass, which allowed fans a better view of the game. However, because of the way the glass had to be supported, it lacked the give of the more traditional flexible glass systems.

139. Despite immediate complaints from players that the rigid glass was like hitting a brick wall, the NHL inexcusably dragged its feet in addressing the serious safety issue.

140. As early as 1997, NHL players began to express concerns over the rigid glass, including a number of prominent NHL players speaking out at the 1997 All-Star game.

141. For example, in 1997 former player Brendan Shanahan, and later the NHL's chief player disciplinarian, stated about the rigid glass system: "It is very dangerous. It's like running into a brick wall." That same year, numerous other NHL players, including some of the era's biggest stars, spoke out about the new rigid glass system:

- a. Owen Nolan (San Jose): "It's a lot harder. It's like hitting concrete."
- b. Darien Hatcher (Dallas): "It's hard. It doesn't move. It seems like guys will get injuries. Being hit into this is not fun."
- c. Chris Chelios (Chicago): "I'd just as soon have the [boards] that give... They are a lot safer."
- d. John LeClair (Philadelphia): "Chances are you will get an injury there more than with the other glass."
- e. Mark Recchi (Montreal): "In [places with the rigid glass], you don't want to get hit there because it hurts so much."
- f. Steve Yzerman (Detroit): "Nobody really talks about it, but in the new buildings, the boards are hard as a wall. The boards don't move now."

142. When asked to respond to the outpour of player complaints regarding the dangerous of the rigid glass system, Arthur Pincus, who at the time was NHL's vice president of public relations, responded by saying: "We have heard those feelings and we are looking at a variety of things dealing with injuries. There is only anecdotal evidence about a variety of factors and we are looking into any number of factors."

143. Following the 2000-2001 season the NHL Injury Analysis Panel identified that the use of seamless glass systems was a primary culprit in the increasing number of concussions.

144. In 2002, the NHL attempted to respond to the concerns, initially targeting December 31, 2002 as the date for teams to make the glass system more flexible. The NHL then extended the deadline until the start of the 2003-04 campaign.

145. Upon information and belief, the reason for the delay was the NHL's and the individual NHL teams' reluctance to pay the changeover fee, which was reportedly around \$200,000.

146. In 2002, Mike Modano, who at the time was a current NHL player with the Dallas Stars, suffered a concussion when he was hit from behind into the seamless rigid glass. In reaction to his injury, Modano stated: "The glass is a real issue. What's the cost? It shows you how important the players are. It's just a meat market. Move them in and move them out. Get some younger guys whose brains aren't scrambled yet."

147. In 2002, responding to concerns surrounding spectator safety, the NHL mandated that all arenas raise the minimum height of the glass atop the boards to five feet – two feet higher than the previous minimum.

148. In mandating this change related to safety, NHL Commissioner Gary Bettman stated that "[i]t was not something that required a great deal of debate... I directed that it be done."

149. However, these mandates did not seek to remedy or eliminate the dangerous seamless glass systems that were still in place in numerous arenas in 2002.

150. Despite the known concussion-related issues surrounding the seamless glass systems, the NHL continued in its inaction, even in the face of other NHL mandated changes related to arena safety.

151. Finally, beginning in the 2010-2011 season, the NHL agreed to review the seamless glass systems still in place in numerous arenas.

152. Upon information and belief, during the 2010-2011 season the NHL engaged in an extensive board and glass review, which included an in-depth review of the seamless glass systems and their associated dangers.

153. In 2011, following the board and glass review, the NHL mandated that all remaining NHL arenas using seamless glass systems had to replace those glass systems with safer Plexiglas systems by the start of the 2011-2012 season.

154. Despite the players' immediate complaints, and despite the NHL acknowledging the safety-related issues surrounding the seamless glass systems as early as 1997, the NHL inexcusably failed to do anything to address the player safety related issues until 2011.

155. During that 15-year period (while the Concussion Program was operating) the NHL was reluctant to incur the cost of replacement that would have helped reduce the incidence of brain injuries suffered by its players.

156. As shown above, the quality and design of NHL arenas, an aspect of the game the NHL is involved with, has proven to have an effect on player safety.

The NHL's Actions to Protect Its Players Have Been Insufficient and Ineffective

157. In 2010, the NHL made its first significant rule change ostensibly designed to address the incidence of concussions.

158. Prior to the 2010–11 season, body checking another player with the head as the primary point of contact was legal. However, beginning with the 2010–11 season, the NHL introduced Rule 48, which made targeting an opponent's head from the blind side illegal.

159. Rule 48 was modified for the 2011–12 season to encompass all hits to the head, with a degree of discretion allowed on the part of the referees in determining whether the contacted player put himself at risk or made himself “vulnerable.”

160. Thus, despite the strengthening of Rule 48, some deliberate contact to the head is still permitted by the NHL – if the player suffering the blow to the head made himself “vulnerable.”

161. According to a July 2013 published study led by Dr. Michael Cusimano, a neurosurgeon at Toronto's St. Michael's Hospital, the implementation of Rule 48 resulted in no significant decrease in concussions in the NHL.

162. Cusimano and his colleagues surveyed NHL games from three seasons — one before Rule 48 and two that came after — to measure the rule's effect. The researchers counted the number of concussions and suspected concussions in both the NHL and the Ontario Hockey League, a junior hockey division that served as a control because it banned hits to the head in 2006. The study revealed that in the year Rule 48

went into effect (Year 2 of the study), concussions in the NHL jumped from 44 in Year 1 to 65 in Year 2. The number went up again in Year 3, to 85.

163. According to the study, the most common cause of concussions in the NHL was body checking, with many of the concussion-causing hits not directed at the head.

164. Cusimano opined that Rule 48 did not go far enough to prevent serious injury, suggesting that fighting, which was the penalty most often associated with concussions, should be banned.

165. Along with the Rule 48 modification, the NHL introduced a modified Rule 41 in 2011.

166. Rule 41 was changed to penalize players who fail to avoid or minimize contact with a defenseless opponent along the boards; however, similar to Rule 48, the referee is given discretion not to call a penalty if the contacted player put himself in a “vulnerable” position.

167. A combined reading of Rules 48 and 41 reveals that an NHL player might not be penalized for deliberately hitting a defenseless opponent in the head along the boards.

168. On March 16, 2011, the NHL changed its concussion protocols to require an “off the ice and bench” examination by a doctor, rather than a trainer.

169. Also in 2011, the NHL created a Department of Player Safety to look at rules that can better protect players. The Department focuses on safety issues related to players’ equipment and the playing environment and administers supplemental player discipline.

170. Following a number of incidents, on July 23, 2013, the NHL finally changed its concussion protocols to require that a concussed player not return to the same game in which the concussion occurred.

171. In 2013, the NHL adopted a rule requiring all NHL players to wear visors but grandfathered its veteran players.

The NHL's Delay in Taking Action Is Inexcusable and Has Caused Harm to Its Players

172. In 2008, Boston University's Dr. Ann McKee (who performed the Reg Fleming autopsy in 2010) stated that "the easiest way to decrease the incidence of CTE [in contact sport athletes] is to decrease the number of concussions." Dr. McKee further noted that "[t]here is overwhelming evidence that [CTE] is the result of repeated sublethal brain trauma."

173. The NHL knew or should have known of that information, along with the other evidence supporting it, for decades.

174. The NHL knew or should have known that for decades, legions of hockey players, including some of the stars of the game, have suffered repeated, serious blows to the head and continued playing without proper treatment.

175. The NHL knew or should have known that its players were getting bigger and stronger, meaning that their collisions were becoming fiercer and their fights fraught with greater peril.

176. The NHL knew or should have known that the change from flexible to rigid glass would have an adverse impact on its players.

177. The NHL knew or should have known that creating rules to eliminate “clutch and grab” play would speed up the game, further increasing the fierceness of on-ice collisions.

178. In spite of what the NHL knew or should have known, it failed to act in a timely manner.

179. Why the NHL (and its Concussion Program) failed to share accurate information and take appropriate actions is difficult to comprehend since the NHL has known or should have known for decades that multiple blows to the head can lead to long-term brain injury, including memory loss, depression, dementia, and other severe symptoms and illnesses. The NHL knew or should have known its players were retiring and dying due to concussions sub-concussive blows to the head. Instead, the NHL remained silent, and insistent on the need for more data, which misled players, coaches, trainers, and the public. As proof positive of its view regarding the seriousness of head injuries, the NHL to this very day has continued to allow bare knuckled fist fighting as a routine part of the game, sending the clear message to players and fans that being struck viciously and repeatedly in the face head should not be considered a serious injury.

180. For decades, the NHL has refused to address the issues of concussions and sub-concussive events and their long-term effects on its players. The NHL’s conduct is willful and wanton and exhibits a reckless disregard for the safety of its players and the public at large. At a minimum, the NHL acted with callous indifference to the duty it voluntarily assumed to the Plaintiffs and players at every level of the game.

181. As a direct result of the fraudulent concealment by the NHL, former players have for many decades been led to believe that the symptoms of memory loss, headaches, confusion, sleeplessness, depression, cognitive difficulty, and the inability to function were not caused by events occurring while they played in the NHL. And as a result of this willful and malicious conduct, these former players have been deprived of medical treatment, incurred expenses, lost employment, suffered humiliation and other damages.

182. Only in the past few years, despite decades of previous research, has the NHL reluctantly adopted ineffective rules to protect its players from unnecessary head injuries. For decades until the present, the NHL has refused to outlaw fighting despite significant medical evidence that to do so would substantially reduce the incidence of concussions in professional hockey and would send the clear message that blows to the head are serious injuries that should be avoided at all costs.

183. Notably, 64.2% of the reported, diagnosed concussions in the Cusimano report were caused by body checking. Only 28% of the reported concussions in the report resulted in a called penalty. A legal body check to another player's body can still result in the checked player's head hitting the ice, boards or glass, resulting in a concussion.

184. On August 21, 2013, 66% of the delegates at the Canadian Medical Association meeting in Calgary voted to "condemn the complacency of the NHL in regards to violence in hockey."

185. The concussive and subconcussive blows suffered by Plaintiffs and the Class in their capacity as NHL players caused twisting, shearing, and stretching of

neuronal cells, and in turn caused the release of Tau protein, which built up in the brain over time, and thus caused changes and damage within their brains on a cellular level. These present, cellular injuries have increased Plaintiffs’ risk of further neurodegenerative disorders and diseases, including but not limited to CTE, dementia, Alzheimer’s disease, and similar cognitive-impairing conditions, beyond that level of risk observed in the average person.

CLASS ACTION ALLEGATIONS

186. Plaintiffs are representative of a Class, as defined by Fed. R. Civ. P. 23, and bring this action for declaratory relief, medical monitoring, negligence, negligent misrepresentation and fraud by omission claims on behalf of themselves and a Class with respect to which the NHL has acted or refused to act on grounds that apply generally to the Class.

187. The Class is defined as:

All living NHL hockey players, their spouses and dependents, and the estates of deceased NHL players, who retired, formally or informally, from playing professional hockey with the NHL or any member club, and who are not seeking active employment as players with any NHL member club

188. Excluded from the Class are Defendant, any of its parents, subsidiaries, or affiliates, any of Defendant’s officers, directors, legal representatives, employees, co-conspirators, successors, subsidiaries, and assigns, all governmental entities, and any judge, justice, or judicial officer presiding over this matter and the members of their immediate families and judicial staff.

189. The Class is so numerous and geographically so widely dispersed that joinder of all members is impracticable. There are questions of law and fact common to the Class. Plaintiffs' claims are typical of the claims of the Class that they represent and Plaintiffs will fairly and adequately protect the interests of the proposed Class.

190. Questions of law and fact common to Class members predominate over any questions affecting only individual Class members. These include the following:

- a. Whether the Defendant's safety-related rulemaking and its statements that it has always acted to promote player safety demonstrate that the NHL assumed the common law duty of care over player safety;
- b. Whether the Defendant's superior knowledge of the dangers of concussions and premature return-to-play imposed a duty to disclose the true dangers of concussions and sub-concussive blows to the head;
- c. Whether the Defendant's assumed a special relationship with players that imposed a duty to disclose the true dangers of concussion and sub-concussive blows to the head;
- d. Whether the Defendant had a duty to exercise care in making statements regarding cognitive health so that the words the NHL used did not become misleading;
- e. Whether the Defendant's tortious conduct was negligent and caused members of the Class to be at risks of repeated traumatic brain and head impacts and the excess risk of latent neurodegenerative disorders and diseases, as well as the need for medical monitoring;
- f. Whether the Defendant created, fostered, or condoned a culture of accepting and expecting premature return-to-play after concussive or subconcussive blows;
- g. Whether the Defendant's tortious conduct was fraudulent and caused members of the Class to be at risks of repeated traumatic brain and head impacts and the excess risk of latent neurodegenerative

disorders and diseases, as well as the need for medical monitoring;
and

- h. Whether Plaintiffs and the Class are entitled to injunctive medical monitoring relief.

191. Plaintiffs' claims are typical of the claims of the respective Class members.

192. Plaintiffs will fairly and adequately protect the interests of the Class if appointed as class representatives. The interests of the named Plaintiffs and of all other members of the Class are identical and the named Plaintiffs are cognizant of their duties and responsibilities to the Class. Plaintiffs' counsel has substantial experiences in class action, athletic concussion, and personal injury litigation and counsel will adequately represent the Class' interests.

193. A class action is superior to other available methods for fairly and efficiently adjudicating the controversy.

194. Defendant has acted and refused to act on grounds that apply generally to the Class, so that final injunctive relief or corresponding declaratory relief is appropriate respecting the Class as a whole.

COUNT I **Medical Monitoring**

195. Plaintiffs reallege the foregoing paragraphs as if fully set forth herein.

196. During their NHL careers, Plaintiffs and members of the Class experienced concussion, subconcussive blows, or a combination, that caused the release of Tau protein and thus caused changes within their brains on a cellular level. These present, cellular injuries have increased their risk of CTE, and thus neurodegenerative disorders

and diseases including but not limited to dementia, Alzheimer's disease and similar cognitive-impairing conditions, to such an extent that they require medical monitoring over and above what a normal person requires.

197. CTE involves the slow build-up of Tau protein within the brain tissue and causes many of the symptoms listed above. CTE is also associated with an increased risk of suicide and progressive cognitive decline and dysfunction.

198. Repeated traumatic head impacts suffered by former NHL players have a microscopic and latent effect on the brain. These impacts twist, shear, and stretch neuronal cells such that multiple forms of damage take place, including the release of small amounts of chemicals within the brain, such as the Tau protein. Among other things, the gradual build up of Tau protein – sometimes over decades – causes CTE, which is the same phenomenon as boxer's encephalopathy (or punch drunk syndrome) studied and reported by Harrison Martland in 1928.

199. But for the repetitive head impacts to which Plaintiffs and members of the Class were exposed, the risk to Plaintiffs and members of the Class that such substances would be released into their brains would have been materially lower or zero.

200. Accordingly, the repeated traumatic head impacts suffered by NHL players exposed them to a subtle and repetitive change within the brain on the cellular level including increased levels of the Tau protein which is known to increase the risk of brain injury. As a result, published peer reviewed scientific studies have shown that playing professional head-impact sports is associated with significant risk for permanent brain injury.

201. Once there is a finding of impairment of mental functioning, the prognosis is poor; the vast majority of such patients go on to develop a serious neurological disorder within a decade.

202. The evidence that CTE is caused by repeated sublethal brain trauma is overwhelming.

203. Brain injury and brain disease in NHL retirees is a latent disease that can appear years or decades after the player experiences head trauma in his NHL career.

204. Concussions are the tip of the iceberg, and repetitive subconcussive blows to the head are the cause of significant brain disease in NHL retirees.

205. Members of the Class were exposed to a significant number of sub-concussive blows and concussions as a result of their professional hockey careers. The general public does not experience this type of brain trauma absent extraordinary circumstances.

206. Historically the NHL has treated repeated sub-concussive blows and concussions as “dings” and having one’s “bell rung,” and fraudulently concealed and negligently misrepresented facts that would assist members of the Class in being able to obtain adequate brain injury diagnosis, management, and treatment of the condition to facilitate recovery and rehabilitation.

207. The NHL has also historically allowed, and allows to this day, bare knuckled fist fighting as a routine part of the game. The NHL has thus continued, at all times and to the present, to send the tacit statement to players, coaches, and fans that blows to the head are not serious injuries. These tacit statements have contributed to the

expectation of players to play immediately after suffering a severe head injury, and before their injury is fully healed.

208. Defendant's fraudulent concealment and negligent misrepresentations as to the risks of chronic sub-concussive blows and concussions has increased the risks for members of the Class to brain injury and its sequelae, including cognitive, mental, and neurological disorders after retirement.

209. Management of concussion requires a gradual multistep process involving baseline testing, and neurocognitive examination.

210. For sports, such as hockey, in which repeated blows to the head are common, proper concussion assessment and management is paramount for preventing and mitigating long term consequences.

211. Medical monitoring for latent brain injury identifies deficits that are amenable to treatment through medical, cognitive, psychological and behavioral counseling, (for the patient and his spouse and family), as well as through pharmaceutical treatment, lifestyle modifications, and other therapeutic interventions.

212. Serial testing of cognitive functioning for early signs or symptoms of neurologic dysfunction, and serial brain imaging for signs of injury or disease, is medically necessary to assure early diagnosis and effective treatment of brain injury.

213. Medical monitoring for latent brain injury is highly specialized and different from the medical care that is normally recommended to other men of a similar age, in the absence of a history of chronic repeated sub-concussive impacts and concussions.

214. Defendant was fully aware of the danger of exposing their players to injury and further injury by allowing them to play with these injuries or to play prior to the time that such injuries could heal. Defendant failed to warn players of these medical risks, and instead attempted to conceal the harmful effects of hockey-related concussions from players. Furthermore, Defendant breached its duties of reasonable and ordinary care to the Plaintiffs and members of the Class by failing to protect their physical and mental health and failing to provide necessary and adequate treatment and safety information.

215. As a proximate result of Defendant's misconduct, Plaintiffs and members of the Class have experienced an increased risk of developing serious latent neurodegenerative disorders and diseases including but not limited to dementia, Alzheimer's disease or similar cognitive-impairing conditions.

216. Well established and specialized medical monitoring procedures exist to provide early diagnosis of brain injury that greatly enhances successful treatment, rehabilitation, and prevention or mitigation of cognitive, psychological, and behavioral deficits.

217. Such procedures include baseline exams, diagnostic exams, behavioral pharmaceutical interventions, serial brain imaging studies and neuropsychological evaluations targeted on identifying the deficits associated with chronic and repeated subconcussive blows and concussions experienced by members of the Class.

218. Medical monitoring for latent brain injury is reasonably necessary to provide for early diagnosis, leading to benefits in treatment, management, rehabilitation, and prevention or mitigation of damage. Medical monitoring will prevent or mitigate the

adverse consequences of the latent neurodegenerative disorders and diseases associated with the repeated head injuries described herein. Furthermore, such monitoring is different than the normal medical treatment prescribed for adult males.

219. Plaintiffs and members of the Class seek the creation and funding of a Court-supervised, NHL-funded medical monitoring regime, which will facilitate early diagnosis and adequate treatment in the event a neurodegenerative disorder or disease is diagnosed.

220. Plaintiffs and the members of the Class have no adequate remedy at law in that monetary damages alone cannot compensate them for the risk of long-term physical and economic losses due to concussions and sub-concussive injuries. Without a Court approved medical monitoring program as described herein, Plaintiffs and the members of the Class will continue to face an unreasonable risk of injury and disability.

221. Plaintiffs and members of the Class also seek all other available and necessary relief in connection with this claim.

COUNT II Negligence

222. Plaintiffs reallege the foregoing paragraphs as if fully set forth herein.

223. The NHL has historically and voluntarily assumed an independent tort duty of care regarding player safety. It has created and enforced rules that protect the health and safety of its players, and it has violated Section 323 of the Restatement (Second) of Torts, and the common law.

224. Throughout the history of the NHL, the League has purported to exercise its duty to protect the health and safety of its players by implementing rules, policies and regulations in a purported attempt to best protect its players. The NHL has admitted that it has “always” assumed the duty to care for player safety. League Deputy Commissioner Bill Daly has publicly stated, “[The NHL is] completely satisfied with the responsible manner in which the league and the players’ association have managed player safety over time, including with respect to head injuries and concussions. . . . This is something that we have always treated as important and will continue to treat as important.”

225. By enacting rules to protect the health and safety of its players, albeit improperly and actionably, the NHL has repeatedly confirmed its duty to take reasonable and prudent actions to protect the health and safety of its players when known and foreseeable risks exist.

226. The NHL breached its duty to its players, including Plaintiffs and members of the Class, to use ordinary care to protect the physical and mental health of players by implementing standardized post-concussion guidelines, by failing to implement mandatory rules that would prevent a player who suffered a mild traumatic brain injury from re-entering a hockey game or practice, and by continuing to allow fist fighting as a routine part of the game.

227. Throughout the many years that the NHL has repeatedly established its duty to protect the health and safety of its players when known and foreseeable risks exist, it has failed to create and implement league-wide guidelines concerning the treatment and monitoring of players who suffer a concussive brain injury during a game.

228. The NHL failed to establish adequate guidelines or policies to protect the neurological health and safety of its players.

229. The NHL's failure to fulfill its assumed duty to protect its players by failing to use reasonable care with respect to the research regarding concussions and sub-concussive blows to the head.

230. The NHL also failed to use reasonable care in responding to independent scientific studies on the risk of concussions and brain disease in sport, and in hockey in particular.

231. The NHL also failed to use reasonable care in protecting Plaintiffs and the Class from the risk of brain disease and the sequelae of concussions and sub-concussive blows to the head.

232. The NHL breached its assumed duty to protect the health and safety of its players by subjecting NHL players to an increased risk of concussive brain injury.

233. If the NHL would have taken the steps to oversee and protect its players, including Plaintiffs and the Class, by developing and implementing reasonable guidelines, policies, and procedures; and educating and training all persons involved with the NHL clubs in the recognition, prevention, and treatment of concussive brain injuries, the NHL players, such as Plaintiffs, would not have suffered from the subject condition or the effects of that condition, would have recovered more rapidly, or would not have suffered long-term neurological damage, and the serious symptoms and disorders resulting from that damage.

234. As a result of the foregoing, Plaintiffs and the Class members were damaged and therefore seek appropriate damages and any other relief authorized by law.

COUNT III
Negligent Misrepresentation

235. Plaintiffs reallege the foregoing paragraphs as if fully set forth herein.

236. The NHL knew or should have known that repetitive head impacts in the sport of hockey created a risk of harm to its players that was similar or identical to the risk or harm to boxers and football players who receive similar repetitive impacts to the head.

237. Despite its knowledge, the NHL, through the Concussion Program, prior statements, and the actions of its Commissioner and its other agents and employees, made material, negligent misrepresentations to its players and former players regarding the link between concussions and brain injury and resulting cognition-impairing conditions. The NHL failed to take reasonable care as to the truth of its statements.

238. The NHL deliberately delayed implementing changes to the game it knew could reduce players' exposure to the risk of life-altering head injuries. In fact, the NHL continues to market violent activities – fighting and vicious body checking – which are proven to increase the incidence of head trauma for its players, and which convey the false message that head injuries are not serious injuries that should prevent a player from continuing to play the game.

239. Plaintiffs and the Class justifiably relied on the NHL's negligent misrepresentations to their detriment in getting care for their injuries.

240. The Plaintiffs were damaged by the NHL's negligent misrepresentations.

241. In addition to the injuries suffered by Plaintiffs and the Class described herein, Defendant's misleading conduct caused or contributed to the personal injuries of the Plaintiffs and the Class, including neurological deficits and disorders, past and future medical expenses, past and future loss of earnings, and past and future emotional distress.

242. As a result of the injuries of Plaintiffs, they are entitled to damages and all other relief allowed by law.

COUNT IV
Fraud by Omission

243. Plaintiffs incorporate by reference all preceding paragraphs as if fully set forth herein.

244. The NHL knew that repetitive head impacts in the sport of hockey created an unreasonable risk of harm to NHL players that was similar or identical to the risk of harm to, for example, boxers and football players who receive similar repetitive impacts to the head.

245. The NHL was aware of the published medical literature dating back as early as the 1920s which linked and discussed the serious risk of neurocognitive brain injuries associated with repetitive traumatic impacts to the head similar to those commonly suffered by NHL players.

246. The NHL had a duty to speak the full truth regarding the health risks caused by concussion and sub-concussive blows to the head. This duty arose because: (1) the NHL had superior knowledge of medical information that was not readily available to

players; and (2) the NHL communicated with players, providing partial or ambiguous statements regarding safety and head injuries, and the context of those communications shows that the NHL needed to complete or clarify those statements with all material information.

247. Despite having superior knowledge on this topic, the NHL withheld material information from current and former NHL players regarding the risks of head injuries in NHL games and practices, including but not limited to the risks associated with returning to physical play too soon after sustaining a concussive or sub-concussive blow to the head.

248. From as early as 1997 and through June of 2010, the NHL, through its Concussion Program, concealed and misrepresented information to the Plaintiffs and the public regarding the brain disease risks of repeated head impacts and concussions in NHL play over the time period relevant to this Complaint.

249. During that time period, although the NHL claimed to be extensively studying brain injuries suffered by NHL players, the NHL-funded Concussion Program issued no reports and no rule changes relating to concussions were made.

250. Furthermore, throughout this time, and at all times and continuing to the present, the NHL has allowed bare knuckled fist fighting as a routine part of the game, sending the clear message that blows to the face and head are not serious injuries.

251. The NHL, through its Concussion Program, exhibited silence on the issues of concussions, except for statements that more data and research were needed, which in turn misrepresented to then current and former NHL players and the general public that

there is no demonstrable link between brain injuries suffered in the NHL and later life neurocognitive issues.

252. Plaintiffs reasonably looked to the NHL for guidance on head injuries and concussions, yet the NHL failed to publish a report or take any action regarding its playing rules and medical protocols, which concealed and minimized the perceived risks of repetitive brain impacts.

253. Through the conduct described herein, the NHL concealed material facts and information and delayed revealing material medical information with the intent to deceive and defraud, which caused Plaintiff to become exposed to the harm referenced above.

254. The NHL was aware that Plaintiffs would rely, and did in fact rely, on their silence and mixed messages regarding the seriousness of head injuries, during and after their NHL careers.

255. As a direct and proximate result of Defendant's fraudulent conduct Plaintiffs were injured.

256. As a result of Plaintiffs' injuries, they are entitled to the damages and all other relief allowed by law.

PRAYER FOR RELIEF

WHEREFORE, Plaintiffs pray for judgment with respect to their Complaint as follows:

1. Certifying the Class as defined herein;
2. Appointing Plaintiffs as Class Representatives and their undersigned

counsel as Class Counsel;

3. With respect to Count I, granting medical monitoring to all members of the Class;
4. Counts II through IV, granting compensatory and all other damages allowed by law;
5. With respect to all counts, awarding Plaintiffs their costs and disbursements in this action, including reasonable attorneys' fees, to the extent permitted by law; and
6. With respect to all counts, granting Plaintiffs all other relief allowable at law or equity.

DEMAND FOR JURY TRIAL

Plaintiffs demand a trial by jury on all issues so triable.

Dated: April 15, 2014

Respectfully Submitted,

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**U.S. District Court
Southern District of New York (Foley Square)
CIVIL DOCKET FOR CASE #: 1:14-cv-02531-SAS**

LaCouture et al v. National Hockey League
Assigned to: Judge Shira A. Scheindlin
Cause: 28:1332 Diversity-Personal Injury

Date Filed: 04/09/2014
Jury Demand: Plaintiff
Nature of Suit: 360 P.I.: Other
Jurisdiction: Federal Question

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V.

Defendant

National Hockey League

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Date Filed	#	Docket Text
04/09/2014	<u>1</u>	CIVIL COVER SHEET filed. (lcu) (Entered: 04/10/2014)
04/09/2014	<u>2</u>	COMPLAINT against National Hockey League. (Filing Fee \$ 350.00, Receipt Number 465401092106) Document filed by Dan Keczmer, Jack Carlson, Brad Maxwell, Allan Rourke, Michael Peluso, Scott Bailey, Dan LaCouture, Richard Brennan, Tom Younghans.(lcu) (Entered: 04/10/2014)
04/09/2014		SUMMONS ISSUED as to National Hockey League. (lcu) (Entered: 04/10/2014)
04/09/2014		Magistrate Judge Ronald L. Ellis is so designated. (lcu) (Entered: 04/10/2014)
04/09/2014		Case Designated ECF. (lcu) (Entered: 04/10/2014)
04/09/2014	<u>3</u>	STANDING ORDER IN RE PILOT PROJECT REGARDING CASE MANAGEMENT TECHNIQUES FOR COMPLEX CIVIL CASES IN THE SOUTHERN DISTRICT OF NEW YORK (See M-10-468 Order filed November 1, 2011). This case is hereby designated for inclusion in the Pilot Project Regarding Case Management Techniques for Complex Civil Cases in the Southern District of New York (the Pilot Project), unless the judge to whom this case is assigned determines otherwise. This case is designated for inclusion in the Pilot Project because it is a class action, an MDL action, or is in one of the following Nature of Suit categories: 160, 245, 315, 355, 365, 385, 410, 830, 840, 850, 893, or 950. The presiding judge in a case that does not otherwise qualify for inclusion in the Pilot Project may nevertheless designate the case for inclusion in the Pilot Project by issuing an order directing that the case be included in the Pilot Project. The description of the Pilot Project, including procedures to be followed, is attached to this Order. (Signed by Judge Loretta A. Preska on 10/31/2011) (lcu) (Entered: 04/10/2014)
04/11/2014	<u>4</u>	AMENDED COMPLAINT amending <u>2</u> Complaint, against National Hockey League with JURY DEMAND. Document filed by Dan Keczmer, Jack Carlson, Brad Maxwell, Allan Rourke, Michael Peluso, Scott Bailey, Dan LaCouture, Richard Brennan, Tom Younghans. Related document: <u>2</u> Complaint, filed by Brad Maxwell, Dan Keczmer, Richard Brennan, Jack Carlson, Scott Bailey, Allan Rourke, Tom Younghans, Michael Peluso, Dan LaCouture.(Rudman, Samuel) (Entered: 04/11/2014)
04/11/2014	<u>5</u>	LETTER addressed to Judge Shira A. Scheindlin from Samuel H. Rudman dated April 11, 2014 re: Corrected Complaint. Document filed by Scott Bailey, Richard Brennan, Jack Carlson, Dan Keczmer, Dan LaCouture, Brad Maxwell, Michael Peluso, Allan Rourke, Tom Younghans.(Rudman, Samuel) (Entered: 04/11/2014)

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UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

_____	X	
DAN LaCOUTURE, DAN KECZMER, JACK	:	Civil Action No. 1:14-cv-02531-SAS
CARLSON, RICHARD BRENNAN, BRAD	:	
MAXWELL, MICHAEL PELUSO, TOM	:	[CORRECTED] CLASS ACTION
YOUNGHANS, ALLAN ROURKE, and	:	COMPLAINT
SCOTT BAILEY, Individually and on Behalf	:	
of All Others Similarly Situated,	:	
	:	
Plaintiffs,	:	
	:	
vs.	:	
	:	
NATIONAL HOCKEY LEAGUE,	:	
	:	
Defendant.	:	
	:	
_____	X	<u>JURY TRIAL DEMANDED</u>

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JURY TRIAL DEMAND110

The above-captioned plaintiffs (“Plaintiffs”) bring this class action complaint against the National Hockey League (the “NHL”). Plaintiffs seek damages, including punitive damages, and equitable relief on behalf of a class of all former and current NHL players as a result of the NHL’s unlawful exploitation of its players. Through the sophisticated use of extreme violence as a commodity, from which the NHL has generated billions of dollars, the NHL has subjected and continues to subject its players to the imminent risk of head trauma and, as a result, devastating and long-term negative health consequences. The NHL has failed and continues to fail to warn its players of these risks and consequences of head trauma, concealing material scientific and anecdotal information from its players. The NHL has failed to institute policies and protocols that could have and will protect its players from suffering or exacerbating head trauma sustained during practice or in games. Plaintiffs further allege as follows:

I. INTRODUCTION

1. Ice hockey is the most difficult team sport in the world.¹ The puck changes possession on average 450 times per game.² Players move at speeds of up to 30 miles an hour.³ For this, ice hockey demands levels of agility, dexterity, strength, and mental prowess like no other team sport.

¹ *Boxing’s Knockout Punch*, <http://sports.espn.go.com/espn/page2/sportSkills> (last visited Mar. 31, 2014).

² Anssi Arjala, *et al*, *An instrument for analyzing offensive game sense in ice hockey*, April, 2013, <http://www.theseus.fi/bitstream/handle/10024/59884/Arjala%20Petaja%20Final.pdf?sequence=>; *Hockey IQ Train Your Brain*, <http://www.icejets.com/page/show/175814-hockey-sense> (last visited Mar. 31, 2014).

³ Sarah Grim Hostetler, Huiyun Xiang & Gary A. Smith, *Characteristics of Ice Hockey – Related Injuries Treated in US Emergency Departments, 2001 – 2002*, *Pediatrics*, (Dec. 6, 2004), <http://pediatrics.aappublications.org/content/114/6/e661.full.html>.

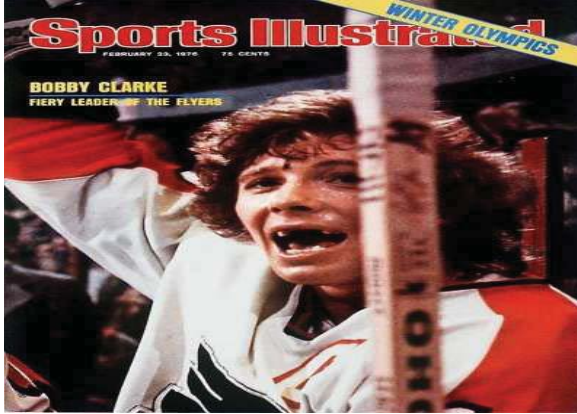
2. While fans have continually flocked to marvel at the world's best athletes competing in the sport of ice hockey, the NHL has looked at ice hockey players as a means to an end. For the NHL, it has been about exploiting the supreme athleticism of its players in order to generate revenue. And early on, the NHL saw extreme violence as a way to bring more fans to the game.

3. As opposed to other elite-level ice hockey organizations, like the European ice hockey leagues and the Olympics, the NHL fostered and promoted an extremely physical game of ice hockey. Through enclosed rink designs and lax rules for fighting, the NHL vectored a culture of extreme violence and packaged the spoils to adoring fans. Throughout the NHL's history, iconic violence has thrived, exemplified by players like the "Broad Street Bullies," and other notable "enforcers" and "goons" throughout the NHL's many different eras.





4. There are countless references in popular culture documenting, parodying and recognizing the NHL's inextricable ties to extreme violence, including poignant images such as:



4

5. Ultimately, the NHL has successfully extracted prolific sums of money exploiting its players through extreme violence for many decades. In fact, in 2012 the NHL's revenues reached an all-time high of \$3.3 billion.⁵

6. Plaintiffs bring this class action lawsuit on behalf of all current and former NHL players because the NHL's exploitation of its players has been and is inequitable. Plaintiffs and the Class (as defined below) have suffered and will continue to suffer serious health problems as a result of the NHL's sophisticated use of extreme violence to bring fans to the game in hockey arenas, on television, the radio and the Internet.

7. Specifically, despite the fact that the NHL's violent game design induces head trauma, including concussions, the NHL has failed and continues to fail to warn its players of the risks to their lives and the devastating and long-term negative health effects. In fact, the NHL affirmatively concealed specific anecdotal evidence from players and scientific evidence about

⁴ Bobby Clarke, *Fiery Leader of the Flyers*, SPORTS ILLUSTRATED (Feb. 23, 1976), <http://sportsillustrated.cnn.com/vault/cover/featured/8473/index.htm> (last visited Mar. 31, 2014); *The Best*, SPORTS ILLUSTRATED (June 10, 2013), <http://www.sicovers.com/Product.aspx?pid=2644> (last visited Mar. 31, 2014).

⁵ Michael Grange, *Bettman: NHL earned big revenues this season* (May 31, 2012), <http://www.sportsnet.ca/hockey/nhl/grange-bettman-large-revenues-nhl/> (last visited Mar. 31, 2014).

the health risks and consequences associated with playing in the NHL, including head injuries. To maintain its billions in revenue, the NHL also purposefully failed to institute policies and protocols that would protect its players from exacerbating injuries sustained during practice or in games.

8. Plaintiffs seek damages, including punitive damages, and equitable relief on behalf of the Class. Among other things, Plaintiffs ask this Court to order the NHL to institute a medical monitoring program that appropriately cares for former and current NHL players, as a result of the lifelong health problems they have suffered and will suffer as a result of the NHL's misconduct.

II. JURISDICTION AND VENUE

9. This Court has subject matter jurisdiction over this matter pursuant to 28 U.S.C. §1332(d), in that the matter in controversy exceeds the sum or value of \$5,000,000 exclusive of interest and costs, and is a class action of more than 100 potential Class members in which at least one Plaintiff is a citizen of a State different from the NHL.

10. This Court has personal jurisdiction over the NHL because the NHL has substantial and continuous business contacts with the State of New York.

11. Venue is proper in this District under 28 U.S.C. §1391. The NHL resides, is found, and has its principal place of business, has an agent, or has transacted substantial business within the Southern District of New York and the NHL is an entity with an unincorporated association subject to personal jurisdiction in this District. Further, a substantial part of the events giving rise to the claims alleged herein occurred in the Southern District of New York.

III. THE PARTIES

12. Plaintiff Dan LaCouture ("LaCouture") is a resident and citizen of the State of Massachusetts. LaCouture played in the NHL at various times from 1998 until 2009. LaCouture

was the 29th draft pick into the NHL in 1996. LaCouture played in 337 NHL games. LaCouture was involved in a total of 52 fights in NHL games. LaCouture was a forward. In one NHL game, LaCouture suffered a concussion at the hands of opposing player Robyn Regehr (“Regehr”), as depicted below:



13. Regehr currently plays in the NHL⁶, has played in over 1000 NHL games,⁷ has been involved in 41 fights in NHL games,⁸ and recently signed a two-year, \$6 million contract extension.⁹ Meanwhile, LaCouture was, has been and will continue to be damaged as a result of the NHL’s misconduct further described herein. Among other things, LaCouture suffers from headaches, irritability, sensitivity to light, change of personality, and depression.

14. Plaintiff Dan Keczmer (“Keczmer”) is a resident and citizen of the State of Tennessee. Keczmer was the 201st draft pick into the NHL in 1986. Keczmer played in 235 NHL games. Keczmer played in 12 Stanley Cup playoff games. Keczmer was a defenseman.

⁶ Players: Robyn Regehr, NHL.com, <http://www.nhl.com/ice/player.htm?id=8467344> (last visited Apr. 4, 2014).

⁷ *Id.*

⁸ Robyn Regehr, HOCKEYFIGHTS.COM, <http://www.hockeyfights.com/players/224> (last visited Apr. 4, 2014).

⁹ Arash Markazi, Robyn Regehr signs 2-year extension, ESPN LA (May 30, 2013), http://espn.go.com/los-angeles/nhl/story/_/id/9326764/robyn-regehr-signs-two-year-extension-los-angeles-kings.

Keczmer was, has been and will continue to be damaged as a result of the NHL's misconduct further described herein.

15. Plaintiff Jack Carlson ("Carlson") is a resident and citizen of the State of Minnesota. Carlson was the 117th draft pick into the NHL in 1974. Carlson played in the NHL at various times from 1978 until 1987. Carlson played in 236 NHL games. Carlson was a forward. Carlson was, has been and will continue to be damaged as a result of the NHL's misconduct further described herein.

16. Plaintiff Richard Brennan ("Brennan") is a resident and citizen of the State of Massachusetts. Brennan was the 46th draft pick into the NHL in 1991. Brennan played in the NHL from 1996 to 2003. Brennan played in 50 NHL games. Brennan was a defenseman. Brennan was, has been and will continue to be damaged as a result of the NHL's misconduct further described herein.

17. Plaintiff Brad Maxwell ("Maxwell") is a resident and citizen of the State of Minnesota. Maxwell played in the NHL at various times from 1977 until 1987. Maxwell was the 7th draft pick into the NHL in 1977. Maxwell played in 612 NHL games. Maxwell was a defenseman. Maxwell was, has been and will continue to be damaged as a result of the NHL's misconduct further described herein.

18. Plaintiff Michael Peluso ("Peluso") is a resident and citizen of the State of Minnesota. Peluso played in the NHL at various times from 1990 until 1998. Peluso was the 190th draft pick into the NHL in 1984. Peluso played in 458 NHL games. Peluso was involved in a total of 179 fights in NHL games. Peluso had 1,951 penalty minutes during his NHL career. Peluso is one of four players to incur over 400 penalty minutes in one season. Peluso was a

forward. Peluso was, has been and will continue to be damaged as a result of the NHL's misconduct further described herein.

19. Plaintiff Tom Younghans ("Younghans") is a resident and citizen of the State of Minnesota. Younghans played in the NHL at various times from 1976 until 1982. Younghans played in 429 NHL games. Younghans was involved in a total of 31 fights in NHL games. Younghans was a forward. Younghans was, has been and will continue to be damaged as a result of the NHL's misconduct further described herein.

20. Plaintiff Allan Rourke ("Rourke") is a resident and citizen of Canada. Rourke played in the NHL at various times from 2003 until 2008. Rourke was the 154th draft pick into the NHL in 1998. Rourke played in 55 NHL games. Rourke was involved in one fight in an NHL regular season game. Rourke was a defenseman. Rourke was, has been and will continue to be damaged as a result of the NHL's misconduct further described herein.

21. Plaintiff Scott Bailey ("Bailey") is a resident and citizen of Canada. Bailey played in the NHL in 1995 and 1996. Bailey was the 112th draft pick into the NHL in 1992. Bailey played in 19 NHL games. Bailey was a goalie. Bailey was, has been and will continue to be damaged as a result of the NHL's misconduct further described herein.

22. Defendant NHL, which maintains its principal place of business at 1185 Avenue of the Americas, New York, New York 10036, is an unincorporated association consisting of 30 franchised member clubs. The NHL posted \$3.23 billion in total revenue for the 2011-2012 season, the last full season before the lockout-shortened the 2012-2013 campaign.¹⁰ In 2012-

¹⁰ Christopher Botta, *NHL fleshes out three-year plan*, SPORTS BUS. JOURNAL, (Sept. 9, 2013), <http://www.sportsbusinessdaily.com/Journal/Issues/2013/09/09/Leagues-and-Governing-Bodies/NHL-reorg.aspx>.

2013, when each team played 48 regular-season games instead of the usual 82, the league has projected \$2.4 billion in total revenue.¹¹

23. The NHL is in the business of, among other things, operating the sole major professional hockey league in the United States and Canada. As such, the NHL promotes, organizes, and regulates the sport of professional hockey in the United States and Canada.

IV. SUBSTANTIVE ALLEGATIONS

A. The Origins of the NHL

24. Ice hockey's modern roots began on March 3, 1875, in Victoria Skating Rink in Montreal, Canada.¹² That is where the first, documented and organized indoor ice hockey game occurred.¹³ For centuries and perhaps millennia prior, people used various, crude devices and rules to synthesize “ball and stick” games on ice.¹⁴

25. In the years following the first game at Victoria Skating Rink, students at McGill University and players called the “Montreal Victorias” started ice hockey clubs.¹⁵ As popularity for the sport grew, the first “world championship” took place in 1883 at the Winter Carnival in Montreal, Canada.¹⁶

¹¹ *Id.*

¹² Earl Zuckerman, *McGill's contribution to the original origins of ice hockey*, McGill University (March 17, 2006), http://web.archive.org/web/20061004083915/http://www.athletics.mcgill.ca/varsity_sports_article.ch2?article_id=81.

¹³ *Id.*

¹⁴ *Id.*

¹⁵ *Id.*

¹⁶ *Id.*

26. Subsequently, in 1886, the first official hockey league, the Canadian Amateur Hockey Association, was founded in Montreal, Canada.¹⁷ The Dominion Hockey Association, as it was also known, created a hockey season for teams in pursuit of a championship.¹⁸ In 1883, the first championship cup was awarded to the championship team – this cup is now known as the Stanley Cup, awarded to the top NHL team.

27. The sport's popularity grew and, eventually the first U.S. ice hockey league was formed in New York City, in 1896. Ice hockey was also played in Europe around that time.¹⁹ In 1895, there was a game played in Buckingham Palace.²⁰ Eventually, the first European ice hockey league was formed in 1908.²¹

28. The first professional leagues were formed in the early 1900s, e.g., the Western Pennsylvania Hockey League and the International Professional Hockey League.²² In 1910, ice hockey enthusiasts formed the National Hockey Association.²³ The National Hockey

¹⁷ *Id.*

¹⁸ *Id.*

¹⁹ *Murky Beginnings The Establishment of the Oxford University Ice Hockey Club ca. 1885*, Oxford University Ice Hockey Club, <http://web.archive.org/web/20020320214131/http://www.ouihc.org/historybeg.asp> (last visited Mar. 26, 2014)

²⁰ *Id.*

²¹ *History of Ice Hockey 1908-1913 Ligue Internationale De Hockey Sur Glace*, <http://web.archive.org/web/20061017052145/http://www.iihf.com/iihf/history/1908.htm> (last visited Mar. 26, 2014).

²² *Professional Hockey Leagues Exploring the Past Hockey Leagues of North America, International Pro Hockey League (1904-1907)*, http://www.hockeyleaguehistory.com/International_Pro_Hockey_League.htm (last visited Mar. 26, 2014)

²³ *Professional Hockey Leagues Exploring the Past Hockey Leagues of North America, National Hockey Association (1909-1917)*, http://www.hockeyleaguehistory.com/National_Hockey_Association.htm (last visited Mar. 26, 2014)

Association codified a three-period game structure and a penalty mechanism for dealing with rough play.²⁴

29. In 1917, the National Hockey Association reorganized as the NHL.²⁵ The NHL operates in the United States and Canada, utilizing players from around the globe.²⁶ Correspondingly, ice hockey is played at the Olympics using NHL and other professional players.²⁷ Similarly, professional ice hockey is played in leagues throughout most European countries, including, but not limited to, Austria, the Czech Republic, Finland, Germany, Norway, Russia, Slovakia, Sweden and Switzerland.²⁸

B. The NHL Quickly Establishes Its Roots in Extreme Violence

30. The NHL has long been known for its violence. Some early violence was attributable to the inherent nature of the game, which developments in player equipment have sought to nullify. For instance, NHL goalie Jacques Plante was the first to introduce a goaltender mask for everyday use in a regular season game.²⁹ Before that, NHL goalies were notoriously

²⁴ *Id.*

²⁵ <http://www.nhl.com/history/112617nhl.html> (last visited Mar. 26, 2014)

²⁶ <http://www.nhl.com/ice/teams.htm?navid=nav-tms-main> (last visited Mar. 26, 2014); <http://www.nhl.com/ice/playersearch.htm?navid=nav-ply-plyrs#> (last visited Mar. 26, 2014).

²⁷ <http://www.sochi2014.com/en/athletes-search?sport=IH&country=all&q=> (last visited, Mar. 26, 2014).

²⁸ *Id.*

²⁹ *This Day In History: Jacques Plante is the first goalie to wear a facemask* HISTORY.COM (Nov. 1, 1959), <http://www.history.com/this-day-in-history/jacques-plante-is-the-first-goalie-to-wear-a-facemask> (last visited Mar. 27, 2014).

afflicted by facial injuries from pucks. Likewise, NHL goalie Emile Francis introduced a catching mitt based on the design of a first baseman's glove to protect the hands of goalies.³⁰

31. Nevertheless, the NHL has fostered violent behavior not inherent to the sport since its inception. There are some enigmatic examples of the type of violent behavior in the early years of the NHL that set the foundation for the eventual cultural association between violence and hockey, which association, in turn, has become the NHL's principle revenue generator.

1. The Coutu Incidents

32. Wilfrid Arthur Coutu ("Coutu") was a notorious NHL player. Coutu played in the NHL from its inception in 1917 until 1927.³¹ Coutu, while playing for the Boston Bruins, fought with his teammate Eddie Shore ("Shore") during a practice.³² In the melee, Coutu severed Shore's ear, which was later sewn back on.³³ The NHL imposed only a \$50 fine on Coutu for this incident, which was eventually refunded.³⁴

33. Two years later, in 1927, spurred on by his coach, Coutu instigated a bench-clearing brawl during a game in the NHL's championship series.³⁵ Coutu tackled one referee

³⁰ *Pre-Game Skate: Origins & Evolution, Evolution of Goaltender's Equipment*, CHIN, <http://www.museevirtuel-virtualmuseum.ca/edu/ViewLoitLo.do%3Bjsessionid=4478F274143CCE61A0986B06CBCE6469?method=preview&lang=EN&id=5964> (last visited Mar. 27, 2014).

³¹ Dave Stubbs, *Coutu's expulsion longest suspension in NHL history*, THE STAR PHOENIX, Dec. 26, 2007.

³² *Id.*

³³ *Id.*

³⁴ *Id.*

³⁵ *Id.*

and challenged another.³⁶ The NHL banned Coutu after the incident and fined him \$100, only to later lift the ban in 1932.³⁷

2. The Cleghorn Incidents

34. Sprague Cleghorn (“Cleghorn”) was a notoriously violent player. Cleghorn played on various teams in the NHL from 1918 until 1928, including alongside Coutu for several years.³⁸

35. In 1922, Cleghorn ignited a brawl during which he injured three different players on the opposing Ottawa Senators’ team.³⁹ The managers of the Ottawa Senators unsuccessfully attempted to expel Cleghorn from the NHL.⁴⁰ The referee of the game during which the incident occurred called Cleghorn a “disgrace to the game.”⁴¹

36. Soon after, Cleghorn again attacked Lionel Hitchman (“Hitchman”) of the Ottawa Senators during a game.⁴² Cleghorn used his hockey stick to strike Hitchman over the head. Despite the fact that Cleghorn was criminally charged and found guilty of assault for his misconduct during the game, Cleghorn was fined only \$50 by the NHL.⁴³

³⁶ *Id.*

³⁷ *Id.*

³⁸ <http://www.legendsofhockey.net/LegendsOfHockey/jsp/LegendsMember.jsp?type=Player&mem=P195803&list=ByName>, www.HHOF.com (last visited Mar. 27, 2014).

³⁹ *Want Cleghorn Out of Hockey*, QUEBEC TELEGRAPH (Quebec City, Quebec), Feb. 3, 1922, at 2.

⁴⁰ *Id.*

⁴¹ WIKIPEDIA, http://en.wikipedia.org/wiki/Sprague_Cleghorn (last visited Mar. 27, 2014).

⁴² *Violence in ice hockey*, http://www.articleworld.org/index.php/Violence_in_ice_hockey, ARTICLEWORLD.ORG (last visited Mar. 27, 2014).

⁴³ *Id.*

37. The NHL inducted Cleghorn into its “Hall of Fame” in 1958.⁴⁴

3. The Richard Incident

38. Maurice Richard (“Richard”) played in the NHL for the Montreal Canadians from 1942 until 1960.⁴⁵ Richard was nicknamed the “Rocket” for his speed and scoring acumen.⁴⁶ Richard was the first NHL player to achieve the feat of 50 goals in 50 games, and tallied 544 goals in his career.⁴⁷

39. In a game against the Boston Bruins in 1955, Richard was hit in the head with a stick by Bruins player Hal Laycoe, which required Richard to receive stitches to stop the bleeding.⁴⁸ In retaliation, Richard struck Laycoe on the shoulder with his stick, punched another Bruins player in the face, and punched a referee.⁴⁹ The Boston police attempted to arrest Richard in the locker room but were kept away by Richard’s teammates.⁵⁰

40. The NHL subsequently held a hearing at which it determined it would suspend Richard for the remainder of the season,⁵¹ also due, in part, to the fact that Richard had previously slapped a referee in the face during another game.⁵²

⁴⁴ <http://www.legendsofhockey.net/LegendsOfHockey/jsp/LegendsMember.jsp?type=Player&mem=P195803&list=ByName>, www.HHOF.com (last visited Mar. 27, 2014).

⁴⁵ <http://www.mauricerichard.org/Biography-english.html> (last visited Mar. 27, 2014).

⁴⁶ *Id.*

⁴⁷ *Id.*

⁴⁸ *Rocket Richard Riot Still Stirs Controversy, Emotion*, THE WINDSOR STAR, Mar. 18, 1980.

⁴⁹ *Id.*; see also Richard Goldstein, *Hal Laycoe, 75, N.H.L. Players Whose High Stick Led to Riot*, N.Y. TIMES, May 2, 1998.

⁵⁰ *Great Moments In Hockey History: Rocket Richard Riot*, Greatest Hockey Legends.com (Mar. 17, 2013), <http://www.greatesthockeylegends.com/2013/03/rocket-richard-riot.html>.

⁵¹ Richard Goldstein, *Hal Laycoe, 75, N.H.L. Players Whose High Stick Led to Riot*, N.Y. TIMES, May 2, 1998.

41. In response, then NHL president Clarence Campbell received pleas for revocation of Richard's suspension, as well as death threats, from Montreal Canadian's fans.⁵³ During the first game following the suspension, thousands of Montreal Canadian's fans rioted at the ice hockey arena before, during and after a game.⁵⁴ "The Richard Riot" caused an estimated \$100,000 in property damage, 37 injuries and 100 arrests.⁵⁵

42. The NHL quickly inducted Richard into its "Hall of Fame" in 1961, the year after Richard retired, waiving the customary three-year waiting period.⁵⁶

C. The NHL Fosters a Culture of "Enforcers" and "Goons"

43. As the NHL continued to thrive in subsequent eras as a result of players like Coutu, Cleghorn, and Richard, so did routine violence, including through players known as "enforcers" or "goons." An "enforcer" or "goon" is a player known for his fighting skills to protect teammates and respond aggressively to physical or foul play.⁵⁷

44. For instance, Dave Schultz ("Schultz") was known in the NHL as "The Hammer."⁵⁸ Schultz played in the NHL from 1971 until 1980 on several different teams.⁵⁹

⁵² WIKIPEDIA, http://en.wikipedia.org/wiki/Richard_Riot (last visited Mar. 27, 2014).

⁵³ See www.hhof.com, <http://www.legendsofhockey.net/LegendsOfHockey/jsp/LegendsMember.jsp?mem=p196108&type=Player&page=bio&list=ByName> (last visited Mar. 27, 2014).

⁵⁴ *The Richard Riot: An Introduction*, <http://www.mauricerichard.org/Videos/TheRichardRiot/Riot-Intro.html> (last visited Mar. 27, 2014).

⁵⁵ *Id.*

⁵⁶ <http://www.legendsofhockey.net/LegendsOfHockey/jsp/LegendsMember.jsp?mem=p196108&type=Player&page=bio&list=ByName> (last visited Mar. 27, 2014)).

⁵⁷ Alex Capstick, *Are ice hockey "enforcers" the toughest guys in sport?*, BBC NEWS MAGAZINE, Jan. 18, 2012, <http://www.bbc.co.uk/news/magazine-16383129>.

⁵⁸ DAVE SCHULTZ, *THE HAMMER: CONFESSIONS OF A HOCKEY ENFORCER* (Summit Books 1st ed. 1981).

Schultz was a member of the NHL's Philadelphia Flyers, who were known as the "Broad Street Bullies," and who were renowned for their punishing physical play.⁶⁰ Schultz has the record for the most penalty minutes in a single season, at 472.⁶¹ Schultz was in a total of 158 fights in NHL games.⁶² Schultz is famously quoted, after winning the Stanley Cup in 1974, as stating:

"I'm more valuable in the penalty box than I am sitting on the bench . . . I'm not gonna stop fighting even if I could. It's one of my assets and if it helps win games I'm going to keep fighting."⁶³

45. On April 6, 2014, there was a bench-clearing brawl during a charity ice hockey game between the New York City Police Department ("NYPD") and the New York City Fire Department at the NHL's New York Islanders rink, as depicted below:

⁵⁹ Players: Dave Schultz, NHL.com, <http://www.nhl.com/ice/player.htm?id=8451245> (last visited Mar. 28, 2014).

⁶⁰ See, e.g., James Christie, *Former Bully Repents Past*, THE GLOBE AND MAIL (CANADA), Nov. 12, 1981 (stating that Schultz's "chief business was the restyling of faces that got in the way of Philadelphia Flyers" and "if anyone is in a position to understand what violence can do to individuals and to hockey, it is Schultz").

⁶¹ *Most Penalty Minutes in an NHL Season*, Guinness Book of World Records, <http://www.guinnessworldrecords.com/records-4000/most-penalty-minutes-in-an-nhl-season/> (last visited Mar. 28, 2014).

⁶² Dave Schultz, HOCKEYFIGHTS.COM, <http://www.hockeyfights.com/players/1054> (last visited Mar. 31, 2014).

⁶³ WILLIAM R. MCMURTRY, INVESTIGATION AND INQUIRY INTO VIOLENCE IN AMATEUR HOCKEY, Chap. 35 (AUG. 21, 1974), <https://archive.org/details/investigatamock00onta>.



46. One of the NYPD spectators invoked Schultz's legacy in commenting on the fight to the *New York Post*:

"It was reminiscent of the old-time Rangers-Flyers games in the mid-'70s," quipped an NYPD cop who was at the game at the Nassau Coliseum. "I was waiting for [legendary Philadelphia Flyers enforcer] Dave Schultz to come out on the ice."⁶⁵

47. Randy Holt ("Holt") was a notable enforcer.⁶⁶ Holt played in the NHL from 1974 until 1984.⁶⁷ Holt amassed 67 penalty minutes in one single game playing for the Los Angeles Kings against the Philadelphia Flyers.⁶⁸ Holt was in a total of 72 fights in NHL games.⁶⁹

⁶⁴ Bench Clearing brawl at FDNY NYPD Hockey Game, Youtube.com, April 6, 2014, <http://www.youtube.com/watch?v=tzYojW73V50> (last visited Apr. 8, 2014).

⁶⁵ Larry Celona and David K. Li, *NYC Cops, firemen get in massive brawl at charity hockey game*, N.Y. Post, April 6, 2014, <http://nypost.com/2014/04/06/nypd-fdny-get-into-massive-brawl-at-charity-hockey-game/> (last visited Apr. 8, 2014).

⁶⁶ FLOYD CONNER, *HOCKEY'S MOST WANTED: THE TOP 10 BOOK OF WICKED SLAPSHOTS, BRUISING GOONS AND ICE ODDITIES* 218 (Potomac Books, Inc. 2002).

⁶⁷ Players: Dave Schultz, *supra*.

⁶⁸ CONNER, *supra* 218.

⁶⁹ Randy Holt, HOCKEYFIGHTS.COM, <http://www.hockeyfights.com/players/10807> (last visited Mar. 31, 2014).

48. Like Cleghorn, Dino Ciccarelli (“Ciccarelli”), an NHL player with the Minnesota North Stars, was criminally prosecuted for his on-ice misconduct in 1988.⁷⁰ During a game against the Toronto Maple Leafs, Ciccarelli attacked a Maple Leafs player with his stick.⁷¹ Ciccarelli was subsequently sentenced to one day in jail and \$1,000 in fines.⁷² Ciccarelli was in a total of 21 fights in NHL games.⁷³ In 2010, the NHL inducted Ciccarelli into its “Hall of Fame,” just as it has done with violent players Cleghorn and Richard.

49. Like Cleghorn and Ciccarelli, NHL player Marty McSorley (“McSorley”) was also criminally prosecuted for his misconduct on the ice. In 2000, McSorley attacked an opposing NHL player with his stick, with three seconds left in the game.⁷⁴ The player fell on his head, lost consciousness, and suffered a concussion.⁷⁵ Canadian authorities charged and convicted McSorley of assault with a weapon.⁷⁶ McSorley was sentenced to 18 months’ probation.⁷⁷ The NHL only suspended McSorley for a year.⁷⁸ The judge presiding over the McSorley case stated, “Perhaps part of the message may be that the NHL, in particular, has to

⁷⁰ *Very Major Penalty*, CNN SPORTS ILLUSTRATED (Oct. 7, 2005), http://sportsillustrated.cnn.com/hockey/nhl/news/2000/10/06/mcsorley_assault_ap/.

⁷¹ *Id.*

⁷² *Id.*

⁷³ Dino Ciccarelli, HOCKEYFIGHTS.COM, <http://www.hockeyfights.com/players/1041> (last visited Mar. 31, 2014).

⁷⁴ *NHL Player Found Guilty of Assault*, ABC NEWS (Oct. 6, 2000), <http://abcnews.go.com/Sports/story?id=100318>.

⁷⁵ *Very Major Penalty*, *supra*.

⁷⁶ *Id.*

⁷⁷ *Id.*

⁷⁸ *McSorley Suspended From NHL Until Feb.*, ABC NEWS (Nov. 7, 2001), <http://abcnews.go.com/Sports/story?id=100192&page=1#.T81KPMWuXh4>.

do some internal soul-searching and ask itself: How much are we selling hockey and how much are we selling violence?”⁷⁹ McSorley was in a total of 225 fights in NHL games.⁸⁰

50. In 1981, there was a violent fight between NHL players Christopher Nilan (“Nilan”) and Paul Baxter (“Baxter”), where Nilan threw a puck at Baxter’s head after it was over.⁸¹ In commenting on the altercation, a media outlet quoted Nilan’s teammate as noting, “Already this year, we’ve had three eye injuries on the team due to high sticks.”⁸² Nilan was in a total of 251 fights in NHL games.⁸³ Baxter was in a total of 69 fights in NHL games.⁸⁴

51. The media coverage of violence in the NHL is legion, including throughout the modern hockey era.⁸⁵

⁷⁹ Rod Mickleburgh, *Judge’s Warning Rejected by NHL; McSorley Convicted, Hockey Authorities Told to Clean Up Act*, THE GLOBE AND MAIL (CANADA), Oct 7, 2000, at A1.

⁸⁰ Marty McSorley, HOCKEYFIGHTS.COM, <http://www.hockeyfights.com/players/568> (last visited Mar. 31, 2014).

⁸¹ James Christie, *Puck Throwing Points to Need for Stiffer NHL Action*, THE GLOBE AND MAIL (CANADA), Nov. 23, 1981.

⁸² *Id.*

⁸³ Christopher Nilan, HOCKEYFIGHTS.COM, <http://www.hockeyfights.com/players/4163>(last visited Mar. 31, 2014).

⁸⁴ Paul Baxter, HOCKEYFIGHTS.COM, <http://www.hockeyfights.com/players/10057> (last visited Mar. 31, 2014).

⁸⁵ See, e.g., Jeff Jacobs, *Violence in NHL Is Getting Worse Despite Penalties*, THE MIAMI HERALD, Nov. 2, 1987 (discussing the continuing violence in the NHL and pointing out recent fights); *Nolan thought Simon would only miss 12 games*, ESPN (Mar. 12, 2007), <http://sports.espn.go.com/nhl/news/story?id=2796469>; William Houston, *Wings Want NHL to Act on Higgins Incident*, THE GLOBE AND MAIL (CANADA), Apr. 1, 1983; James Christie, *Sports Violence: Controversial Can of Worms*, THE GLOBE AND MAIL (CANADA), Apr. 28, 1984; Allen Abel, *Statistics Prove Hockey is Lunacy*, THE GLOBE AND MAIL (CANADA), Nov. 14, 1977.

D. The NHL Is Now Inextricably Linked to Extreme Violence

52. Not surprisingly, popular culture has reflected the fused association between extreme violence and the NHL in many different media.

1. Documentary Depictions of Extreme Violence

53. In 2010, filmmaker George Roy of HBO Sports made a documentary film, *Broad Street Bullies*, which was about the Philadelphia Flyers team during the Schultz era.⁸⁶ The film was narrated by Tony Award-winning actor Liev Schreiber and begins with the statements:

In any great drama, you need heroes and villains. The Flyers are both. . . . This is going to be a wild show. . . . Blood being spilt. Actual blood. . . . It's a badge of honor to be a goon. . . . We loved to be hated. . . . We don't have to apologize to nobody.⁸⁷

54. Simultaneously, the film flashes images of Philadelphia Flyers fighting, as well as these images:



⁸⁶ BROAD STREET BULLIES (HBO 2010).

⁸⁷ *Id.*



55. In 2011, Academy Award-winning filmmaker Alex Gibney released a documentary about Nilan's career, *The Last Gladiators*.⁸⁸ While in the NHL, Nilan was known as "Knuckles,"⁸⁹ as Nilan was in 251 fights in NHL games. Nilan played in the NHL from 1979 until 1992.⁹⁰ Nilan was a Stanley Cup champion in 1986⁹¹ and an NHL all-star in 1991.⁹² *The Last Gladiators* portrays Nilan's life, including his violent career in the NHL, and includes images like:

⁸⁸ THE LAST GLADIATORS (Jigsaw Prods. 2011).

⁸⁹ *Id.*

⁹⁰ Players: Chris Nilan, NHL.com, <http://www.nhl.com/ice/player.htm?id=8449883#&navid=nhl-search> (last visited Mar. 28, 2014).

⁹¹ *Id.*

⁹² *Id.*



56. In the film, Nilan is quoted as lamenting about his exit from the NHL, “I was sad when it was over I was trying to get through a day without hurting any other person.”⁹³

2. Abstract and Other Media Depictions of Extreme Violence

57. In 1988, *The Wall Street Journal* ran an article recounting lines from the play, *Welcome to the NHL*, which was presented by the Alberta Theater Project as part of the festivities for the 1988 Winter Olympic games in Calgary.⁹⁴ In one of the lines, the protagonist

⁹³ THE LAST GLADIATORS (Jigsaw Prods. 2011) – Official Trailer, youtube.com, <http://www.youtube.com/watch?v=ww9UAmAORJA>.

⁹⁴ Frederick C. Klein, *Winter Olympics: Going for the Goldeneye, Finding Snow Art*, WALL S. J., Feb. 23, 1988.

who is sent off to learn hockey states, “I am against violence! It is against my principles!”⁹⁵ The coach responds, “This isn’t violence. This is sport.”⁹⁶

58. There is a glut of hockey dramas and comedies that use violence as their central thesis for the respective protagonists overcoming adversity during the game.⁹⁷ Notably, in *Mystery, Alaska*,⁹⁸ Academy Award-winning actor Russell Crowe leads a makeshift team of hockey players from an obscure Alaska town in an unlikely and violent hockey game against the NHL’s New York Rangers, as depicted by one screenshot from the movie trailer:



59. In *Mystery, Alaska*, Russell Crowe was the town sheriff and the team captain.⁹⁹ The very next year, the film *Gladiator* was released also starring Russell Crowe, which won the

⁹⁵ *Id.*

⁹⁶ *Id.*

⁹⁷ Compare, e.g., *GOON* (Magnet 2011); *THE ROCKET* (Cinémainaire, Inc. 2005); *YOUNGBLOOD* (United Artists 1986); *SLAP SHOT* (Kings Road Entm’t 1977).

⁹⁸ *MYSTERY, ALASKA* (Hollywood Pictures 1999).

⁹⁹ *Id.*

Best Picture Academy Award.¹⁰⁰ Russell Crowe won the Best Actor Academy Award for his role in *Gladiator* as a bloodied Roman war veteran turned slave, General Maximus Decimus Meridius.¹⁰¹ In *Gladiator*'s opening scenes, Russell Crowe leads a Roman platoon in a battle against Nordic warriors. The Nordic warriors open their attack by sending Crowe a Roman soldier's decapitated body on a horse, while holding up the soldier's head. Ice hockey has some of its roots in Nordic tradition.¹⁰²

60. In similar fashion, media has created memes associating violence with the NHL by reiterating infamous statements:

“He scored hockey by the number of fights. If you lost seven to one, but won five fights, he figured you won the game.”¹⁰³

“There are rough players and there are dirty players. I'm rough and dirty.”¹⁰⁴

“Here's Wellwood,' '[s]even-and-oh in the faceoffs, plus-two, two assists, played 20 minutes, drew eight minutes on the power play, lost a tooth and a pint of blood. What a guy.’”¹⁰⁵

“If you can't beat 'em in the alley, you can't beat 'em on the ice.”¹⁰⁶

“A goal, an assist and a fight.”¹⁰⁷

¹⁰⁰ GLADIATOR (Dreamworks SKG 2000).

¹⁰¹ *Id.*

¹⁰² *Id.*

¹⁰³ Clint Haggart, *Battalion looking for win in spitfire rematch*, NORTH BAY NIPISSING NEWS (Feb. 13, 2014), <http://www.northbaynipissing.com/sports-story/4367560-battalion-looking-for-win-in-spitfire-rematch/>.

¹⁰⁴ Laurel Zeisler, *Historical Dictionary of Ice Hockey*, 211 (2013).

¹⁰⁵ Mike Halford, *et al*, *Of Supple Skin, Mangled Names and Playoff Beards*, THE PROVINCE (May 1, 2009), <http://www2.canada.com/theprovince/news/sports/story.html?id=f08aded2-835d-48fe-b926-40c346ffbeeb>.

¹⁰⁶ Kelly McParland, *The lines of Conn Smythe: From the Battlefield to Maple Leaf Gardens: A Hockey Icon's Story*, Ch. 3, p. 2 (2011).

61. In the classic horror film, *Friday the 13th Part 3*, the evil villain dons an ice hockey goalie's mask.¹⁰⁸

62. *Sports Illustrated* magazine alone portrayed and documented the NHL's extreme violence several times, including two pictures of Bobby Clarke of the Philadelphia Flyers playing with missing teeth, and players physically hitting each other with their sticks and bodies while playing the game.¹⁰⁹

E. The NHL Uses Its Extreme Violence as a Commodity to Generate Billions of Dollars

63. The NHL has expressly acknowledged that it has capitalized on violence. In 1988, *The Miami Herald* quoted then NHL President John Zeigler as stating, "Violence will always be with us in hockey."¹¹⁰ Similarly, in an interview the following year with *The Wall Street Journal*, Zeigler was quoted as stating as follows in response to the suggestion that the NHL end violence:

"If you did that, you wouldn't be commissioner for long," said he. "The view of the 21 people who own the teams, and employ me, is that fighting is an acceptable outlet for the emotions that build up during play. Until they agree otherwise, it's

¹⁰⁷ Trent Reinsmith, *50 Greatest Hockey Quotes of All Time*, BLEACHER REPORT (Jan. 25, 2011), <http://bleacherreport.com/articles/563354-50-greatest-hockey-quotes-of-all-time#articles/563354-50-greatest-hockey-quotes-of-all-time/page/45>.

¹⁰⁸ See Richard Brooker, *first to don "Friday the 13th" hockey mask, dies*, MSN News (Apr. 9, 2013), <http://news.msn.com/obits/richard-brooker-first-to-don-friday-the-13th-hockey-mask-dies>.

¹⁰⁹ Bobby Clarke, *Fiery Leader of the Flyers* SPORTS ILLUSTRATED (Feb. 23, 1976), <http://sportsillustrated.cnn.com/vault/cover/featured/8473/index.htm> (last visited Mar. 28, 2014); *Mayhem on the Ice* SPORTS ILLUSTRATED (May 6, 1974), <http://www.sicovers.com/Product.aspx?pid=1704> (last visited Mar. 28, 2014); *The Best* SPORTS ILLUSTRATED (June 10, 2013), <http://www.sicovers.com/Product.aspx?pid=2644> (last visited Mar. 28, 2014).

¹¹⁰ Jerry Crowe, *NHL President Ziegler Denies Problems of League*, THE MIAMI HERALD, May 16, 1988.

here to stay.” He added: “The main question about fighting is, ‘Does the customer accept it?’ The answer, at present, seems to be yes.”¹¹¹

64. In a similar vein, in a *Sports Illustrated* article entitled *Hockey? Call It Sockey: Hockey’s designated hit men are making a travesty of the game. It’s high time to get rid of all the goons*, the author noted how profitable violence was for the NHL:

[M]any NHL executives are scared to death that if fighting were banned from hockey, thousands of season-ticket holders who get their jollies from watching grown men in short pants in a quasi-legal, bare-knuckle battle would bail out on the spot. Violence sells. That’s not news, so does sex. If that’s what’s important, why doesn’t the league hire a bunch of bikini-clad bimbos to skate around behind the Zambonis holding up placards showing each team’s penalty totals?¹¹²

65. Former NHL President Clarence Campbell has expressly acknowledged as follows regarding the NHL:

[I]t is the business of conducting the sport in a manner that will induce or be conducive to the support of it at the box office . . . Show business, we are in the entertainment business and that can never be ignored. We must put on a spectacle that will attract people.¹¹³

66. A famous critic of the violence in the NHL, William McMurtry (“McMurtry”), a Canadian lawyer and brother of Chief Justice of Ontario R. Roy McMurtry,¹¹⁴ has reported:

In talking to numerous players in the NHL and WHA, they all feel that most advertising and selling of the game is over-emphasizing the fighting and brawling at the expense of educating the crowds about the skill and finesse. This past season the advertising for the NBC Game of the Week, showed a film clip of a

¹¹¹ Frederick Klein, *On Sports: Less Brawl, More Teams*, WALL S. J., Nov. 17, 1989.

¹¹² E.M Swift, *Hockey? Call It Sockey: Hockey’s designated hit men are making a travesty of the game. It’s high time to get rid of all the goons*, SPORTS ILLUSTRATED, Feb. 17, 1986.

¹¹³ McMurtry, *supra*, at 18.

¹¹⁴ Helen Burnett, *McMurty Known for Taking on Impossible Cases*, LAW TIMES (Feb. 26, 2007), <http://www.lawtimesnews.com/200702261400/headline-news/mcmurty-known-for-taking-on-impossible-cases>.

hockey fight. Can you conceive of any other sport promoting itself in this fashion?¹¹⁵

67. McMurtry and Campbell engaged in heated dialogue, during a public investigation into violence in the NHL.¹¹⁶ In one exchange, Campbell acknowledged the type of pressure facing players to fight:

McMurtry: And right now it is extremely difficult for the player who is being provoked and being pushed to turn his back and appear to be running. The pressure of his own team-mates and from the many millions of fans make it an almost impossibility for him to do that.

Campbell: No, I don't accept that.

McMurtry: Perhaps you should talk to the players sometimes, sir.

Campbell: Okay.

McMurtry: Because they will tell you. I have talked to many of them on this, and they do not want to come and give evidence for obvious reasons. They feel it would prejudice their career with their superiors. It would prejudice what would happen to them on the ice if they were to say publicly they don't like fighting and they don't like being involved in fighting. Yet they have no alternative, because if they turn their back and appear to be frightened, they will not only be put on the bench but run out of hockey, when they are on the ice . . .

Campbell: Disastrous.

* * *

McMurtry: To have the sanction there of being embarrassed and ridiculed and to be discussed among your peers and your coach and many millions of fans, that is not one of the most difficult decisions in the world for a person, to turn his back and not fight?

Campbell: *I didn't say it wasn't difficult.* I said it is an alternative. (Italics in original.)

McMurtry: *Then if you will agree it is a very difficult alternative, it is apparently what you call the free alternative.* (Italics in original.)

¹¹⁵ McMurtry, *supra*, at 18.

¹¹⁶ *Id.* at 19-21.

Campbell: *All right.* (Italics in original)

McMurtry: There is incredible pressure and duress on that player not to turn his back – is that not true?

Campbell: I don't think it is as great as you say, *but it is real.* (Italics in original.)

McMurtry: There is a real pressure and duress on that player to stand his ground and to fight?

Campbell: *I think so, yes, yes.* (Italics in original.)¹¹⁷

68. The violent dynamic of the NHL is unique to the NHL. Other elite and professional ice hockey leagues have a different style of play, including Olympic and European ice hockey. The difference is attributable to the dimensions of the ice rink the NHL uses,¹¹⁸ as well as the actual rules of the game themselves.¹¹⁹ Indeed, McMurtry and Campbell also engaged in a heated exchange on how the NHL's rules induce a violent style of play:

McMurtry: All right. Let us talk about that situation. If the whistle blows and clearly play is stopped and one player physically attempts to provoke or intimidate another player, the player who is being intimidated or provoked, what are his alternatives?

Campbell: It all depends on his circumstance. There are a lot of factors that enter into it. *In the first place he has to evaluate his own capability opposite the other party. That is one.* (Italics in original.)

McMurtry: *What does that mean?* (Italics in original.)

Campbell: *His physical capability to respond in kind.* (Italics in original.)

¹¹⁷ *Id.* at 19-20.

¹¹⁸ David Shoalts, *Shanahan Advocate Larger Ice Surfaces Narrow Confines Cause Injuries*, *Star Says*, THE GLOBE AND MAIL (CANADA), Dec. 12, 1996, at C13; *Smith: Enlarging the Crease Could Cut Hockey Violence*, THE GLOBE AND MAIL (CANADA), Feb. 2, 1983.

¹¹⁹ James Christie, *Taking Risks On the Job*, THE GLOBE AND MAIL (CANADA), Mar. 18, 1981 (discussing how NHL owners passed up the opportunity to rid hockey of fighting around 1976); James Christie, *Viewpoint NHL Stickhandles Around Problem*, THE GLOBE AND MAIL (CANADA), June 12, 1980 (discussing how the NHL recently affirmed that one-on-one fighting is permitted in the game).

McMurtry: *In other words he has to make an assessment as to whether he can hold his own with this player in a fight?* (Italics in original.)

Campbell: *I think he has to keep that in mind all the time.* (Italics in original.)

McMurtry: *He has to keep that in mind all the time?* (Italics in original.)

Campbell: *Yes.* (Italics in original.)

McMurtry: All right, continue.

Campbell: So if he decides that he would sooner get himself an equivalent penalty he can respond in kind, if he wishes.

McMurtry: Right.

Campbell: Or if he decides that it would be smarter for him to abstain and let the other fellow take the penalty, that is great; that is his choice.

McMurtry: *You just told me he would not have a penalty.* (Italics in original.)

Campbell: *I didn't say that at all.* I said it might not be an infraction of a character that would warrant either a game misconduct or a misconduct penalty, either one, for inciting, I don't know. That is a matter of judgment on the part of the officials. And the officials, believe me, are men who have had quite a lifetime of experience in this field. (Italics in original.)

McMurtry: Mr. Campbell, I don't pretend to be as knowledgeable about the NHL as you are, but I have watched NHL games for at least 25 years and I have never seen that rule called.

Campbell: *Well, let me put it this way: it is not surprising to me that you have not. It is a rule . . .* (Italics in original.)¹²⁰

69. Similarly, in a Congressional hearing, then NHL President John Zeigler and Representative Henry J. Hyde entered into a colloquy explaining why the NHL is so violent compared to Olympic hockey:

Hyde: You have stated that you subscribe to the theory that roughness is a basic part of the game, and that occasional fights occur as an outlet for pent-up emotions. How do you reconcile this with the fact that the Olympic hockey games, which were magnificent, were played without such an outlet?

¹²⁰ McMurtry, *supra*, at 20-21.

Ziegler: First of all, there were some outlets, if you will examine, when there were confrontations and the outlets were this gesturing when they came together, and there were a number. Second, they were playing on a bigger ice surface, and you do not have the intensity of competition on a bigger ice surface. You have much more time to execute. You play a different game. You do not use the boards as much as part of defense and offense.¹²¹

F. The NHL Has Known that Its Violent Construct Has Created and Will Continue to Create Imminent Risks of Head Trauma to NHL Players Which Result in Devastating and Long-Term Negative Health Effects

1. The Concussion Problem Is Endemic to the NHL

70. According to NHL.com, a search for the term “concussion” generates 6,807 “news” articles as of April 9, 2014.

71. In 1998, a Canadian news article documented how frequent concussions are for NHL players, stating:

Concussions have become an epidemic in the NHL over the past several years, striking everyone from marquee players to fourth-line checkers. The rash of concussions has led the NHL to try to improve prevention and diagnosis of concussions and has awakened many players and coaches.

* * *

According to statistics provided by the NHL, 60 players had concussions last season during the regular season and the playoffs. As of early February this season, 56 players already had received concussions.¹²²

72. The American Association of Neurological Surgeons defines a concussion as a clinical syndrome characterized by an immediate and transient alteration in brain function,

¹²¹ *Hearings Before the Subcommittee on Crime of the Committee on the Judiciary House of Representatives on H.R. 7903: Excessive Violence in Professional Sports*, 9th Cong. 134-163 (1980).

¹²² Maureen Delany, *NHL struggles with efforts to prevent concussions Bell Ringers / They don't just make players see stars. They can end a season, or even a career*, THE GLOBE AND MAIL (CANADA), Mar. 24, 1998, at S11.

including an alteration of mental status and level of consciousness, resulting from mechanical force or trauma.

73. The injury generally occurs when the head either accelerates rapidly and then is stopped, or is rotated rapidly. The results frequently include, among other things, confusion, blurred vision, memory loss, nausea, and sometimes unconsciousness.

74. Medical evidence has shown that symptoms of a concussion can reappear hours or days after the injury, indicating that the injured party has not healed from the initial blow.

75. According to neurologists, once a person suffers a concussion, the person is up to four (4) times more likely to sustain a second one. Additionally, after suffering even a single concussion, a lesser blow may cause the injury, and the injured person requires more time to recover.

76. Clinical and neuropathological studies by some of the nation's foremost experts have demonstrated that multiple concussions sustained during an NHL player's career can cause severe cognitive problems such as depression and early-onset dementia.

77. Repeated head trauma can also result in so-called "Second Impact Syndrome," in which re-injury to a person who has already suffered a concussion triggers swelling that the skull cannot accommodate.

78. Repeated instances of head trauma also frequently lead to Chronic Traumatic Encephalopathy ("CTE"), a progressive degenerative disease of the brain.

79. CTE involves the build-up of toxic proteins in the brain's neurons. This build-up result in a condition whereby signals sent from one cell to thousands of connecting cells in various parts of the brain are not received, leading to abnormal and diminished brain function.

80. CTE is found in athletes (and others) with a history of repetitive concussions. Conclusive studies have shown this condition to be prevalent in retired professional hockey players who have a history of head injury.

81. This head trauma, which includes multiple concussions, triggers progressive degeneration of the brain tissue. These changes in the brain can begin months, years, or even decades after the last concussion or the end of active athletic involvement. The brain degeneration is associated with memory loss, confusion, impaired judgment, paranoia, impulse-control problems, aggression, depression, and eventually progressive dementia.

82. In a study at the Boston University Center for the Study of Traumatic Encephalopathy and the Veterans Affairs Boston Healthcare System, in collaboration with the Sports Legacy Institute, neuropathologists confirmed CTE in four deceased NHL players who died after exhibiting signs of degenerative brain disease.

83. There are many other documented examples of well-known players who have suffered and continue to suffer head trauma as a result of the violence encouraged and created by the NHL, as described herein.

2. Scientists Warn Against the Concussion Problem While the NHL Continues Profiting from Extreme Violence

84. For almost a century, while unnecessary violence, including brutal fighting, has permeated NHL games, the NHL has been on notice that multiple blows to the head can lead to long-term brain injury, including, but not limited to, memory loss, dementia, depression, and CTE and its related symptoms. There have been legions of studies throughout the eras proving these negative health consequences.

85. CTE was first addressed in a 1928 article written by pathologist Harrison Martland, discussing “Punch Drunk” syndrome in a group of athletes exposed to repetitive brain

trauma (the “Martland study”). The article was published in *The Journal of the American Medical Association* (“JAMA”).¹²³

86. The Martland study was the first to link sub-concussive blows and “mild concussions” to degenerative brain disease. There were many subsequent other studies published regarding the dangers of athletic head trauma.

87. For example, in 1937, the *U.S. Naval Medicine Bulletin* published a paper titled *Dementia Pugilistica*.¹²⁴ In 1941, *JAMA* published an article titled *The Medical Aspect of Boxing*.¹²⁵ In 1952, *JAMA* published a study of encephalopathic changes in those suffering repeated blows to the head, focusing on professional boxers.¹²⁶ That same year, an article published in the *New England Journal of Medicine* recommended a three-strike rule for concussions in football (*i.e.*, recommending that players cease to play football after receiving their third concussion).

88. In 1956, the *Journal of Neurology, Neurosurgery and Psychiatry* published a paper titled *Diffuse Degeneration of the Cerebral White Matter in Severe Dementia Following Head Injury*.¹²⁷ In 1959, the *Journal of Mental Science* published a paper titled *Observations on*

¹²³ Harrison S. Martland, M.D., *Punch Drunk*, 91 JAMA 1103 (1928).

¹²⁴ J. A. Millspaugh, *Dementia Pugilistica*, 35 U.S. NAVAL MED. BULLETIN 297 (1937).

¹²⁵ Ernst Joki, M.D., *The Medical Aspect of Boxing*, 117 JAMA 25 (1941)

¹²⁶ Ewald W. Busse, M.D., Albert J. Silverman, M.D., *Electroencephalographic Changes in Professional Boxers*, 149 JAMA 1522 (1952).

¹²⁷ Sabina J. Strich, *Diffuse Degeneration of the Cerebral White Matter in Severe Dementia Following Head Injury*, 19 J. NEUROL., NEUROSURG. AND PSYCHIATRY 163 (1956).

*the Pathology of Insidious Dementia Following Head Injury.*¹²⁸ In 1959, the *Canadian Medical Association Journal* published a study titled *Puck Aneurysm*, in which it stated:

Although it is well known that to be struck in the head by a hockey puck cannot be an entirely benign event, it is perhaps insufficiently appreciated that a regulation hockey puck weights 165 grams and may travel at a velocity in excess of 120 feet per second. When such a missile strikes the head, delayed as well as immediate sequelae cannot be wholly unexpected. In the cases reported here, it may be felt that the patients got off lightly, but on the other hand, it can be pointed out that in both instances the injuries could have been prevented by the wearing of a suitably designed protective helmet.¹²⁹

89. In 1962, *JAMA* published an article titled *Protection of the Head and Neck in Sports*, in which it concluded, “Helmets for use in one sport might not be satisfactory for another. Individual design of the helmet for each sport is mandatory if maximum protection is to be obtained.”¹³⁰ In 1966, the *Journal of Neurology* published a paper titled *Concussion Amnesia*.¹³¹ In 1968, the *Journal of Neurochirurgia* published a paper titled *Brains of Boxers*.¹³² In 1968, the *Canadian Medical Association Journal* published a study titled *Severe Brain Injury and Death Following Minor Hockey Accidents: The Effectiveness of the “Safety Helmets” of Amateur Hockey Players*. The study noted the death of NHL player Bill Masterton resulting from head trauma he suffered during an NHL game.¹³³

¹²⁸ J.A.N. Corsellis, JB Brierley, *Observations on the Pathology of Insidious Dementia Following Head Injury*, 105 J. MENTAL SCI. 714(1959).

¹²⁹ J.S. Campbell, M.D., Pierre Fournier, M.D., D.P. Hill, M.D., *Puck Aneurysm*, 82 CAN. MED. ASS’N J. 923 (1959).

¹³⁰ ES Gurdjian, M.D., HR Lissner, M.S., LM Patrick, M.S., *Protection of the Head and Neck in Sports*, 182 JAMA 509 (1962).

¹³¹ C. Miller Fisher, *Concussion amnesia*, 16 NEUROLOGY 826 (1966).

¹³² EE Payne, *Brains of boxers*, 5 NEUROCHIRURGIA 173 (1968).

¹³³ John F. Fekete, M.D., *Severe Brain Injury and Death Following Minor Hockey Accidents*, 99 CAN. MED. ASS’N J. 99 (1968) 1234.



90. The article then concluded:

The ideal protective hockey helmet, therefore, should be able to protect the players against blows and falls. The shell and the suspension apparatus of the helmets should be able to cushion enough of the impact of falls and blows to reduce the transmitted accelerating or decelerating velocity of the head blow by the 30 ft. per second danger threshold found by White and associates, and below the 425 lbs per sq. in. pressure found by Gurdjian. Apparently 30 ft. per second is the upper limit of impact velocity which the human brain can suffer without experiencing cerebral concussion. Likewise, 425 lbs. per sq. in. is the approximate upper limit of pressure which the human skull can withstand without fracture.¹³⁴

91. In 1969, *JAMA* published an article, titled *Ice Hockey Can be Safer*, noting the imminent risk of head trauma to ice hockey players.¹³⁵ The article stated:

Physicians have played some role in making the wearing of protective helmets compulsory in amateur hockey on this continent. But we must not presume that this regulation of itself can eliminate serious head injury or death. Patently, not all the helmets in use are sufficient. We must encourage, support, or initiate research to produce more effective equipment.¹³⁶

¹³⁴ *Id.* at 1238.

¹³⁵ *Ice Hockey Can be Safer*, 207 *JAMA* 1706 (1969).

¹³⁶ *Id.*

92. In 1969, the *British Journal of Psychiatry* published a paper titled, *Organic Psychosyndromes due to Boxing*.¹³⁷ In 1969, Anthony Roberts published a study titled *Brain Damage in Boxers: A study of the prevalence of traumatic encephalopathy among ex-professional boxers*.¹³⁸

93. In 1970, *The Lancet* published a paper titled *Retrograde Memory Immediately After Concussion*.¹³⁹ In 1970, *Medical & Science in Sports* published an article titled *The effectiveness of a special ice hockey helmet to reduce head injury in collegiate intramural hockey*.¹⁴⁰

94. In 1973, a disabling and sometimes deadly condition involving the second impact concussion occurring before symptoms of a first concussion was described by R.C. Schneider. This later was coined the “Second Impact Syndrome” in 1984. In 1973, *Psychology Medicine* published a study titled *The Aftermath of Boxing*.¹⁴¹ In 1974, the *Journal of Brain* published a paper titled, *Cerebral Concussion and Traumatic Unconsciousness: Correlation of experimental*

¹³⁷ John Johnson M.D., M.R.C.P.E., D.P.M., *Organic Psychosyndrome due to Boxing*, 115 THE BRIT. J. PSYCHIATRY 45 (1969).

¹³⁸ ANTHONY HERBERS ROBERTS, *BRAIN DAMAGE IN BOXERS: A STUDY OF THE PREVALENCE OF TRAUMATIC ENCEPHALOPATHY AMONG EX-PROFESSIONAL BOXERS*, London: Pitman Med. & Scientific Publ’g Co., Ltd., 1969.

¹³⁹ PR Yarnell, S Lynch, *Retrograde Memory Immediately After Concussion*, 295 THE LANCET 863 (1970).

¹⁴⁰ Jess F. Kraus, Bruce D. Andersonm, C.E. Mueller, *The effectiveness of a special ice hockey helmet to reduce head injury in collegiate intramural hockey*, 2 MED. & SCI. IN SPORTS 162 (1970).

¹⁴¹ J.A.N. Corsellis, CJ Bruton, D Freeman-Browne, *The Aftermath of Boxing*, 3 PSYCHOLOGICAL MED. 270 (1973).

and clinical observations of blunt head injuries.¹⁴² In 1974, *The Lancet* published a study titled *Traumatic Encephalopathy in a Young Boxer*.¹⁴³ That same year, *The Lancet* also published a study titled, *Delayed Recovery of Intellectual Function After Minor Head Injury*.¹⁴⁴ In 1975, *The Lancet* published an article titled *Cumulative Effect of Concussion*.¹⁴⁵ In 1975, the *Minerva Medical Journal* published an article titled *Ice Hockey Accidents*, discussing, *inter alia*, concussions.¹⁴⁶ In 1978, *Ageing* published a study titled *Posttraumatic Dementia*.¹⁴⁷ The next year, the *British Journal of Sports Medicine* published a study titled *Association Football Injuries to the Brain: A Preliminary Report*.¹⁴⁸

95. In 1980, the *Canadian Journal of Applied Sports Science* published an article titled, *Puck Impact Response of Ice Hockey Face Masks*.¹⁴⁹

96. In sum, as the NHL extracted vast sums of money by selling its violent commodity, numerous studies were published in scores of peer-reviewed journals warning of the

¹⁴² AK Ommaya, TA Gennarelli, *Cerebral Concussion and Traumatic Unconsciousness: Correlation of Experimental and Clinical Observations of Blunt Head Injuries*, 97 *BRAIN* 633 (1974).

¹⁴³ PK Harvey, JN Davis, *Traumatic Encephalopathy in a Young Boxer*, 2 *THE LANCET* 928 (1974).

¹⁴⁴ D Gronwall, P Wrightson, *Delayed Recovery of Intellectual Function After Minor Head Injury*, 304 *THE LANCET* 605 (1974).

¹⁴⁵ D Gronwall, P Wrightson., *Cumulative Effect of Concussion*, 306 *THE LANCET* 995 (1975).

¹⁴⁶ P Muller, K Biener, *Ice Hockey Accidents*, 66 *MINERVA MED.* 1325 (1975).

¹⁴⁷ J.A.N. Corsellis, *Posttraumatic dementia*, 7 *AGING* 125 (1978).

¹⁴⁸ A Tysvaer, O Storli, *Association Football Injuries to the Brain: A Preliminary Report*, 15 *BRIT. J. OF SPORTS MED.* 163 (1981).

¹⁴⁹ RW Nornam, PJ Bishop, MR Pierrynowski, *Puck impact response of ice hockey face masks*, 5 *CAN. J. APPLIED SPORT SCI.* 208 (1980).

dangers of single concussions, multiple concussions, and contact sports-related head trauma from multiple concussions. These studies collectively and conclusively established that:

- (a) repetitive head trauma in contact sports has dangerous long-term effects on the brain;
- (b) post-mortem evidence of CTE was present in numerous cases of boxers and contact-sport athletes;
- (c) there is a relationship between neurologic pathology and the length of the careers of athletes who play contact sports;
- (d) immediate retrograde memory issues occur following concussions;
- (e) mild head injury requires recovery time without risk of subjection to further injury;
- (f) head trauma is linked to dementia; and
- (g) an athlete who suffers a concussion requires significant rest before being subjected to further contact.

97. At the end of 1991, the Colorado Medical Society published concussion research that they had been working on since the death of a high school student from second impact syndrome. The paper outlined clear guidelines on the appropriate response to suspected concussions.

98. According to the Colorado Medical Society guidelines, a Grade I concussion consists of confusion only, Grade II includes confusion and post-traumatic amnesia, and Grades III and IV involve a loss of consciousness. By these guidelines, an athlete who has suffered a concussion may return to sports after having been free of symptoms, both at rest and during exercise, as follows:

- (a) Grade I - first concussion: 15 minutes; second concussion: one week.
- (b) Grade II - first concussion: one week; second concussion: two weeks (with physician approval).
- (c) Grade IIIa (unconscious for seconds) - first concussion: 1 month; second concussion: six months (with physician approval).
- (d) Grade IIIb (unconscious for minutes) - first concussion: six months; second concussion: one year (with physician approval).

99. In response to the publication of the Colorado Medical Society guidelines, the NCAA and high school teams almost immediately adopted the new, stricter guidelines on how to care for injured players.

100. In 2000, the *Clinical Journal of Sport Medicine* published an article titled *Risk of Head and Neck Injuries in Ice Hockey with Full Face Shields or Half Face Shields*.

101. In 2001, The International Ice Hockey Federation, in partnership with the Federation Internationale de Football Association Medical Assessment and Research Center and the International Olympic Committee Medical Commission, organized the first International Symposium on Concussion in Sport, and convened in Vienna.

102. Faced with the increasing incidence of concussions and head injuries in ice hockey and other sports, the International Symposium on Concussion in Sport gathered the leading medical experts from all parts of the world and from a wide sampling of different sports, experienced in dealing with sports-related head injuries. The objective of the symposium was to understand, as completely as possible, what actually takes place when severe blows to the head occur, with the goal of eliminating concussions in all sports.

103. One of the papers presented at the first International Symposium on Concussion in Sport 2001, titled *Procedures After Minor Traumatic Brain Injury mTBI In Ice Hockey to Prevent Neurological Sequelae*, noted that, during the 15 years preceding the symposium, the proportion of mTBI (mild traumatic brain injury) to the overall number of injuries in the sport of ice hockey generally increased from 2% to 20%, and in the NHL specifically, increased from 2% in the 1989-1990 season to 8% in 1999-2001 seasons. The authors recommended that any confused player with or without amnesia should be taken off the ice and not be permitted to play again for at least 24 hours.

104. In 2004, the International Symposium on Concussion in Sport reconvened in Prague with the aim of providing recommendations for the improvement of the safety and health of athletes who suffer concussive injuries in ice hockey, rugby, football, and other sports based on the most up-to-date research. These experts recommended that a player never be returned to play while symptomatic, and coined the phrase, “when in doubt, sit them out.”

105. In 2004, the *Clinical Journal of Sport Medicine* published an article titled *Head Injuries Presenting to Emergency Departments in the United States From 1990 to 1999 for Ice Hockey, Soccer, and Football*.¹⁵⁰ The results of the study found:

There were an estimated 17,008 head injuries from ice hockey, 86,697 from soccer, and 204,802 from football that presented to US EDs from 1990 to 1999. The total number of concussions presenting to EDs in the United States over the same period was estimated to be 4820 from ice hockey, 21,715 from soccer, and 68,861 from football. While the rates of head injuries, concussions, and combined concussions/internal head injuries/skull fractures presenting to EDs per 10,000 players were not always statistically similar for all 3 sports in each year data were available, they were usually comparable.¹⁵¹

¹⁵⁰ J. Scott Delaney, *Head injuries presenting to emergency departments in the United States from 1990 to 1999 for ice hockey, soccer, and football*, 14 CLINICAL J. SPORTS MED. 80 (2004.).

¹⁵¹ *Id.*

106. The study concluded: “While the total numbers of head injuries, concussions, and combined concussions/skull fractures/internal head injuries presenting to EDs in the United States are different for ice hockey, soccer, and football for the years studied, the yearly rates for these injuries are comparable among all 3 sports.”¹⁵²

107. In 2011, the *Clinical Journal of Sports Medicine* published an article titled *Sport-Related Concussions: Knowledge Translation Among Minor Hockey Coaches*.¹⁵³ The study investigated minor hockey coaches’ knowledge of sport-related concussions, and found that the majority of coaches correctly recognized and understood the issues related to sports-related concussions.¹⁵⁴

108. In 2012, the *Clinical Journal of Sport Medicine* published an article titled *Eliminate Head-Checking in Ice Hockey*.¹⁵⁵ The article states:

Although findings have not been universally confirmed or accepted, 8 most studies suggest that multiple concussions can lead to permanent functional impairment as a result of cumulative brain trauma. In most head injuries occurring during athletic activity, there is a significant acceleration, and diffuse damage may occur even if the coverings of the brain are not breached . . .

We feel that the medical profession needs to raise awareness and to advocate for a “no head-checking” rule, for stricter rule enforcement and more vigorous penalization. The proposed “no head-checking rule” should be implemented in all levels of hockey and in all locations where ice hockey is played. Everyone must send the message that there is no role for the head as a target in ice hockey. We simply must have a “no head-checking rule” in all ice hockey.¹⁵⁶

¹⁵² *Id.*

¹⁵³ Martin Mrazik, et al., *Sport-related concussions: knowledge translation among minor hockey coaches*, 21 CLINICAL J. SPORTS MED. 315 (2011).

¹⁵⁴ *Id.*

¹⁵⁵ Tom Pashby, MD, et al., *Eliminate Head-Checking in Ice Hockey*, 11 CLINICAL J. SPORTS MED. 211 (2001).

¹⁵⁶ *Id.*

109. In 2012, the *Clinical Journal of Sports Medicine* published an article titled *Concussion reporting rates at the conclusion of an intercollegiate athletic career*.¹⁵⁷ The article concludes:

Overall, 49.7% of all respondents (80/161) reported 1 acknowledged, unreported, or potential concussion. The unreported rate was lower than previous high school studies; however, the potentially unrecognized rate remains high and should be clinically concerning. These findings suggest educational interventions targeting collegiate student-athletes should remain and continue to focus on identifying concussion symptoms and dispelling the common misconception that ‘bell ringers’ and ‘dings’ are not concussions.¹⁵⁸

3. The NHL’s Knowledge of Head Trauma Documented Through Media Coverage of NHL Incidents

110. There are many general and specific reports documenting head trauma to NHL players.

111. For example, in 1978, a Canadian media outlet ran a story on NHL player Rick Martin (“Martin”).¹⁵⁹ Martin played in the NHL from 1971 until 1982.¹⁶⁰ Martin was part of the famous offensive line with fellow Quebec natives called the “French Connection.”¹⁶¹ In an NHL game, opposing player Dave Farrish (“Farrish”) hooked Martin around his neck from behind and

¹⁵⁷ Tracy Llewellyn, et al., *Concussion reporting rates at the conclusion of an intercollegiate athletic career*, 24 *CLINICAL J. SPORTS MED.* 76 (2014).

¹⁵⁸ *Id.*

¹⁵⁹ *Martin suffers concussion Injury revives NHL helmet debate*, *THE GLOBE AND MAIL (CANADA)*, Feb. 14, 1978.

¹⁶⁰ Players: Richard Martin, NHL.com, <http://www.nhl.com/ice/player.htm?id=8449275#&navid=nhl-search> (last visited Mar. 28, 2014).

¹⁶¹ <http://web.archive.org/web/20070810185553/http://www.sabresalumni.com/2001/connection.php3>.

kicked Martin's feet out from under him.¹⁶² As a result of Farrish's conduct, Martin hit his head on the ice, was knocked unconscious and went into convulsions.¹⁶³ The 1987 article comments that Martin's head trauma could have been mitigated had Martin been wearing a helmet, but quotes then NHL president Zeigler with a countervailing remark, "'The league's position has been and is right now that the wearing of a helmet is up to the individual.'"¹⁶⁴ Despite his conduct, Farrish played in the NHL until 1984 and since his retirement in 2005, has been part of the coaching staff for the NHL.¹⁶⁵

112. In 1988, the Philadelphia Inquirer ran a story titled *Hazardous Despite a Player's Death, Helmets Were Long Ignored*.¹⁶⁶ The article recounts deaths during NHL games and criticized the NHL's attitude toward player safety:

Although those incidents tended to create an immediate upsurge in the use of helmets, players gradually discarded them. And the NHL stood pat.

In fact, while the NHL ignored the issue, most minor leagues and the governing bodies for intercollegiate and international hockey mandated the use of helmets.

Finally, in 1979 - more than a decade after a death that a helmet almost certainly would have prevented - the NHL made them mandatory. But the league equivocated even then, ruling that any player who had signed a professional contract before June 1 of that year had the option of refusing to wear one.

¹⁶² *THE consequences of a career [...]; AND WHILE WE'RE AT IT (sport)*, The Daily Mail, Jan. 9, 2012, <http://www.highbeam.com/doc/1G1-276641492.html>.

¹⁶³ *Id.*

¹⁶⁴ *Martin suffers concussion Injury revives NHL helmet debate*, THE GLOBE AND MAIL (CANADA), Feb. 14, 1978.

¹⁶⁵ Dave Farrish: Toronto Maple Leafs – Assistant Coach, <http://www.nhl.com/ice/page.htm?id=26051> (last visited Mar. 28, 2014).

¹⁶⁶ Frank Fitzpatrick, *Hazardous Despite A Player's Death, Helmets Were Long Ignored*, THE INQUIRER, (Jan. 13, 1988), http://articles.philly.com/1988-01-13/sports/26283417_1_bill-masterton-helmets-nhl.

Had it been so inclined, the NHL could have required helmets immediately in the wake of the Masterton incident. The players, stunned by their colleague's death, seemed to be leaning in that direction.

On Jan. 17, 1968, the NHL Players Association (NHLPA) issued a statement urging the league to adopt mandatory helmet legislation.

Chicago's Stan Mikita, the league's MVP that year, and others began wearing helmets immediately after the death. Blackhawks superstar Bobby Hull admitted that vanity alone had kept him from using a helmet and said that he would consider using one.

The NHL, though, remained unmoved.

Clarence Campbell, the imperious commissioner who refused to lend league sanction to a benefit game for Masterton's family, went so far as to suggest that the death was just one of those things.

“It was a routine accident that could have happened in any hockey game . . . a normal hazard of the occupation,” Campbell said in defense of NHL policy. “(Helmets) are optional now, and we think that is the best method of dealing with it.”

* * *

Callous as it sounded, Campbell's attitude on helmets was merely reflective of a firmly held belief among league owners that their use was bad for the game.¹⁶⁷

113. In 2012, *The Daily Mail* ran an article discussing Martin's career, noting:

THE consequences of a career in professional ice hockey may be even worse than previously thought. An autopsy on Rick Martin, a seven-time All-Star and winger with the Buffalo Sabres in the 1970s, who died of a heart attack aged 59, discovered he, too, suffered the degenerative brain disease chronic traumatic encephalopathy.

Martin is the third former NHL player to be found, posthumously, to have the condition, but the first not to play in the role of enforcer. There is no explanation for Martin's illness, although he was victim of one of the sport's most notorious fouls, when Dave Farrish of the New York Rangers hooked his neck from behind and kicked his feet away. Martin, who was not wearing a helmet, hit his head on the ice and went into convulsions.

¹⁶⁷ *Id.*

Meanwhile, don't forget folks, *Goon*, a film making light of ice hockey's most violent excesses, is in cinemas this week. Coming soon: *Goon 2: The Drooling Years*.¹⁶⁸

114. In 1987, a Canadian media outlet ran a story on NHL player, Earl Seibert ("Seibert").¹⁶⁹ Seibert played in the NHL from 1931 until 1946.¹⁷⁰ The NHL inducted Seibert into the NHL Hall of Fame in 1963.¹⁷¹ The article noted that Seibert suffered at least one concussion in 1929 and, subsequently, was the first NHL player to wear a helmet.¹⁷²

115. In 1987, the Associated Press ran a story about NHL player Brad Marsh ("Marsh").¹⁷³ Marsh played in the NHL from 1978 until 1993.¹⁷⁴ Marsh was an NHL all-star in his final year.¹⁷⁵ Marsh was in 55 fights in NHL games.¹⁷⁶ The article stated as follows regarding Marsh:

Philadelphia defenceman Brad Marsh will miss about a week of play while recovering from a collision that left him with a concussion and scalp wounds. Marsh, one of the few remaining NHL players to play without a helmet, was

¹⁶⁸ THE DAILY MAIL, *supra*.

¹⁶⁹ Paul Patton, *Where are they Now? Earl Seibert Hockey*, THE GLOBE AND MAIL (CANADA), Mar. 7, 1987.

¹⁷⁰ *Id.*

¹⁷¹ *One On One With Earl Seibert*, Hockey Hall of Fame (April 10, 2012), http://www.hhof.com/htmlSpotlight/spot_oneononep196303.shtml.

¹⁷² Paul Patton, *Where are they Now? Earl Seibert Hockey*, THE GLOBE AND MAIL (CANADA), Mar. 7, 1987.

¹⁷³ Associated Press, *Around the Rinks*, THE GLOBE AND MAIL (CANADA), Dec. 11, 1987.

¹⁷⁴ Brad Bradley Marsh, Hockey Hall of Fame <http://www.legendsofhockey.net/LegendsOfHockey/jsp/SearchPlayer.jsp?player=11026> (last visited on Mar. 28, 2014).

¹⁷⁵ *Id.*

¹⁷⁶ Brad Marsh, HOCKEYFIGHTS.COM, <http://www.hockeyfights.com/players/4212> (last visited Mar. 31, 2014).

injured when Cam Neely and Ray Bourque of the Boston Bruins checked him hard against the boards during the first period Tuesday.¹⁷⁷

116. In 1988, a Canadian media outlet ran a story regarding NHL player Edgar Laprade's hospitalization due to head trauma.¹⁷⁸ Edgar Laprade ("Laprade") played in the NHL from 1945 until 1955.¹⁷⁹ In the incident, opposing player Bill Ezinicki ("Ezinicki") caused Laprade's concussion.¹⁸⁰ Ezinicki played in the NHL from 1944 until 1955,¹⁸¹ and had the nickname "Wild Bill."¹⁸² The article notes that then NHL president Clarence Campbell concluded that Ezinicki's contact with Laprade was legal.¹⁸³ Laprade would later be inducted into the NHL's "Hall of Fame."¹⁸⁴

117. In 1996, a Canadian media outlet ran an article titled *Comfort, safety clash in NHL helmet debate*, noting a "rash of concussions this season."¹⁸⁵ That same year, a Canadian

¹⁷⁷ Associated Press, *Around the Rinks*, THE GLOBE AND MAIL (CANADA), Dec. 11, 1987.

¹⁷⁸ Paul Patton, *Where Are They Now? Bill Ezinicki Hockey*, THE GLOBE AND MAIL (CANADA), Jan. 13, 1988

¹⁷⁹ *Players: Edgar Laprade*, NHL.com, <http://www.nhl.com/ice/player.htm?id=8447326#&navid=nhl-search> (last visited Mar. 28, 2014).

¹⁸⁰ Paul Patton, *Where Are They Now? Bill Ezinicki Hockey*, THE GLOBE AND MAIL (CANADA), Jan. 13, 1988.

¹⁸¹ *Three-time Cup winner 'Wild Bill' Ezinicki dies* (Oct. 15, 2012), <http://www.nhl.com/ice/news.htm?id=643484>.

¹⁸² *Id.*

¹⁸³ Paul Patton, *Where Are They Now? Bill Ezinicki Hockey*, THE GLOBE AND MAIL (CANADA), Jan. 13, 1988.

¹⁸⁴ Spotlight Pinnacle, *Hockey Hall of Fame*, http://www.hhof.com/htmlSpotlight/spot_pinnacle199302.shtml (last visited Mar. 28, 2014).

¹⁸⁵ David Shoalts, *Comfort, safety clash in NHL helmet debate*, THE GLOBE AND MAIL (CANADA), Mar. 28, 1996.

media outlet ran an article titled *Concussions just a fact of hockey life*.¹⁸⁶ The article discussed NHL player Dave Gagner (“Gagner”).¹⁸⁷ Gagner played in the NHL from 1984 until 1999.¹⁸⁸ Gagner was in 11 fights in NHL games.¹⁸⁹ The article recounted Gagner’s many concussions suffered in the NHL and his thoughts on the scope of the problem.¹⁹⁰ The article quotes Gagner as follows:

“The hitting isn’t any harder now than it used to be, but I think that players are less concerned with retaliation than they were 10 years ago. Mironov hit me with an elbow that landed right on my right eye. Ten years ago, there would have been a bench-clearing brawl after a hit like that. Now guys won’t risk a 10-game suspension or worse by getting off the bench and going after someone. I guess the league did this to make the game better and for the fans it might be. For us, it’s more dangerous.”¹⁹¹

4. The NHL’s Knowledge of Head Trauma to Its Own Icons

118. Although all NHL players face imminent risk of head trauma, many of the NHL’s icons have suffered from notorious issues. There are many examples of head trauma to players through which the NHL has generated billions of dollars.

¹⁸⁶ Gare Joyce, *Concussions Just a Fact of Hockey Life*, THE GLOBE AND MAIL (CANADA), April 10, 1996.

¹⁸⁷ *Id.*

¹⁸⁸ *Players: Dave Gagner*, NHL.com, <http://www.nhl.com/ice/player.htm?id=8446997> (last visited Mar. 28, 2014).

¹⁸⁹ Dave Gagner, HOCKEYFIGHTS.COM, <http://www.hockeyfights.com/players/693> (last visited Mar. 31, 2014).

¹⁹⁰ Joyce, *supra*.

¹⁹¹ *Id.*

a. Gordie Howe’s Head Trauma Issues

119. Gordie Howe (“Howe”) is one of the greatest NHL players ever.¹⁹² Howe played in the NHL from 1946 until 1980.¹⁹³ Howe’s accolades may never be surpassed, even by fellow NHL Hall of Fame inductees.¹⁹⁴ However, Howe was nicknamed “blinky” due to the lasting effects of head trauma he suffered during a game.¹⁹⁵ A news outlet recently reported that Howe is battling dementia.¹⁹⁶

b. Marc Savard’s Head Trauma Issues

120. Marc Savard (“Savard”) played in the NHL from 1997 until 2011.¹⁹⁷ Savard was in a total of 3 fights in NHL games.¹⁹⁸ In 2010, Savard was carried off the ice after a collision with opposing player, Matt Cooke (“Cooke”).

¹⁹² See Legends of Hockey, Hockey Hall of Fame, <http://www.legendsofhockey.net/LegendsOfHockey/jsp/LegendsMember.jsp?mem=p197204&page=bio#photo> (last visited on Mar. 28, 2014).

¹⁹³ *Id.*

¹⁹⁴ See John Kresier, *Numbers only start to tell story of Howe’s greatness*, (Mar. 29, 2013) <http://www.nhl.com/ice/news.htm?id=662741>.

¹⁹⁵ Larry Schwartz, *Howe kept going and going . . .*, ESPN CLASSIC, http://espn.go.com/classic/biography/s/Howe_Gordie.html (last visited on Mar. 28, 2014).

¹⁹⁶ Helene St. James, *Battling dementia on 86th birthday, Detroit Red Wings legend Gordie Howe still not one to sit around*, DETROIT FREE PRESS, <http://www.freep.com/article/20140331/SPORTS05/303310029/gordie-howe-detroit-red-wings-86th-birthday-mark-howe-mr-hockey> (last visited on Apr. 10, 2014).

¹⁹⁷ *Team: Marc Savard*, NHL.com, <http://bruins.nhl.com/club/player.htm?id=8462118> (last visited on Mar. 28, 2014).

¹⁹⁸ Marc Savard, HOCKEYFIGHTS.COM, <http://www.hockeyfights.com/players/463> (last visited Mar. 31, 2014).

121. In response to Cooke's collision with Savard and in explaining why Cooke was not suspended, NHL Commissioner Gary Bettman stated: "I was very unhappy and upset with that hit'. . . . 'I was more upset there was nothing [in the NHL's rules] to do to punish it.'"¹⁹⁹ Cooke's hit on Savard was characterized as "[a]very surgical hit to the head."²⁰⁰

122. Cooke has played in the NHL since 1998.²⁰¹ The next year after the hit on Savard, the NHL suspended Cooke for four games for hitting an opposing player from behind

¹⁹⁹ Bob Condor, *Bettman on rule's effect on play, injury prevention*, NHL.com, Mar. 25, 2010, <http://www.nhl.com/ice/news.htm?id=522722>.

²⁰⁰ James Matheson, *Time for NHL to throw book at Cooke*, EDMONTON JOURNAL (Mar. 21, 2011), <http://www2.canada.com/edmontonjournal/columnists/story.html?id=37ad4c4b-a85c-4e26-9b11-9613cc12cb27>.

²⁰¹ Players: Matt Cooke, NHL.com, <http://www.nhl.com/ice/player.htm?id=8465951> (last visited on Mar. 28, 2014).

and for ten days for elbowing an opposing player in the head.²⁰² Cooke was in a total of 22 fights in NHL games.²⁰³

123. After suffering head trauma from his interaction with Cooke, Savard was later hit by other opposing players.²⁰⁴ Savard has described the daily struggles with the lasting effects of head injuries: “I’m still hoping that something happens that I’ll feel a lot better. But if I feel like this, I still couldn’t play.”²⁰⁵

c. Nick Kypreos’s Head Trauma Issues

124. In 1998, the Canadian press ran an article regarding NHL player Nick Kypreos (“Kypreos”).²⁰⁶ Kypreos played in the NHL from 1989 until 1997.²⁰⁷ Kypreos was in a total of 81 fights in NHL games.²⁰⁸

²⁰² Kevin Allen, *Matt Cooke suspended for rest of season, first playoff round*, USA TODAY (Mar. 21, 2011), http://usatoday30.usatoday.com/sports/hockey/nhl/2011-03-21-matt-cooke-suspension_N.htm.

²⁰³ Matt Cooke, HOCKEYFIGHTS.COM, <http://www.hockeyfights.com/players/131> (last visited Mar. 31, 2014).

²⁰⁴ Scott Burnside, *Marc Savard’s life still unsettled*, ESPN.com (Jan. 21, 2012), http://espn.go.com/nhl/story/_/id/7487217/boston-bruins-marc-savard-dealing-concussion-issues.

²⁰⁵ *Id.*

²⁰⁶ Canadian Press, *Leaf Battles Back from Concussion*, THE GLOBE AND MAIL (Canada), March 12, 1998.

²⁰⁷ Players: Nick Kypreos, NHL.com, <http://bruins.nhl.com/club/player.htm?id=8462118> (last visited on Mar. 28, 2014).

²⁰⁸ Nick Kypreos, HOCKEYFIGHTS.COM, <http://www.hockeyfights.com/players/914> (last visited Mar. 31, 2014).



125. Kypreos was a Stanley Cup champion.²⁰⁹ The 1998 article discusses how, on one occasion, Kypreos suffered a concussion during a game.²¹⁰ Instead of going to the hospital, Kypreos recounted that he attempted to participate in a subsequent practice. The article notes that there was “no protocol to follow” for NHL players who suffered concussions. In recounting a fight during an NHL game, Kypreos is quoted as saying:

“I lost my helmet and hit my head on the ice.” . . . “It’s like a dream you can’t remember. Within one hour everything started to come back into focus. I was being asked how I was feeling and if I could go back on the ice to finish the game.”²¹¹

²⁰⁹ Anthony Jenkins, *Sports broadcaster Nick Kypreos on a new bilingualism*, THE GLOBE AND MAIL (CANADA), May. 2, 2013, <http://www.theglobeandmail.com/globe-debate/sports-broadcaster-nick-kypreos-on-a-new-bilingualism/article11688187/>.

²¹⁰ Canadian Press, *Leaf Battles Back from Concussion*, THE GLOBE AND MAIL (Canada), March 12, 1998.

²¹¹ NHL Careers Ended by Concussions, http://sportsillustrated.cnn.com/multimedia/photo_gallery/1103/nhl-careers-ended-by-concussions/content.17.html (last visited Mar. 28, 2014).

d. Dennis Vaske's Head Trauma Issues

126. Dennis Vaske ("Vaske") played in the NHL from 1990 to 1999.²¹² Vaske was in one fight in an NHL game.²¹³ Vaske ended his career due to concussions he suffered in the NHL.²¹⁴ In one trip to the hospital, Vaske recounted, "[r]iding in that ambulance, I thought my head was going to explode."²¹⁵ Vaske made attempts to continue playing despite the concussions.²¹⁶

e. Gino Odjick's Head Trauma Issues

127. Gino Odjick ("Odjick") played in the NHL from 1990 until 2002.²¹⁷ Odjick was in a total of 154 fights in NHL games.²¹⁸

²¹² Players: Dennis Vaske, NHL.com, <http://www.nhl.com/ice/player.htm?id=8458300> (last visited on Mar. 28, 2014).

²¹³ Dennis Vaske, HOCKEYFIGHTS.COM, <http://www.hockeyfights.com/players/4213> (last visited Mar. 31, 2014).

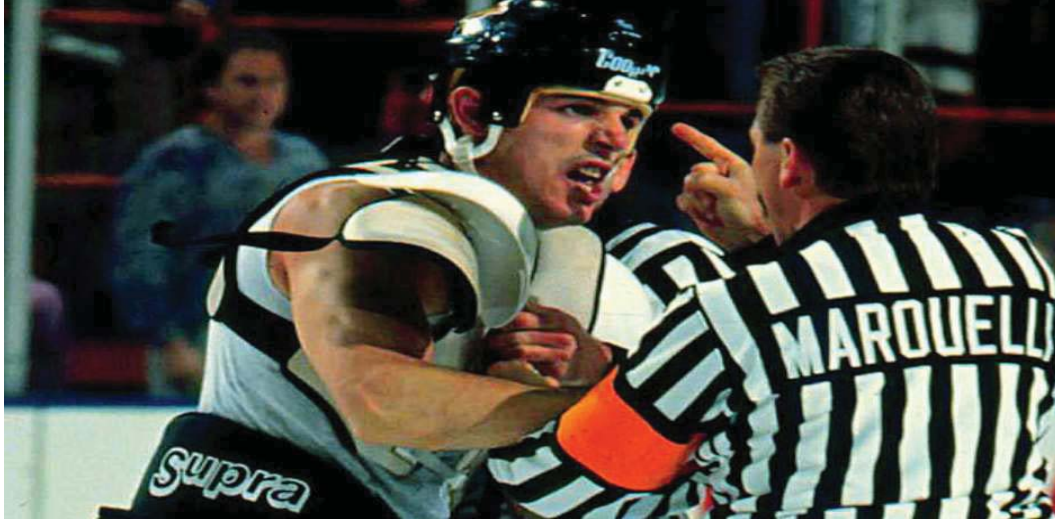
²¹⁴ NHL Careers Ended by Concussions, http://sportsillustrated.cnn.com/multimedia/photo_gallery/1103/nhl-careers-ended-by-concussions/content.16.html (last visited Mar. 28, 2014).

²¹⁵ *Id.*

²¹⁶ *Id.*

²¹⁷ Players: Gino Odjick, NHL.com, <http://www.nhl.com/ice/player.htm?id=8449961> (last visited Mar. 28, 2014).

²¹⁸ Gino Odjick, HOCKEYFIGHTS.COM, <http://www.hockeyfights.com/players/21> (last visited Mar. 31, 2014).



128. Odjick was hit in the back of the head by a puck.²¹⁹ Odjick subsequently suffered from persistent dizziness and headaches and retired from the NHL.²²⁰

f. Dean Chynoweth's Head Trauma Issues

129. Dean Chynoweth ("Chynoweth") played in the NHL from 1988 until 1998.²²¹ Chynoweth was in a total of 38 fights in NHL games.²²²

²¹⁹ NHL Careers Ended by Concussions, http://sportsillustrated.cnn.com/multimedia/photo_gallery/1103/nhl-careers-ended-by-concussions/content.18.html (last visited mar. 28, 2014).

²²⁰ *Id.*

²²¹ Players: Dean Chynoweth, NHL.com, <http://www.nhl.com/ice/player.htm?id=8446081#&navid=nhl-search> (last visited Mar. 28, 2014).

²²² Dean Chynoweth, HOCKEYFIGHTS.COM, <http://www.hockeyfights.com/players/921> (last visited Mar. 31, 2014).



130. Chynoweth reportedly suffered 13 concussions during his NHL career.²²³

Chynoweth is quoted as stating the following regarding the head trauma injuries he suffered in the NHL:

“One doctor told me I could probably keep playing but I would have to change my game, less contact, no fighting, but due to lingering symptoms it was not possible. I wouldn’t have wanted to play any other way than the way I played.”²²⁴

g. Geoff Courtnall’s Head Trauma Issues

131. Geoff Courtnall (“Courtnall”) played in the NHL from 1983 to 2000.²²⁵

²²³ NHL Careers End by Concussions, http://sportsillustrated.cnn.com/multimedia/photo_gallery/1103/nhl-careers-ended-by-concussions/content.15.html (Mar. 28 , 2014).

²²⁴ *Id.*

²²⁵ Players: Geoff Courtnall, NHL.com, <http://www.nhl.com/ice/player.htm?id=8446205#&navid=nhl-search> (last visited Mar. 28, 2014).



132. Courtnall was in a total of 49 fights in NHL games.²²⁶ Courtnall's NHL career ended after taking an elbow to the chin from opposing player Bryan Berard ("Berard") during a game in 1999.²²⁷ The trauma caused Courtnall to suffer a Grade 2 concussion and, subsequently, Courtnall ended his NHL career.²²⁸ Berard, who had already been in the NHL for several years, suffered no repercussions for the elbow during the game.²²⁹ The NHL eventually penalized Berard with a two-game suspension.²³⁰ Berard went on to play for nearly another decade in the NHL.²³¹ Berard was in a total of 6 fights in NHL games.²³² Berard's NHL career eventually ended with an extreme eye injury during an NHL game.²³³

²²⁶ Geoff Courtnall, HOCKEYFIGHTS.COM, <http://www.hockeyfights.com/players/725> (last visited Mar. 31, 2014).

²²⁷ NHL Careers Ended by Concussions, http://sportsillustrated.cnn.com/multimedia/photo_gallery/1103/nhl-careers-ended-by-concussions/content.14.html (last visited Mar. 28, 2014).

²²⁸ *Id.*

²²⁹ *Id.*

²³⁰ *Id.*

²³¹ Players: Bryan Berard, NHL.com, <http://www.nhl.com/ice/player.htm?id=8462032#&navid=nhl-search> (last visited Mar. 28, 2014).

h. Petr Svoboda's Head Trauma Issues

133. Petr Svoboda ("Svoboda") played in the NHL from 1984 until 2001.²³⁴



134. In 2000, Svoboda was knocked out by opposing player Shane Doan ("Doan").²³⁵ Svoboda retired 17 months later due to the lingering effects of the head trauma.²³⁶ Svoboda was in a total of 20 fights in NHL games.²³⁷ Doan was a five-year veteran of the NHL when he

²³² Bryan Berard, HOCKEYFIGHTS.COM, <http://www.hockeyfights.com/players/403> (last visited Mar. 31, 2014).

²³³ Nathaniel Vinton, *Former NHL Star Bryan Berard Out to Recover Millions Lost in Financial Scam*, DAILY NEWS (June 30, 2013), <http://www.nydailynews.com/sports/i-team/scammed-ex-nhl-star-berard-fighting-back-article-1.1386771>.

²³⁴ NHL Player Search, Petr Svoboda, Hockey Hall of Fame, <http://www.legendsofhockey.net/LegendsOfHockey/jsp/SearchPlayer.jsp?player=11602> (last visited Apr. 11, 2014).

²³⁵ NHL Careers Ended by Concussions, http://sportsillustrated.cnn.com/multimedia/photo_gallery/1103/nhl-careers-ended-by-concussions/content.13.html (last visited Mar. 28, 2014).

²³⁶ *Id.*

²³⁷ Petr Svoboda, HOCKEYFIGHTS.COM, <http://www.hockeyfights.com/players/277> (last visited Mar. 31, 2014).

concussed Svoboda.²³⁸ Doan was in a total of 41 fights in NHL games.²³⁹ In 2010, Doan was suspended for three games for hitting the head of opposing player Dan Sexton during a game.²⁴⁰ Doan had never before been suspended by the NHL. Doan is still playing in the NHL today.²⁴¹

i. Jeff Beukeboom's Head Trauma Issues

135. Jeff Beukeboom ("Beukeboom") played in the NHL for 13 seasons.²⁴² Beukeboom won four Stanley Cups during his NHL career. Beukeboom suffered from at least six concussions.

²³⁸ Players: Shane Doan, NHL.com, <http://www.nhl.com/ice/player.htm?id=8462038#&navid=nhl-search> (last visited Mar. 28, 2014).

²³⁹ Shane Doan, HOCKEYFIGHTS.COM, <http://www.hockeyfights.com/players/161> (last visited Mar. 31, 2014).

²⁴⁰ *Shane Doan suspended 3 games for hit*, ESPN (Mar. 18, 2010), <http://sports.espn.go.com/nhl/news/story?id=5700397>.

²⁴¹ Players: Shane Doan, NHL.com, <http://www.nhl.com/ice/player.htm?id=8462038#&navid=nhl-search> (last visited Mar. 28, 2014).

²⁴² NHL Careers Ended by Concussions, http://sportsillustrated.cnn.com/multimedia/photo_gallery/1103/nhl-careers-ended-by-concussions/content.12.html (last visited Mar. 28, 2014).

136. On one occasion in 1998, opposing player Matt Johnson (“Johnson”) sucker punched Beukeboom, which caused a concussion.²⁴³ Beukeboom was playing in an NHL game three months later and suffered yet another concussion.²⁴⁴ The head trauma left Beukeboom with headaches and trouble concentrating. That would be Beukeboom’s final NHL game. Beukeboom was in a total of 98 fights in NHL games.²⁴⁵ Johnson was a four-year NHL veteran when he attacked Beukeboom in 1998. The NHL suspended Johnson for 12 games as a result of the attack. Johnson would go on to continue playing in the NHL until 2004. Johnson tallied over 1,500 penalty minutes in his NHL career.²⁴⁶ Johnson was in a total of 132 fights in NHL games.²⁴⁷

j. Adam Deadmarsh’s Head Trauma Issues

137. Adam Deadmarsh (“Deadmarsh”) played in the NHL from 1994 until 2003.²⁴⁸

²⁴³ *Id.*

²⁴⁴ *Id.*

²⁴⁵ Jeff Beukeboom, HOCKEYFIGHTS.COM, <http://www.hockeyfights.com/players/656> (last visited Mar. 31, 2014).

²⁴⁶ NHL & WHA Career Leaders and Records for Penalties in Minutes, http://www.hockey-reference.com/leaders/pen_min_career.html (last visited Mar. 28, 2014).

²⁴⁷ Matt Johnson, HOCKEYFIGHTS.COM, <http://www.hockeyfights.com/players/183> (last visited Mar. 31, 2014).

²⁴⁸ Players: Adam Deadmarsh, NHL.com, <http://www.nhl.com/ice/player.htm?id=8459436#&navid=nhl-search> (last visited Mar. 28, 2014).

138. Deadmarsh suffered a concussion during a fight with opposing player Ed Jovanovski (“Jovanovski”) in 2000. Deadmarsh was in a total of 58 fights in NHL games.²⁴⁹ In 2002, Deadmarsh was kneed in the head by his own teammate during an NHL practice. Deadmarsh suffered from headaches and dizziness until he retired in 2005. Deadmarsh has been quoted as follows regarding his head trauma:

“I’ve kind of been holding on and hoping and praying that I’d recover from this concussion issue that I have and I haven’t been able to do that” . . . “It’s one of the most frustrating injuries I think you could possibly have from a sports aspect. Unless you have concussions, it’s kind of hard to explain to someone what it feels like, but you know it’s something that’s not supposed to be there.”²⁵⁰

139. Jovanovski still plays in the NHL. Jovanovski has been in a total of 50 fights in NHL games thus far.²⁵¹ In 1996, the NHL suspended Jovanovski for three games for leaving the

²⁴⁹ Adam Deadmarsh, HOCKEYFIGHTS.COM, <http://www.hockeyfights.com/players/235> (last visited Mar. 31, 2014).

²⁵⁰ NHL Careers Ended by Concussions, http://sportsillustrated.cnn.com/multimedia/photo_gallery/1103/nhl-careers-ended-by-concussions/content.11.html (last visited Mar. 28, 2014).

²⁵¹ Ed Jovanovski, HOCKEYFIGHTS.COM, <http://www.hockeyfights.com/players/194> (last visited Mar. 31, 2014).

penalty box after receiving a roughing penalty.²⁵² That same year, Jovanovski fought with an opposing player, Bernie Nicholls (“Nicholls”). Nicholls hit Jovanovski with a stick to the head and, as a result, the NHL then suspended Nicholls for two games and issued a \$1,000 fine against Nicholls.²⁵³ Nicholls was in a total of 27 fights in NHL games.²⁵⁴ In 2009, the NHL suspended Jovanovski for two games for hitting an opposing player in the head with his forearm during a game.²⁵⁵ The next month, Jovanovski elbowed an opposing player in the head, and the NHL issued another two-game suspension.²⁵⁶ In 2011, Jovanovski suffered an orbital fracture from colliding with an opposing player.²⁵⁷

k. Stu Grimson’s Head Trauma Issues

140. Stu Grimson (“Grimson”) played in the NHL from 1989 to 2002.²⁵⁸ Grimson got in over 200 fights in his NHL career.²⁵⁹

²⁵² Gordon Edes, *Jovanovski Suspended 3 Games*, SUNSENTINEL, Nov. 24, 1996, http://articles.sun-sentinel.com/1996-11-24/sports/9611240089_1_jovanovski-panthers-game-misconduct.

²⁵³ *Nicholls Suspended*, N.Y. TIMES Mar. 1, 1997, <http://www.nytimes.com/1997/03/01/sports/nicholls-suspended.html>.

²⁵⁴ Bernie Nicholls, HOCKEYFIGHTS.COM, <http://www.hockeyfights.com/players/3757> (last visited Apr. 1, 2014).

²⁵⁵ *Jovanovski suspended two games*, ESPN (Dec. 9, 2009), <http://sports.espn.go.com/nhl/news/story?id=4727474>.

²⁵⁶ *League suspends Jovanovski 2 games for elbow*, ESPN (Jan. 11, 2010), <http://www.nhl.com/ice/news.htm?id=513275>.

²⁵⁷ *Phoenix Coyotes' Ed Jovanovski likely out several weeks with orbital bone fracture*, Arizona Central, (Feb. 18, 2011), <http://www.azcentral.com/sports/coyotes/articles/2011/02/18/20110218phoenix-coyotes-ed-jovanovski-injury.html#ixzz2xGxlclXw>.

²⁵⁸ Players: Stu Grimson, NHL.com, <http://www.nhl.com/ice/player.htm?id=8447386#&navid=nhl-search> (last visited Mar. 28, 2014).



141. As a result of a fight with opposing player Dave Brown (“Brown”), Grimson required reconstructive cheek surgery.²⁶⁰ Brown had been suspended for 15 games for hitting opposing player Tomas Sandstrom with his stick and causing a concussion.²⁶¹ Brown was in the NHL from 1982 until 1996, and is a Stanley Cup champion.²⁶² Brown was in a total of 148 fights in NHL games.²⁶³

²⁵⁹ NHL Careers Ended by Concussions, http://sportsillustrated.cnn.com/multimedia/photo_gallery/1103/nhl-careers-ended-by-concussions/content.10.html (last visited Mar. 28, 2014).

²⁶⁰ *Id.*

²⁶¹ *Flyers’ Brown Suspended for 15 Games*, N.Y. TIMES (Nov. 3, 1987), <http://www.nytimes.com/1987/11/03/sports/flyers-brown-suspended-for-15-games.html>.

²⁶² Players: David Brown, NHL.com, <http://www.nhl.com/ice/player.htm?id=8445712#&navid=nhl-search> (last visited Mar. 28, 2014).

²⁶³ Dave Brown, HOCKEYFIGHTS.COM, <http://www.hockeyfights.com/players/1038> (last visited Mar. 31, 2014).

142. Grimson suffered from concussion symptoms that forced him to retire.²⁶⁴ One of Grimson's final moments in the NHL was a fight with an opposing player in 2001.

I. The Moore Brothers' Head Trauma Issues

143. Steve Moore and Mark Moore were brothers who were drafted to play into the NHL.²⁶⁵ Mark Moore never made it to the NHL due to a concussion he suffered.²⁶⁶ Steve Moore's career ended due to a fractured neck and concussion he suffered from a blindside by opposing player Todd Bertuzzi ("Bertuzzi") in 2004, as depicted below:

144. Steve Moore's recurring concussion symptoms kept him from returning to the NHL.²⁶⁷ In 2001, Bertuzzi had been suspended by the NHL for 10 games for participating in a

²⁶⁴ *NHL Careers Ended by Concussions*, SI.COM, http://sportsillustrated.cnn.com/multimedia/photo_gallery/1103/nhl-careers-ended-by-concussions/content.10.html (last visited Mar. 28, 2014).

²⁶⁵ *NHL Careers Ended by Concussions*, SI.COM, http://sportsillustrated.cnn.com/multimedia/photo_gallery/1103/nhl-careers-ended-by-concussions/content.9.html (last visited Mar. 28, 2014).

²⁶⁶ *Id.*

²⁶⁷ *Id.*

fight during a game.²⁶⁸ Bertuzzi still plays in the NHL and has played in over 1,000 games.²⁶⁹ Bertuzzi has been in 31 fights in NHL games.²⁷⁰

m. Keith Primeau's Head Trauma Issues

145. Keith Primeau ("Primeau") played in the NHL from 1990 until 2006.²⁷¹



146. Primeau suffered four concussions in the NHL.²⁷² In 2003-2004, Primeau missed 21 NHL games due to concussions.²⁷³ Primeau was in a total of 81 fights in NHL games.²⁷⁴ In

²⁶⁸ *Bertuzzi given 10-game suspension*, CBC SPORTS (Oct. 15, 2001), <http://www.cbc.ca/sports/hockey/bertuzzi-given-10-game-suspension-1.298642>.

²⁶⁹ Jeremy Laura, *Todd Bertuzzi passes 1000 game milestone*, Examiner.com (Feb. 28, 2011), <http://www.examiner.com/article/todd-bertuzzi-passes-1000-game-milestone>.

²⁷⁰ Todd Bertuzzi, HOCKEYFIGHTS.COM, <http://www.hockeyfights.com/players/207> (last visited Mar. 31, 2014).

²⁷¹ *Players: Keith Primeau*, <http://www.nhl.com/ice/player.htm?id=8450550#&navid=nhl-search> (last visited Mar. 28, 2014).

²⁷² *NHL Careers Ended by Concussions*, SI.COM, http://sportsillustrated.cnn.com/multimedia/photo_gallery/1103/nhl-careers-ended-by-concussions/content.8.html (last visited Mar. 28, 2014).

²⁷³ *Id.*

2006, Primeau suffered a concussion at the hands of Alex Perezhogin (“Perezhogin”), who hit Primeau in the head.²⁷⁵ Primeau subsequently retired from the NHL and has agreed to have his brain donated for use in Boston University’s research effort into the causes of CTE in athletes.²⁷⁶

147. In 2004, Perezhogin swung his stick at the face of an opposing player in a minor league hockey game.²⁷⁷ The opposing player went unconscious and started convulsing. The player required twenty stitches in his face and suffered a concussion.²⁷⁸ Perezhogin was criminally prosecuted by the local authorities and was sentenced to one year probation and fined \$5,000.²⁷⁹

n. Matthew Barnaby’s Head Trauma Issues

148. Matthew Barnaby (“Barnaby”) played in the NHL from 1992 until 2007.²⁸⁰ Barnaby was in a total of 206 fights in NHL games.²⁸¹ In 2007, Barnaby suffered a concussion from a fight with opposing player Josh Gratton (“Gratton”), as depicted below:

²⁷⁴ Keith Primeau, HOCKEYFIGHTS.COM, <http://www.hockeyfights.com/players/29> (last visited Mar. 31, 2014).

²⁷⁵ *Flyers’ Primeau retires because of lingering concussion*, ESPN (Sept. 15, 2006), <http://sports.espn.go.com/nhl/news/story?id=2587486>.

²⁷⁶ *Retired NHL Star Keith Primeau to Donate Brain Upon Death to Center for the Study of Traumatic Encephalopathy* (Apr. 3, 2009), <http://www.bu.edu/news/2009/04/03/retired-nhl-star-keith-primeau-to-donate-brain-upon-death-to-center-for-the-study-of-tra>.

²⁷⁷ *Perezhogin charged after baseball-like swing* (Aug. 26, 2004), <http://sports.espn.go.com/nhl/news/story?id=1868300>.

²⁷⁸ *Id.*

²⁷⁹ *Sports Shorts*, THE STAR-LEDGER (June 8, 2005), at S74.

²⁸⁰ *Players: Matthew Barnaby*, NHL.com, <http://www.nhl.com/ice/player.htm?id=8459019#&navid=nhl-search> (last visited Mar. 28, 2014).

²⁸¹ *Matt Barnaby*, HOCKEYFIGHTS.COM, <http://www.hockeyfights.com/players/82> (last visited Mar. 31, 2014).

149. Barnaby retired later that year due to the loss of vision in his left eye.²⁸² Gratton was in a total of 44 fights in NHL games.²⁸³

o. Mike Richter's Head Trauma Issues

150. Mike Richter ("Richter") played in the NHL from 1989 until 2003.²⁸⁴ The NHL inducted Richter into its "Hall of Fame" in 2008.²⁸⁵ Richter suffered from two concussions in eight consecutive months – one of which was caused by a puck to his face mask and another which was caused by a knee to his head.²⁸⁶

²⁸² *NHL Careers Ended by Concussions*, SI.COM http://sportsillustrated.cnn.com/multimedia/photo_gallery/1103/nhl-careers-ended-by-concussions/content.7.html (last visited Mar. 28, 2014).

²⁸³ Josh Gratton, HOCKEYFIGHTS.COM, <http://www.hockeyfights.com/players/1526> (last visited Mar. 31, 2014).

²⁸⁴ Players: Mike Richter, NHL.com, <http://www.nhl.com/ice/player.htm?id=8450833#&navid=nhl-search> (last visited Mar. 28, 2014).

²⁸⁵ United States Hockey Hall of Fame Museum, Our Enshrinees, <http://www.ushockeyhall.com/enshrinees.cfm> (last visited Mar. 28, 2014).

²⁸⁶ *NHL Careers Ended by Concussions*, SI.COM, http://sportsillustrated.cnn.com/multimedia/photo_gallery/1103/nhl-careers-ended-by-concussions/content.6.html.



p. Scott Stevens's Head Trauma Issues

151. Scott Stevens (“Stevens”) played in the NHL from 1982 until 2004.²⁸⁷ Stevens was in 111 fights in NHL games.²⁸⁸ Stevens was hit in the head by a slapshot by an opposing player in 2003, causing a concussion.²⁸⁹ Stevens retired the next year due to post-concussion syndrome.²⁹⁰

²⁸⁷ Players: Scott Stevens, NHL.com, <http://www.nhl.com/ice/player.htm?id=8451715#&navid=nhl-search> (last visited Mar. 28, 2014).

²⁸⁸ Scott Stevens, HOCKEYFIGHTS.COM, <http://www.hockeyfights.com/players/173> (last visited Mar. 31, 2014).

²⁸⁹ *NHL Careers Ended by Concussions*, SI.COM, http://sportsillustrated.cnn.com/multimedia/photo_gallery/1103/nhl-careers-ended-by-concussions/content.5.html (last visited Mar. 28, 2014).

²⁹⁰ *Id.*

q. Pat LaFontaine's Head Trauma Issues

152. Pat LaFontaine ("LaFontaine") played in the NHL from 1983 until 1998.²⁹¹ LaFontaine suffered from six concussions. LaFontaine was in a total of 2 fights in NHL games.²⁹²



²⁹¹ Players: Pat LaFontaine, NHL.com, <http://www.nhl.com/ice/player.htm?id=8448626#&navid=nhl-search> (last visited Mar. 28, 2014).

²⁹² Pat LaFontaine, HOCKEYFIGHTS.COM, <http://www.hockeyfights.com/players/4223> (last visited Mar. 31, 2014).

153. LaFontaine was once knocked unconscious by a hit from an opposing player, James Patrick (“Patrick”).²⁹³ Patrick was in a total of 12 fights in NHL games.²⁹⁴ LaFontaine collided with another player, causing a concussion. LaFontaine later hit his head on the ice and was knocked out by a hard check from opposing player, Francois Leroux (“Leroux”). Leroux played in the NHL from 1988 until 1998.²⁹⁵ In 1996, Leroux fought an opposing player in a game and received a penalty for having had taped knuckles.²⁹⁶ Leroux was in a total of 52 fights in NHL games.²⁹⁷

154. LaFontaine recounted his head trauma:

A neurologist at the Mayo Clinic asked me, “Did it feel like someone came along and ripped all the motivation and personality out of you?” That was exactly what happened to me . . . I remember being scared because for the first month after my fifth concussion, I was very depressed at times. I wouldn't want to come out of my room. My wife was really scared because the littlest things would set me off.²⁹⁸

²⁹³ *NHL Careers Ended by Concussions*, SI.COM, http://sportsillustrated.cnn.com/multimedia/photo_gallery/1103/nhl-careers-ended-by-concussions/content.4.html (last visited Mar. 28, 2014).

²⁹⁴ James Patrick, HOCKEYFIGHTS.COM, <http://www.hockeyfights.com/players/10049> (last visited Mar. 31, 2014).

²⁹⁵ Players: Francois Leroux, NHL.com, <http://www.nhl.com/ice/player.htm?id=8448822#&navid=nhl-search> (last visited Mar. 28, 2014).

²⁹⁶ WIKIPEDIA, http://en.wikipedia.org/wiki/Francois_Leroux (last visited Mar. 27, 2014).

²⁹⁷ Francois Leroux, HOCKEYFIGHTS.COM, <http://www.hockeyfights.com/players/732> (last visited Mar. 31, 2014).

²⁹⁸ *NHL Careers Ended by Concussions*, SI.COM, http://sportsillustrated.cnn.com/multimedia/photo_gallery/1103/nhl-careers-ended-by-concussions/content.4.html (last visited Mar. 28, 2014).

155. The NHL inducted LaFontaine into its “Hall of Fame” after he retired due to the effects of his repeated head trauma.²⁹⁹

r. Chris Pronger’s Head Trauma Issues

156. Chris Pronger (“Pronger”) played in the NHL from 1993 until 2012.³⁰⁰ In 2000, Pronger took a stick to his eye during a game.³⁰¹



157. Pronger returned several games later and was hit hard into the boards.³⁰² Attempting to play two games after that, Pronger was unable to play due to the effects of the concussion he had sustained.³⁰³ Pronger was in a total of 21 fights in NHL games.³⁰⁴

²⁹⁹ Hockey Hall of Fame, <http://www.legendsofhockey.net/LegendsOfHockey/jsp/LegendsMember.jsp?type=Player&mem=P200302&list=ByName> (last visited, Mar. 28, 2014).

³⁰⁰ <http://flyers.nhl.com/club/player.htm?id=8459424> (last visited Mar. 27, 2014).

³⁰¹ Adam Kimelman, *Pronger to miss at least 2-3 weeks with eye injury*, NHL.COM (Oct. 24, 2011) <http://www.nhl.com/ice/news.htm?id=597339> (last visited Mar. 27, 2014).

³⁰² Sean Leahy, *Chris Pronger out for season with severe post-concussion syndrome*, YAHOO SPORTS, http://sports.yahoo.com/nhl/blog/puck_daddy/post/chris-pronger-out-for-season-with-severe-post-concussion-syndrome?urn=nhl,wp19988 (Dec. 15, 2008).

³⁰³ *Id.*

s. **Paul Kariya's Head Trauma Issues**

158. Paul Kariya ("Kariya") played in the NHL from 1994 until 2010.³⁰⁵ Kariya was an NHL all-star³⁰⁶ and achieved numerous accolades during his tenure, including the Lady Byng Trophy for the NHL's most gentlemanly player.³⁰⁷ Kariya scored over 400 goals in his NHL career.³⁰⁸ Kariya had an illustrious amateur career, receiving the award for the top collegiate hockey player in 1993, winning Olympic medals, including the gold medal in 2002 at the Salt Lake City Winter Olympics.³⁰⁹

159. Kariya ended his NHL career due to the negative effects of head trauma he suffered in the NHL. In one instance, Kariya suffered a blindside hit from opposing player Gary Suter ("Suter").³¹⁰

³⁰⁴ Chris Pronger, HOCKEYFIGHTS.COM, <http://www.hockeyfights.com/players/395> (last visited Mar. 31, 2014).

³⁰⁵ Career Stats: Paul Kariya, THE SPORTS NETWORK, <http://www.tsn.ca/nhl/teams/players/bio/?id=1258>.

³⁰⁶ *Id.*

³⁰⁷ Career Stats: Paul Kariya, THE SPORTS NETWORK, <http://www.tsn.ca/nhl/teams/players/bio/?id=1258>.

³⁰⁸ *Id.*

³⁰⁹ *Id.*

³¹⁰ Ira Podell, *Long overdue, NHL set to eliminate hits to head*, USA Today (Mar. 19, 2010), http://usatoday30.usatoday.com/sports/hockey/nhl/2010-03-19-1441696908_x.htm



The NHL suspended Suter for four games.³¹¹ Suter played in the NHL from 1985 until 2002, for a total of over 1,000 games.³¹² In 1989, Suter suffered a broken jaw during a game.³¹³ In 1990, Suter was arrested for assaulting a police officer.³¹⁴ Suter was prosecuted, pled to the charges, and paid a fine of \$8,520.³¹⁵ Suter had been accused of intentionally trying to injure Wayne

³¹¹ Elliot + Teaford, *Cross-check on Kariya Costs Suter Four Games*, L.A. Times, Feb. 4, 1998, <http://articles.latimes.com/1998/feb/04/sports/sp-15396>.

³¹² Career Stats: Gary Suter, THE SPORTS NETWORK, <http://www.tsn.ca/nhl/teams/players/bio/?id=623>.

³¹³ *Flames' Suter can't grin, but he bears it*, Record-Journal, May 14, 1989, <http://news.google.com/newspapers?id=pFNIAAAAIBA&sjid=agENAAAIBA&pg=1248,3540428>

³¹⁴ *Suter faces trial*, Dubuque Telegraph-Herald, Aug. 1, 1990, p. 1B, <http://news.google.com/newspapers?id=sllFAAAAIBA&sjid=3bsMAAAAIBA&pg=4840,241483>

³¹⁵ *Suter agrees to \$8,520 fine*, Telegraph Herald, Feb. 12, 1991, <http://news.google.com/newspapers?id=sWxFAAAAIBA&sjid=XLwMAAAAIBA&pg=5571,2088236>

Gretzky during a Canada Cup game.³¹⁶ In 1998, Suter signed a three-year contract worth \$10 million.³¹⁷ The NHL inducted Suter into its “Hall of Fame” in 2011.

160. In 1996, an opposing player hit Kariya during an NHL game, concussing Kariya.³¹⁸ The player was not penalized during the game but was subsequently suspended by the NHL.³¹⁹ Kariya missed two games because of the concussion.³²⁰

161. In 2003, Kariya collided with an opposing player during an NHL game.³²¹ Kariya laid on the ice motionless and had to be helped to the locker room.³²² Kariya then returned to the game.³²³

162. Kariya suffered from headaches and short term memory loss.³²⁴ Kariya has been an outspoken critic of the NHL, stating in interviews:

³¹⁶ *Suter’s longest night*, Milwaukee Journal, Sept. 17, 1991, p. C2, <http://news.google.com/newspapers?id=4aIaAAAIBAJ&sjid=QCwEAAAIBAJ&pg=6809,969422>

³¹⁷ Tim Sassone, *Striking gold out west Sharks sign ex-Hawk Suter for 3 years, \$10 million*, Daily Herald, July 2, 1998, – via Highbeam<http://www.highbeam.com/doc/1G1-68946874.html>

³¹⁸ *Kariya to miss 2 games*, Lodi News-Sentinel, Nov. 15, 1996, at 22, <http://news.google.ca/newspapers?id=4dczAAAIBAJ&sjid=ViEGAAAIBAJ&pg=5528,1864571&dq=paul+kariya&hl=en>.

³¹⁹ *Last Word in Sports, Toronto, Maple Leafs*, Observer-Reporter, Nov. 15, 1996, at C4, <http://news.google.ca/newspapers?id=CHReAAAIBAJ&sjid=3WENAAAIBAJ&pg=6720,2484324&dq=paul+kariya&hl=en>.

³²⁰ *Kariya to miss 2 games*, Lodi News-Sentinel, Nov. 15, 1996, at 22, <http://news.google.ca/newspapers?id=4dczAAAIBAJ&sjid=ViEGAAAIBAJ&pg=5528,1864571&dq=paul+kariya&hl=en>.

³²¹ Sherry Skalko, *Kariya shows character in Game 6*, ESPN.com, June 8, 2003, <http://sports.espn.go.com/nhl/playoffs2003/story?id=1564873>.

³²² *Id.*

³²³ Damian Cristodero, *Kariya toughs out rough Stevens hit*, St. Petersburg Times, July 9, 2003, http://www.sptimes.com/2003/06/09/Sports/Kariya_toughs_out_rou.shtml.

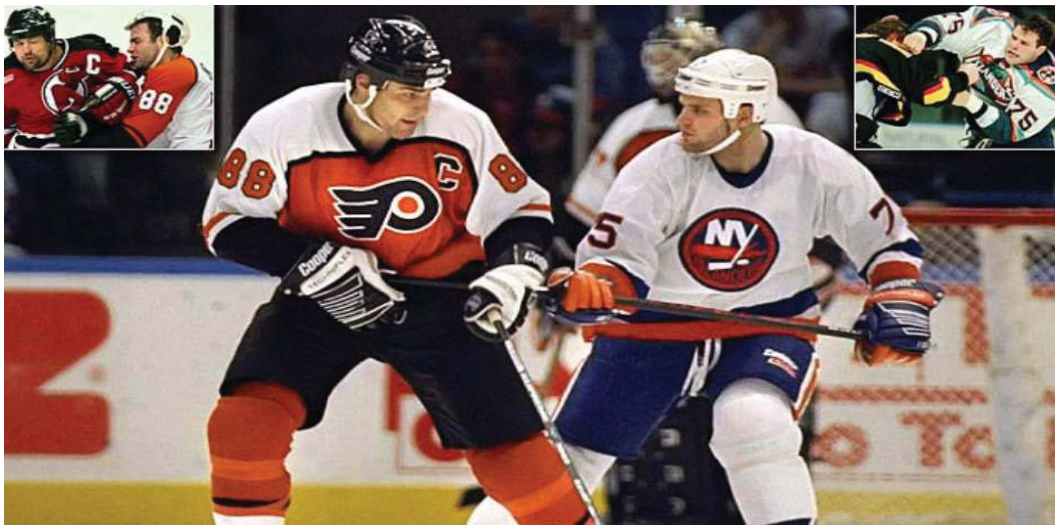
“The thing I worry about is that you’ll get a guy who is playing with a concussion, and he gets hit, and he dies at centre ice.” . . .

“There’s too much of a lack of respect players have for one another If the league wants to stop that kind of conduct, it will have to punish players Ten-game suspensions . . . and more, have to be brought back to help wake up players.”

“There probably isn’t a player in the league who hasn’t had a concussion.”³²⁵

t. The Lindros Brothers’ Head Trauma Issues

163. Eric and Brett Lindros were brothers who played in the NHL.



164. Eric Lindros was the NHL MVP in 1995 and a 2002 Olympic gold medal winner.³²⁶ Eric Lindros suffered eight concussions from 1998 through 2005, which eventually

³²⁴ Joe Lapointe, *Hockey; Kariya Is Haunted by Next Big Hit*, N.Y. Times, Oct. 6, 1998, <http://www.nytimes.com/1998/10/06/sports/hockey-kariya-is-haunted-by-next-big-hit.html>.

³²⁵ Randy Starkman, *Kariya retires, expresses worry for hockey’s future*, THE TORONTO STAR (June 29, 2011), http://www.thestar.com/sports/hockey/2011/06/29/kariya_retires_expresses_worry_for_hockeys_future.html.

³²⁶ Eric Lindros Official Website, <http://www.ericlindros.ca/bio> (last visited Mar. 27, 2014).

led to his retirement in 2007.³²⁷ Eric Lindros' former team, the Philadelphia Flyers, downplayed the seriousness of his concussion condition.³²⁸

165. Brett Lindros retired two years after playing in the NHL.³²⁹ Brett Lindros had sustained numerous concussions by the age of 20 and is quoted as stating:

“What was scary for me was each time it took longer to resolve -- my last concussion before my 20th birthday took eight or nine weeks. . . . Sometimes I had memory loss on the bench.”³³⁰

166. A Canadian news source noted Brett Lindros' outspoken views on the issue of concussions.³³¹ Brett Lindros stated: “It's every kid's dream to play in the NHL . . . My dreams have basically been shattered.”³³² The article went on to note:

Although Lindros's concussions at the pro level are well documented, he said he wasn't sure how many he might have suffered during his junior career with the Kingston Frontenacs of the Ontario Hockey League.³³³

167. The news source also interviewed coaches and management from Brett Lindros' NHL team, which noted the frequency of concussions and the NHL's willful disregard of the

³²⁷ *Eric Lindros retiring from NHL: Report*, Cbc SPORTS (Nov. 6, 2007) <http://www.cbc.ca/sports/hockey/eric-lindros-retiring-from-nhl-report-1.691592> (last visited Mar. 27, 2014).

³²⁸ Alexander Hecht, *Article, Legal and Ethical Aspects of Sports-Related Concussions: The Merrill Hoge Story*, 12 Seton Hall J. Sports & Ent. L. 17, 43-44 (2002).

³²⁹ Gerald Eskenazi, *NHL PLAYOFFS; Brett Lindros Calls It Quits*, N.Y. TIMES, (May 2, 1996), <http://www.nytimes.com/1996/05/02/sports/nhl-playoffs-brett-lindros-calls-it-quits.html> (last visited Mar. 27, 2014).

³³⁰ *Id.*

³³¹ Robert MacLeod, *Brett Lindros Ends Career Concussion-prone Islander Heeds Brain Damage Warning*, THE GLOBE AND MAIL (CANADA) (May 2, 1996).

³³² *Id.*

³³³ *Id.*

problem.³³⁴ For instance, Mike Milbury, the team's general manager and coach, stated: "And I think not only do we have to think how to treat a concussion, you have to think more in terms of preventive measures. It used to be in old-time hockey you'd take a hit, you'd get your bell rung and you'd go right back out there. Obviously, we've got to rethink that."³³⁵

168. After retirement, Eric Lindros was also vocal about his views on the concussion problems. In fact, Eric Lindros started a call to action in the ice hockey community, including through his association with the Ontario Brain Injury Association.³³⁶ A Canadian news source quoted Eric Lindros as stating as follows:

It's time to understand that we have a problem . . . We just don't want anyone to go through this again. . . . You cannot fix a brain, that's something I had to learn. It's not like a shoulder or a knee. . . Hockey in an old sport. It's the old-school boys and an old way of thinking. We have to change that thinking a little bit. I bought into it, I wanted to be a tough guy. But it didn't do me any good. That's what came home to me obviously . . . my brother can't play hockey any more . . . Hopefully, other kids won't have to go through this frustration and a shortened dream of playing in the league. . . . The lack of response from the hockey community has frustrated me³³⁷

169. Another Canadian news article discussed the outreach on the NHL's concussion problem by the Lindros family.³³⁸ The article noted how different the NHL is from other elite ice hockey organizations in other parts of the world in its stance on concussions: "In European hockey, historically, if a player has a concussion, he's automatically out three weeks. That seems

³³⁴ *Id.*

³³⁵ *Id.*

³³⁶ Lynda Dugdale, *Concussions Grave Problem, Teary Lindros Says*, THE GLOBE AND MAIL (CANADA) (Aug. 28, 1997).

³³⁷ *Id.*

³³⁸ James Christie, *Alliance Advocates Need for Sport Safety; Lindros's Father Serves As Adviser; Urges More Information on Injuries*, THE GLOBE AND MAIL (CANADA) (June 23, 2000).

bizarre to North Americans.”³³⁹ The Lindros family criticized the NHL’s stance on concussions, which involved “baseline testing”:

But you can return to baseline and still be concussed . . . Not all teams rest players for the same period of time as it’s taken them to lose the symptoms of concussion. Some teams are knowledgeable, others ignore them [symptoms] as if they just didn’t happen.³⁴⁰

170. According to sources quoted in the article, 9% of all ice hockey players from the junior level and upward suffer one or more concussions in their careers.³⁴¹ The article went on to note that, from 1976 to 1996, “62 Canadian hockey players had landed in wheelchairs for life with catastrophic neck injuries.”³⁴² A physician interviewed further commented:

[I]n the 1980s, the rate was four paralyzes per year . . . In the 1990s, it dropped to two per year. We hope it’s cut in half again in this decade. But what has grown in the 1990s is concussions.³⁴³

u. Tony Granato’s Head Trauma Issues

171. Tony Granato (“Granato”) played in the NHL from 1988 until 2001.³⁴⁴ During a game in 1996, Granato suffered a hard hit, which resulted in head trauma that caused swelling and bleeding of his brain.³⁴⁵ Complaining of severe headaches, he checked into the hospital a

³³⁹ *Id.*

³⁴⁰ *Id.*

³⁴¹ *Id.*

³⁴² *Id.*

³⁴³ *Id.*

³⁴⁴ Hockey Hall of Fame, <http://www.legendsofhockey.net/LegendsOfHockey/jsp/SearchPlayer.jsp?player=10553> (last visited Mar. 27, 2014).

³⁴⁵ Lisa Dillman, *Head Injury Puts Kings’ Granato Into Hospital*, LOS ANGELES TIMES (Jan. 31, 1996)

few days later.³⁴⁶ He was forced to have brain surgery to remove an abnormal collection of blood in his left temporal lobe.³⁴⁷ Granato was in a total of 4 fights in NHL games.³⁴⁸

G. Despite Knowledge of the Imminent Risk of Head Trauma and Its Devastating and Long-Term Negative Health Effects, the NHL Has Failed to Warn and Adequately Protect Its Players

172. The NHL publicly acknowledges that its management are “the caretakers” of its players,³⁴⁹ and that the NHL has to “do everything possible to protect [its] players.”³⁵⁰ NHL deputy commissioner William L. Daly stated at a congressional hearing, “[T]he National Hockey League considers the safety of our Players to be a top priority. . . the National Hockey League has been – and will remain – absolutely committed to promoting the safety of its Players.”³⁵¹ Yet NHL players had the option of not wearing a helmet until 1979.³⁵² Many helmets that have

³⁴⁶ *Id.*

³⁴⁷ Hockey Hall of Fame, <http://www.legendsofhockey.net/LegendsOfHockey/jsp/SearchPlayer.jsp?player=10553> (last visited Mar. 27, 2014).

³⁴⁸ Tony Granato, HOCKEYFIGHTS.COM, <http://www.hockeyfights.com/players/478> (last visited Mar. 31, 2014).

³⁴⁹ Dan Rosen, *New concussion protocol goes into effect tonight*, NHL.com (Mar. 16, 2011), <http://www.nhl.com/ice/news.htm?id=556289>.

³⁵⁰ *Concussion Syndrome Rocks NHL League Puts Study on Fast Track, but players must show more respect*, WINNIPEG FREE PRESS, Apr. 2, 1998, at C3.

³⁵¹ STATEMENT OF WILLIAM L. DALY BEFORE THE HOUSE OF REPRESENTATIVES COMMITTEE ON ENERGY AND COMMERCE, SUBCOMMITTEE ON COMMERCE, REGARDING CONCUSSIONS IN SPORTS, Submitted in connection with testimony on March 13, 2014.

³⁵² James Duplacey, THE OFFICIAL RULES OF HOCKEY: AN OFFICIAL PUBLICATION OF THE NATIONAL HOCKEY LEAGUE 49 (NHL Enterprise, Inc. 2001) (describing the June 1, 1979 NHL legislation that made the wearing of a helmet mandatory for any player signing an NHL contract after June 1, 1979. However, the legislation grandfathered in players who were members of the NHL prior to that date, providing that the use of a helmet was voluntary for them.).

been worn are not safe.³⁵³ NHL goalies didn't wear a full protective mask covering until 1959.³⁵⁴

173. Academics have also criticized the NHL as being in a “state of denial when it comes to concussion management.”³⁵⁵ As one commentator noted: “[P]layers were evaluated at the bench. This was grossly inadequate as players can easily wave the trainer away and shrug off the immediate effects of a head shot.”³⁵⁶ Another commentator has noted that “it took time before the intransigent NHL ordered the use of helmets for new players coming into the league since 1979.”³⁵⁷

174. In a 2012 academic article, the author states as follows regarding the NHL's concussion policies:

One change in policy implemented by the NHL to combat the recent concussion epidemic included the revision of its concussion management protocols. First, a doctor, rather than a trainer, must make immediate return to play decisions. Second, immediate examinations to detect whether an athlete had suffered a concussion must occur in a quiet room, free from distractions, as opposed to on the bench, where such examinations would sometimes occur. The initial examination represents a strong improvement in the NHL's concussion management policy, as it increases the likelihood of concussion detection. Where the old policy allowed a motivated athlete to insist he is okay and return on the

³⁵³ Gare Joyce, *Hard Heads Shun Safer Helmets Heads up / Some of Hockey's Greats Continue to Sport Helmets They Wouldn't Let Their Kids Wear. The NHL and its Players are Finally Putting Their Heads Together*, THE GLOBE AND MAIL (CANADA), Dec 2, 1997, at A30.

³⁵⁴ *The night Plante made goaltending history*, NHL.com (Nov. 1, 2012), <http://www.nhl.com/ice/news.htm?id=383063>.

³⁵⁵ Alexander Hecht, *Article, Legal and Ethical Aspects of Sports-Related Concussions: The Merril Hoge Story*, 12 Seton Hall J. Sports & Ent. L. 17, 63 (2002).

³⁵⁶ Bobby Brooks, *2011 NHL Playoffs: Are the New NHL Concussion Protocols Really Working?* BleacherReport.com (Apr. 18, 2011), <http://bleacherreport.com/articles/669655-head-cases-are-the-new-concussion-protocols-really-working>.

³⁵⁷ James Christie, *Background "Helmets Masterton Injury Got Players Thinking,"* THE GLOBE AND MAIL (CANADA), Aug. 27, 1992.

next shift, the new policy requires a physician evaluation if an athlete exhibits any of the following symptoms: loss of consciousness, motor coordination or balance problems, slowness to get up following a hit to the head, blank or vacant look, disorientation, clutching the head after a hit, or a visible facial injury in combination with any of the above. Evidently, the threshold requiring an evaluation is purposefully low. . . . While both the NHL and NFL have made positive changes to their concussion management policies, the policies remain deficient.³⁵⁸

175. Worse, throughout the decades, the NHL has purposefully failed to warn against and protect its players from the risks and consequences of head trauma.

1. The NHL Spurns Many Different Calls for Change Throughout the Eras

176. The NHL has paid cynical public relations lip-service to the need for change to its violent manner. Then NHL president John Zeigler stated as follows in a 1977 Canadian media interview: “Probably the best way to change violence in the NHL is to change our image.”³⁵⁹

177. Regarding a brawl between seven Philadelphia Flyers players and five New York Rangers players, then executive vice president of the NHL, Brian O’Neil, stated in a 1978 Canadian media interview: “The violence was all over the ice and even threatened to include the fans.”³⁶⁰ However, O’Neil went on to acknowledge that the NHL’s own “rulebook” did not provide for the types of fines that he claimed he would have like to have seen “levied” against the brawlers.³⁶¹

³⁵⁸ Mitch Koczerginiski, *Article: Who is at Fault When a Concussed Athlete Returns to Action?*, 47 Val. U.L. Rev. 63 (2012).

³⁵⁹ United Press International, *Game Breeds Frustration Hockey Needs Fights to Stay Clean: Ziegler*, THE GLOBE AND MAIL (CANADA), Dec. 3, 1977.

³⁶⁰ Associated Press, “*Disgusting*” *Brawl Sees 12 Players Ejected Heavy Fines Will be Sought After Exhibition of Violence*, THE GLOBE AND MAIL (CANADA), Sept. 28, 1978.

³⁶¹ *Id.*

178. In a 1978 media interview regarding an NHL player who swung his stick at another player, O’Neil proclaimed that the three game suspension without pay for the player was not “severe enough.”³⁶²

179. But when calls for change came from various authorities and institutions, the NHL was quick to retreat from its public-relations lip service.

a. The Sports Violence Act of 1980

180. The United States Congress proposed bill entitled, the Sports Violence Act of 1980.³⁶³

181. The proposed bill was intended to deter and punish episodes of violence in professional sports by imposing federal criminal penalties. Proponents of the act said that federal legislation to control violence in professional sports was necessary because existing mechanisms, such as league self-regulation and state and local laws, had been ineffective for curbing violence.

182. At the congressional hearings for the act, an attorney who represented professional athletes spoke about a concussion injury sustained by one of his clients, Dennis Polonich, an NHL player, and the need for federal regulation to deter violent conduct:

In a professional hockey game between the Colorado Rockies and the Detroit Red Wings played at Olympia Stadium in Detroit, Michigan on October 25, 1978, Wilf Paiement of the Colorado Rockies attacked Dennis Polonich of the Red Wings with his stick. Paiement struck Polonich across the face with his hockey stick in a manner described by Referee John McCauley as a “baseball type swing.” Polonich sustained severe nasal fractures, multiple lacerations to the face and a concussion. If the blow had struck Polonich an inch higher on his face, he could well have lost the sight of one or both eyes. Polonich had no recollection of the events for several hours after the injury. As a result of the attack, Paiement

³⁶² James Christie, *NHL Crackdown Decks Williams For Three Games*, THE GLOBE AND MAIL (CANADA) Dec. 16, 1978.

³⁶³ H.R. 7903, 96th Cong., 2d. Sess., 126 Cong. Rec. 20,890 (1980).

was suspended for 15 games by the National Hockey League. He was fined the maximum amount allowed permitted under the rule – Five Hundred Dollars (\$500.00). The Wayne County Prosecutor’s Office investigated the incident and decided not to prosecute Paiement. However, Prosecutor William L. Calahan stated “The operation of the law does not stop at the ticket gates of any sports event in my jurisdiction. Even though this specific incident will not result in a criminal prosecution, everyone concerned should understand that criminal violence occurring during any sporting event will, if supported by fact of law, be prosecuted.”

Polonich is my client and I can assure you that his ability to play professional hockey has been severely impaired as a result of this injury. It is my judgment that the penalty and fine assessed against Paiement was too little and too late to deter such future acts of violence.³⁶⁴

183. In addition, at the hearing, there was a prepared statement by Rick Horrow, an author on the topic of sports violence. Mr. Horrow mentioned another NHL incident where the player that caused the concussion suffered little consequences for his actions of violence:

A September 21, 1969 incident gave rise to *Regina v. Green* and *Regina v. Maki*. That night, Boston Bruin Ted Green almost lost his life after being struck by a hockey stick wielded by Wayne Maki of the St. Louis Blues. Green “came off the boards and cuffed Maki with the back of his glove.” Maki retaliated with his stick, coming straight overhead – as described at the NHL disciplinary hearing – “like a logger splitting a stump.” Milt Schmidt, the Bruin coach at the time, said it was “the worst thing he ever saw in a hockey game. He fell like a cut log.” Green sustained a serious concussion and massive hemorrhaging. After two brain operations, he regained only partial sensation and has never recovered 100 percent. Two charges were brought; one against each participant. While the incident was condemned both in and out of hockey, and despite the severity of the injuries and the intentional violence involved, all the criminal charges were dismissed. A one-month league suspension was the only penalty imposed.³⁶⁵

184. Further, the hearing discussed a paper entitled *Sports Injuries: Who Pays?* authored by John Liskey, which provided, in pertinent part, regarding the concussion problem endemic to the NHL:

³⁶⁴ *Hearings Before the Subcommittee on Crime of the Committee on the Judiciary House of Representatives*, 97th Cong. 26, at 39 (1980) (statement of Brian M. Smith).

³⁶⁵ *Hearings Before the Subcommittee on Crime of the Committee on the Judiciary House of Representatives*, 97th Cong. 26, at 92 (1980) (statement of Rick Horrow).

Dan Maloney of the Detroit Red Wings was the third player in NHL history to stand trial for criminal assault. Maloney allegedly attacked Brian Glennie of the Toronto Maple Leafs from behind, punched him in the face, threw him to the ice, punched him again, then twice lifted him from the ice and dropped him. Glennie was diagnosed with a severe concussion. The Court stated that Glennie could not have consented to this kind of violence as “part of the game.” The Court said “There’s good law and good sense to apply the criminal law equally and evenly within the society and the sporting arena.” On July 1, 1976, Dan Maloney was acquitted because of a hung jury. In an unusual procedure, a statement by the jury accompanied the acquittal, pleading for an end to violence in hockey.³⁶⁶

185. Nevertheless, in response to the bill, then NHL president Zeigler was quoted by a Canadian media outlet as stating at a subcommittee hearing that “under the present laws in the United States and in the provinces of Canada, people charged with refereeing the sports seem to have done a responsible job.”³⁶⁷ Ziegler was also quoted as stating that the NHL “didn’t need the federal Government to interfere.”³⁶⁸

b. The McMurtry Report

186. William McMurtry (“McMurtry”), a Canadian lawyer and brother of Chief Justice of Ontario R. Roy McMurtry,³⁶⁹ authored a report criticizing the excessive violence in the NHL.³⁷⁰ After McMurtry interviewed then NHL president Clarence Campbell and various NHL players, McMurtry concluded that that professional hockey, “with its emphasis on winning and use of violence as a tactical instrument to achieve that goal,” was a cause of violence in amateur

³⁶⁶ *Hearings Before the Subcommittee on Crime of the Committee on the Judiciary House of Representatives*, 97th Cong. 26, at 239 (1980) (Appendix).

³⁶⁷ Al Strachen, *Intervention Spoils Sport*, THE GLOBE AND MAIL (CANADA) Nov. 26, 1980.

³⁶⁸ *Id.*

³⁶⁹ William R. McMurtry, Q.C., Senior Litigator, Advocate for the “Underdog” and Compassionate Leader Dies at 72, taglaw.com (Feb. 12, 2007).

³⁷⁰ *Id.*; William R. McMurtry, Q.C., INVESTIGATION AND INQUIRY INTO VIOLENCE IN AMATEUR HOCKEY (Aug. 21, 1974), <https://archive.org/details/investigatamhock00onta>.

hockey.³⁷¹ McMurtry went on to further criticize the NHL, observing that “[i]t is perhaps the only sport, professional or otherwise, that encourages the use of physical intimidation outside the rules as a legitimate tactic,” and that “[a]ll players spoken to stated there was tremendous peer pressure to stand and fight.”³⁷²

c. Hockey Legends Blow the Whistle

187. Some players staged a backlash against the NHL, the most notable of which was Bobby Hull (“Hull”). The NHL inducted Hull into its “Hall of Fame” in 1983. Hull played in the NHL from 1957 until 1980. Hull was a Stanley Cup champion and has been considered among the greatest NHL players of all time.³⁷³ In the years leading to his retirement, Hull took it upon himself to call for change to the violence in the NHL. In 1975, Hull staged a one-game protest strike.³⁷⁴ Hull was also vocal about why he rejected the NHL’s commodification of violence:

“The idiot owners, the incompetent coaches, the inept players are dragging the game into the mud. They’re destroying it with their senseless violence. The game is no pleasure any more. It’s an ordeal.”³⁷⁵

188. In another article concerning violence in the NHL, a media outlet quotes Hull as saying, “I’ve watched NHL, WHA, junior and minor hockey and it’s all the same. Why do people think they have to annihilate the opposition to win?”³⁷⁶

³⁷¹ *Id.* at 17.

³⁷² *Id.* at 19.

³⁷³ MICHAEL ULMER, THE HOCKEY NEWS, THE TOP 100 NHL PLAYERS OF ALL TIME (McClelland and Stewart 1998).

³⁷⁴ Neil Campbell, *After 22 Years as superstar Hull quits as player, stays as executive*, THE GLOBE AND MAIL (CANADA), Nov. 2, 1978.

³⁷⁵ *Id.*

189. Like Hull, Bobby Orr was also critical of the NHL's use of violence to entice spectators. The NHL inducted Orr into its "Hall of Fame" in 1979 at age 31.³⁷⁷ Orr played in the NHL from 1966 until 1979. Orr was a Stanley Cup champion³⁷⁸ and considered by ESPN as one of the 50 greatest athletes of the 20th Century.³⁷⁹ Orr was quoted as follows by a media outlet regarding the violence in the NHL: "If the NHL can't see what they're doing to hockey, then shame on them."³⁸⁰

190. Mike Bossy played in the NHL from 1977 until 1987.³⁸¹ Bossy was a first team NHL all-star five times³⁸² and holds many goal scoring records.³⁸³ The NHL inducted Bossy into its Hall of Fame in 1991.³⁸⁴ In the year after Bossy retired from the NHL, a Canadian media outlet documented Bossy's denouncement of NHL goons, and the need for the NHL to issue

³⁷⁶ *Mad Enough to Stop Fighting*, THE GLOBE AND MAIL (CANADA) (Mar. 24, 1979).

³⁷⁷ ESPN – Boston Hall of Fame, ESPN.com, <http://espn.go.com/sportsnation/boston/halloffame/jersey?id=6857654> (last visited Apr. 3, 2014)

³⁷⁸ *Id.*

³⁷⁹ Top N. American Athletes of the Century, <http://espn.go.com/sportscentury/athletes.html> (last visited Apr. 3, 2014).

³⁸⁰ Trent Frayne, *Orr Scores When Aiming at Hockey Violence*, THE GLOBE AND MAIL (CANADA) (Jan 24, 1989).

³⁸¹ Mike Bossy, Legends of Hockey, <http://www.legendsofhockey.net/LegendsOfHockey/jsp/LegendsMember.jsp?mem=p199101&type=Player&page=bio&list=ByName> (last visited Apr. 3, 2014)

³⁸² *Id.*

³⁸³ *Id.*

³⁸⁴ *Id.*

harsh suspensions against players who intentionally try to injure others.³⁸⁵ Bossy was in one fight in an NHL game.³⁸⁶

d. Canadian Authorities Seek Reform

191. In the wake of the defeat of the NHL's all-stars to a then Soviet Union team in 1979, Ontario Attorney-General Roy McMurtry took the opportunity to criticize the violence in the NHL:

The people who run hockey in this country have a lot of explaining to do . . . During the past 10 years, there has been much less emphasis placed on the basic skills – such as skating and handling the puck - than there has been on the physical aspects of the game.

You go out and watch the youngsters play, as I have often over the years, and the kids are inhibited from developing their skills because they're waiting for someone to take a run at them, or try to run them through the boards

* * *

It doesn't matter what an attorney-general says, but when you've got top-notch hockey players like Bobby Hull, Jean Beliveau, and Maurice Richard criticizing the professional leagues for the lousy model they've provided for hockey in general, then one has to perhaps sit up and listen to what they're saying.³⁸⁷

192. Similarly, Otto Jelinek, Canadian Minister of State for Fitness, was quoted by a media outlet regarding his desire to meet with then NHL president Zeigler: "I have to express my point of view and the point of view of the federal Government regarding violence in sport.

³⁸⁵ James Christie, *The Boss Is back Book by former Islander star lashes out at NHL violence*, THE GLOBE AND MAIL (CANADA) Nov. 19, 1988.

³⁸⁶ Mike Bossy, HOCKEYFIGHTS.COM, <http://www.hockeyfights.com/players/11198> (last visited Mar. 31, 2014).

³⁸⁷ *McMurtry upset violence blamed for NHL's defeat*, THE GLOBE AND MAIL (CANADA), Feb. 21, 1979.

My meeting with Mr. Ziegler won't be a confrontation, but I have to share my views with him.”³⁸⁸

e. Additional Backlash

193. In 1984, a Canadian media outlet reported on a forum conducted by the Ontario Commission regarding hockey violence.³⁸⁹ During the three-day forum, former NHL players provided their insight.³⁹⁰ However, a then NHL executive vice-president commented on the forum, stating that he did “not believe hockey to be above the law, but steadfastly maintains that the sport has its own disciplinary measures and can govern itself.”³⁹¹

194. In 1985, a Canadian media outlet noted the NHL's rejection of criticism about its violence.³⁹² The article quoted Ziegler as saying, ““The facts don't bear out all the dialogue going on (about violence)' 'I myself don't see any need for a dramatic change.’”³⁹³

195. In 1987, a U.S. media outlet reported on a meeting about the violence in the NHL between then Mayor of Boston, Massachusetts, Ray Flynn, and Ziegler.³⁹⁴ The article quoted

³⁸⁸ James Christie, *Plans meeting with Ziegler NHL worries Jelinek*, THE GLOBE AND MAIL (CANADA), Mar. 7, 1985.

³⁸⁹ James Christie, *Sports violence: Controversial can of worms*, THE GLOBE AND MAIL (CANADA), Apr. 28, 1984.

³⁹⁰ *Id.*

³⁹¹ *Id.*

³⁹² *Ziegler rejects views of violence increase*, THE GLOBE AND MAIL (CANADA) Feb. 6, 1985.

³⁹³ *Id.*

³⁹⁴ *Boston Mayor Ray Flynn met Friday with NHL president*, CHICAGO TRIBUNE, Feb. 21, 1987, http://articles.chicagotribune.com/1987-02-21/sports/8701150191_1_general-manager-emile-francis-stanley-cup-playoffs-nhl.

Flynn as having told Ziegler ““that if professional leagues did not live up to their responsibilities, then the league should expect community intervention.””³⁹⁵

f. The Rink

196. In or about 1996, NHL arenas began using a seamless glass system above the rink boards. The seamless glass eliminated the metal dividers between the rectangular panes of independent flexible plexiglass that was standard prior to the introduction of the seamless glass. The seamless glass allowed fan to see the game more clearly, and pucks shot around the corners did not take as many strange bounces.

197. Players immediately began complaining, describing hits against the seamless glass as being like hitting concrete or a brick wall.

198. In a January 19, 1997 *New York Times* article, NHL player Derian Hatcher was quoted as saying: “It’s hard. It doesn’t move. It seems like guys will get injuries. Being hit into this is not fun.””³⁹⁶

199. When asked to respond to players’ concerns regarding the seamless glass systems, Arthur Pincus, the NHL’s vice president of public relations, said, “We have heard those feelings and we are looking at a variety of things dealing with injuries. There is only anecdotal evidence about a variety of factors and we are looking into any number of factors.””³⁹⁷

200. The NHL failed to act for another three years, until, prior to the 2000-2001 season, it adopted regulations requiring arenas with tempered glass to meet certain flexibility

³⁹⁵ *Id.*

³⁹⁶ Joe Lapointe, *Players Call a New Type of Glass Around Rinks Unsafe*, N.Y. TIMES Jan. 19, 1997, <http://www.nytimes.com/1997/01/19/sports/players-call-a-new-type-of-glass-around-rinks-unsafe.html>

³⁹⁷ *Id.*

standards.³⁹⁸ The NHL gave a target deadline for improving the safety of seamless glass of December 31, 2002.³⁹⁹

201. It was not until the 2011-2012 season, however, that the NHL finally required all arenas to convert the seamless glass system to a flexible acrylic system.⁴⁰⁰

g. Player Equipment

202. The NHL has long known that hard cap plastic shoulder pads have increased the incidence of concussions.

203. The NHL recognized the risk of hard plastic capped elbow pads in 2003, when rule changes required any hard plastic in elbow pads be covered by a layer of foam.⁴⁰¹

204. NHL players have publically stated that harder and more protective equipment gives player a feeling of “invincibility,” which leads NHL players to play much more physically and aggressively; extensively padded players are less concerned about injuring themselves in a hard body check.⁴⁰²

³⁹⁸ *Statement of William L. Daly Before the House of Representatives Committee on Energy and Commerce, Subcommittee on Commerce, Regarding Concussions in Sports* (Mar. 13, 2014), <https://energycommerce.house.gov/hearing/improving-sports-safety-multifaceted-approach>.

³⁹⁹ Transcript of media conference call with NHL Commissioner Gary Bettman, Oct. 3, 2002, http://sportsillustrated.cnn.com/hockey/news/2002/10/03/media_conference/.

⁴⁰⁰ *Statement of William L. Daly, supra; NHL opens its 95th season tomorrow night with spotlight on Winnipeg return, B's Cup defense*, NHL.COM (Oct. 5, 2011) <http://www.nhl.com/ice/news.htm?id=594578>.

⁴⁰¹ David Shoalts, *Elbow, shoulder pads under scrutiny in bid to reduce NHL head injuries*, THE GLOBE AND MAIL (CANADA), Dec. 13, 2011, <http://www.theglobeandmail.com/sports/hockey/elbow-shoulder-pads-under-scrutiny-in-bid-to-reduce-nhl-head-injuries/article4180946/>.

⁴⁰² Douglas Flynn, *NHL Needs to Modify Protective Equipment to Reduce Head Injuries*, NESN.com, (Mar. 19, 2011), <http://nesn.com/2011/03/the-hits-just-keep-coming/>.

205. Hard plastic acts as body armor and simultaneously protects an aggressive player's shoulders, while creating a harder striking surface for the recipient of a blow, leaving many players concussed.⁴⁰³

206. The NHL waited, however, until the 2010-2011 season to require foam covering over plastic shoulder pads.⁴⁰⁴

207. The use of hard plastic in both elbow and shoulder pads is still permitted, despite numerous calls to eliminate hard plastic and soften the padding worn by NHL players.⁴⁰⁵

208. As Boston Bruins team president Cam Neely stated in 2012: “‘Personally, I’d rather have a player with a separated shoulder than someone with a concussion’. . . . ‘I don’t know why it’s that difficult to look at the equipment and say, ‘We really need to do something with the shoulder pads and elbow pads.’”⁴⁰⁶

2. In 1997, the NHL Undertakes an Untimely and Purposefully Ineffective “Concussion Program”

209. Rather than take immediate measures to protect its players from these known dangers, it was not until 1997 that the NHL launched a concussion program to improve the understanding of this injury.

210. The 1997 NHL Concussion Program was to focus on initial post-concussion signs, symptoms, physical examination findings and time loss (*i.e.*, time between the injury and

⁴⁰³ Shoalts, *supra*.

⁴⁰⁴ *Id.*

⁴⁰⁵ See e.g., Jason Brough, *Flyers owner: NHL equipment too hard* (Dec. 13, 2011), <http://prohockeytalk.nbcsports.com/2011/12/13/flyers-owner-nhl-equipment-too-hard/>.

⁴⁰⁶ Fluto Shinzawa, *NHL seeks improvements in equipment safety*, THE BOSTON GLOBE, May 20, 2012, <http://www.bostonglobe.com/sports/2012/05/19/nhl-seeks-improvements-equipment-safety/qCK53CUq1upvel3SC9aidK/story.html>.

medical clearance by the physician to return to competitive play) experienced by NHL players, and assess the utility of initial post-concussion clinical manifestations in predicting time loss among hockey players.

211. The 1997 NHL Concussion Program was conducted over seven NHL regular seasons from 1997 to 2004 to determine the incidence of concussions and time lost. NHL team physicians documented post-concussion clinical manifestations and recorded the date when a player was medically cleared to return to play.

212. Team physicians reported 559 concussions during regular season games.⁴⁰⁷ The estimated incidence was 1.8 concussions per 1000 player-hours.⁴⁰⁸

213. By 1997, when the NHL formed the NHL Concussion Program, independent scientists, doctors, and neurologists alike were already convinced that all concussions — even seemingly mild ones — were serious injuries that could permanently damage the brain, impair thinking ability and memory, and hasten the onset of mental decay and senility, especially when inflicted frequently and without time to properly heal.

214. The NHL Concussion Program was publicized as being independent from the NHL, consisting of a combination of the NHL's Player's Association, doctors and researchers from major universities.

215. In actuality however, the NHL Concussion Program was not independent. It consisted of individuals who were already affiliated with the NHL.

⁴⁰⁷ Brian W. Benson et. al, *A prospective study of concussions among National Hockey League players during regular season games: the NHL-NHLPA Concussion Program*, Canadian Medical Ass'n J., May 11, 2011, 905-911.

⁴⁰⁸ *Id.*

216. During the time the NHL Concussion Program “studied” the effects of concussions on hockey players, the NHL experienced increasingly devastating and highly publicized career-ending concussions in its players. Many of these incidents are described above.

217. At the conclusion of the NHL Concussion Program studies in 2004, the NHL knew that fighting and concussions in the NHL were serious risks that could result in life altering consequences.

218. NHL Commissioner Gary Bettman, at a 2007 press conference broadcast on CBC Sports, said: “Fighting has always had a role in the game . . . from a player safety standpoint, what happens in fighting is something we need to look at just as we need to look at hits to the head. . . . But we’re not looking to have a debate on whether fighting is good or bad or should be part of the game.”⁴⁰⁹

219. Moreover, the NHL continued to withhold and suppress information from its players, and the health and careers of the NHL’s best players continued to be destroyed.

3. The NHL Undertakes an Untimely and Purposefully Ineffective Rule 48

220. Before the start of the 2010-2011 season, the NHL created Rule 48, which made illegal checks to the head, defined as “[a] hit resulting in contact with an opponent’s head where the head is targeted and the principal point of contact is not permitted,”⁴¹⁰ subject to a five-minute major penalty and automatic game misconduct, as well as possible supplemental discipline if deemed appropriate by the league.

⁴⁰⁹ *Fighting not up for debate: Bettman*, CBC Sports (Mar. 26, 2007), <http://www.cbc.ca/sports/hockey/fighting-not-up-for-debate-bettman-1.661551>.

⁴¹⁰ *Rule 48 – Illegal Check to the Head*, <http://www.nhl.com/ice/page.htm?id=64063> (last visited on Apr. 4, 2014).

221. Rule 48 did not, however, impair the ability of players to deliberately target the head of another player during a body check, which continued to be legal under the NHL rules until the beginning of the 2013-2014 season.

a. The Head Trauma to Sidney Crosby Further Exposes the NHL's Failure to Warn and Adequately Protect Against the Imminent Risk of Head Trauma and Its Devastating and Long-Term Negative Health Effects

222. Despite the enactment of Rule 48, concussions continued to end the careers of NHL stars in spectacular fashion, as described above. Moreover, the NHL's concussion problem took center stage, despite Rule 48, in 2011 with its current star player, Sidney Crosby ("Crosby"). Crosby was the first overall draft pick in his NHL class.⁴¹¹ Crosby, known as the "The Next One,"⁴¹² has received numerous NHL accolades and awards since starting in the league in 2005.⁴¹³ The jersey Crosby wore in this third NHL game sold for over \$21,000.⁴¹⁴ A jersey from Crosby's World Junior Hockey Championship days sold for over \$22,000.⁴¹⁵ Crosby

⁴¹¹ Greg Fernandez, *Pens Draft History - Sidney Crosby*, NHL.com (June 18, 2012) <http://penguins.nhl.com/club/news.htm?id=634404> (last visited Mar. 28, 2014).

⁴¹² "The Next One," MARITIME MAGAZINE (Jan. 18, 2004) http://web.archive.org/web/20070504131840/http://www.cbc.ca/maritimemagazine/archives/040118_thenextOne.html (last visited Mar. 28, 2014).

⁴¹³ Greg Fernandez, *Pens Draft History - Sidney Crosby*, (Jun 18, 2012) <http://penguins.nhl.com/club/news.htm?id=634404> (last visited Mar. 28, 2014)

⁴¹⁴ Guide: Sidney Crosby, talkicehockey.com, http://www.talkicehockey.co.uk/guides/ice_hockey_stars_sidney_crosby.html (last visited Mar. 28, 2014).

⁴¹⁵ *Crosby jersey nets \$22,100 in auction*, CBC SPORTS (Jan. 20, 2005) <http://www.cbc.ca/sports/hockey/crosby-jersey-nets-22-100-in-auction-1.568876> (last visited Mar. 28, 2014).

led his Canadian team to an Olympic gold medal at the 2014 Winter Olympics in Sochi, Russia.⁴¹⁶ A jersey that he wore during the Olympics sold for \$37,100.⁴¹⁷

223. On January 1, 2011, Crosby and his NHL team played against the Washington Capitals.⁴¹⁸ Named the “2011 NHL Winter Classic,” the game was televised on NBC in the United States, on CBC in Canada, and on RDS in French-speaking areas of Canada.⁴¹⁹ During the game, opposing player Dave Steckel (“Steckel”) landed a blindside hit on Crosby.⁴²⁰ Steckel played in the NHL from 2005 until 2013.⁴²¹ In years prior to blindsiding Crosby, Steckel had suffered a broken finger during a game, which required pins.⁴²²

224. Although Crosby suffered concussion symptoms from Steckel’s hit, he returned to play in the internationally televised game.⁴²³ Four days later, Crosby’s team played the Tampa

⁴¹⁶ Athletes: Sidney Crosby, XXII Olympic Winter Games, <http://www.sochi2014.com/en/athlete-sidney-crosby> (last visited Mar. 28, 2014).

⁴¹⁷ *Sidney Crosby Olympic jersey sells for \$37,100 at NHLPA online auction*, The Hockey News May 19, 2010, <http://www.thehockeynews.com/articles/33682-Sidney-Crosby-Olympic-jersey-sells-for-37100-at-NHLPA-online-auction.html> (last visited Mar. 28, 2014).

⁴¹⁸ *Pen’s Crosby Returns on Monday*, EDMONTON JOURNAL (ALBERTA), Nov. 21, 2011, at C5.

⁴¹⁹ Travis Hughes, *Winter Classic TV Coverage from NBC, CBS, RDS*, SB NATION (Jan. 1, 2011), <http://www.sbnation.com/nhl/2011/1/1/1907928/winter-classic-tv-coverage-nbc-cbc-rds-penguins-capitals-outdoor-hockey> (last visited Mar. 28, 2014).

⁴²⁰ *A Timeline of Sidney Crosby’s Concussion and Recovery*, THE CANADIAN PRESS (Sept. 7, 2011) <http://www.nhl.com/ice/news.htm?id=587898> (last visited Mar. 28, 2014); *Pen’s Crosby Returns on Monday*, *supra*.

⁴²¹ Players – David Steckel, NHL.com <http://www.nhl.com/ice/player.htm?id=8469483> (last visited Mar. 28, 2014).

⁴²² Tarik El-Bashir, *Steckel Is Close; Clark Not So Much*, THE WASHINGTON POST (Mar. 27, 2008), <http://voices.washingtonpost.com/capitalsinsider/steckel-is-close-clark-not-so.html>.

⁴²³ *A Timeline of Sidney Crosby’s Concussion and Recovery*, THE CANADIAN PRESS (Sept. 7, 2011), <http://www.nhl.com/ice/news.htm?id=587898> (last visited Mar. 28, 2014).

Bay Lightning.⁴²⁴ Although Crosby had neck pain, he played in the game.⁴²⁵ During that subsequent game, Crosby's head was driven into the boards by opposing player Victor Hedman ("Hedman").⁴²⁶ Hedman received only a minor penalty.⁴²⁷ Later that year, Hedman signed a 5-year, \$20 million contract extension.⁴²⁸

225. As a result of Hedman's hit on Crosby, Crosby felt additional concussion-like symptoms the next day.⁴²⁹ Crosby was then diagnosed by a specialist at the University of Pittsburgh with a concussion.⁴³⁰ The specialist determined that the concussion was affecting Crosby's vestibular system, which is the part of the brain that allows an individual to stand upright and maintain balance.⁴³¹ In the subsequent months, Crosby experienced concussion-like symptoms, which he then addressed at a September 2011 press conference.⁴³²

⁴²⁴ *Id.*

⁴²⁵ *Id.*

⁴²⁶ Josh Hargreaves, *Crosby discusses lengthy recovery road from concussions, safety of the game*, THE GLOBE AND MAIL (Sept. 5, 2013) <http://www.theglobeandmail.com/sports/hockey/crosby-discusses-lengthy-recovery-road-from-concussions-safety-of-the-game/article14118504/> (last visited Mar. 28, 2014).

⁴²⁷ Angie Carducci, *Crosby Talks Concussion, Blindside Hits*, Inside Hockey (Jan. 8, 2011), <http://insidehockey.com/crosby-talks-concussion-blindside-hits> (last visited Mar. 28, 2014).

⁴²⁸ Damian Cristodero, *Tampa Bay Lightning defenseman Victor Hedman welcomes pressure of \$20 million contract extension*, TAMPA BAY TIMES (Dec. 2, 2011) <http://www.tampabay.com/sports/hockey/lightning/tampa-bay-lightning-defenseman-victor-hedman-welcomes-pressure-of-20/1204626>.

⁴²⁹ *A Timeline of Sidney Crosby's Concussion and Recovery*, THE CANADIAN PRESS (Sept. 7, 2011), <http://www.nhl.com/ice/news.htm?id=587898> (last visited Mar. 28, 2014).

⁴³⁰ *Id.*

⁴³¹ *Id.*

⁴³² *Id.*

4. NHL Players Still Face the Same Imminent Risk of Head Trauma and Its Devastating and Long-Term Negative Health Effects

a. Scientists Continue to Warn Against the Concussion Problem

226. In 2013, researchers published an article titled, *Bodychecking Rules and Concussion in Elite Hockey*.⁴³³ The abstract of the article confirms that the various, supposed rule changes implemented and studies conducted by the NHL have not protected its players:

The number of NHL concussions or suspected concussions was lower in 2009 –10 than in 2010 –11 (IRR 0.61; 95% CI 0.45, 0.83), but did not increase from 2010 – 11 to 2011–12 (IRR 1.05; 95% CI 0.80, 1.38). 64.2% of NHL concussions were caused by bodychecking, and only 28.4% of concussions and 36.8% of suspected concussions were caused by illegal incidents. We conclude that rules regulating bodychecking to the head did not reduce the number of players suffering concussions during NHL regular season play and that further changes or stricter enforcement of existing rules may be required to minimize the risk of players suffering these injuries.⁴³⁴

b. The NHL Has Not Implemented Effective Change

227. The report resulting from the NHL Concussion Program was not published until May 17, 2011 – 20 years after publication of the Colorado Medical Society guidelines, and ten years after the first International Symposium on Concussion in Sport. The report amounted to little more than a statistical analysis of concussions suffered and time lost by players.

228. Notably, the NHL Concussion Program report did not take a position on the long-term effects of concussions, and did not provide any specific recommendations as to return to play guidelines or rule changes.

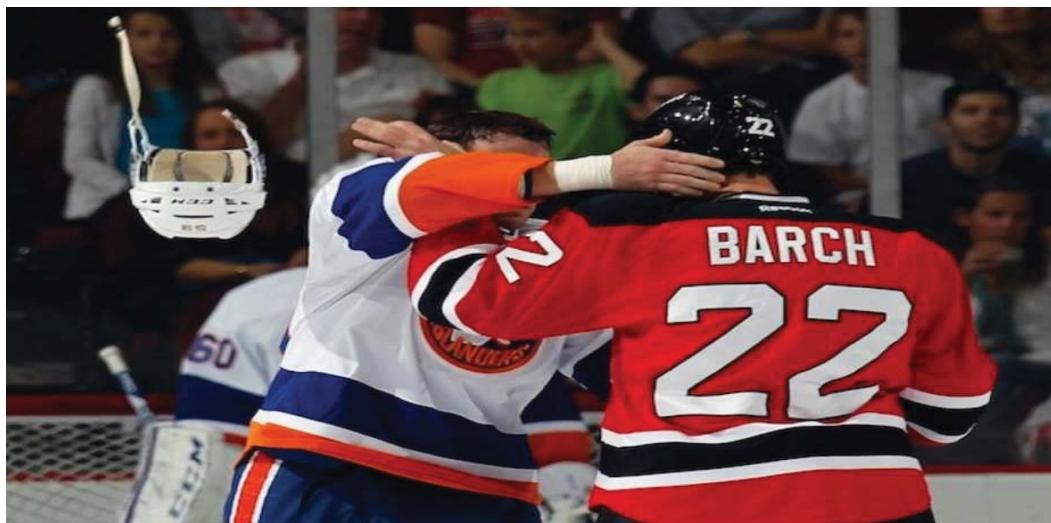
⁴³³ Laura Donaldson, Mark Asbridge, Michael D. Cusimano, *Bodychecking Rules and Concussion in Elite Hockey*, PLOS ONE (July 2013), <http://www.plosone.org/article/fetchObject.action?uri=info%3Adoi%2F10.1371%2Fjournal.pone.0069122&representation=PDF>.

⁴³⁴ *Id.* at 1.

229. After the publication of the NHL Concussion Program report, the NHL continued to take the position that additional research was needed.

c. The NHL Keeps Profiteering from Extreme Violence

230. Although fighting has long been forbidden at other high levels of play, including the Olympics and the NCAA, the NHL has refused to follow suit, despite incontrovertible evidence that eliminating fighting would significantly reduce concussions. In fact, the NHL's supposed incentives against fighting create the absurd situation where players take off each other's helmet before fighting in order to receive a lesser penalty.⁴³⁵ Pictured below are Krys Barch ("Barch") and Brett Gallant ("Gallant") doing just that in a September 19, 2013 NHL preseason game:



231. Barch and Gallant fought two more times during that game.⁴³⁶ Barch has played in the NHL from 2006 until the present. In 2009, Barch had eight teeth shattered by an opposing

⁴³⁵ Sean Leahy, *Krys Barch, Brett Gallant find rule loophole, remove each other's helmets before fight (Video)*, Yahoo! Sports (Sept. 19, 2013), <http://sports.yahoo.com/blogs/puck-daddy/krys-barch-brett-gallant-rule-loophole-remove-other-011011548--nhl.html>.

⁴³⁶ *Krys Barch 2013-2014 Preseason Fight Card*, <http://www.hockeyfights.com/players/598/fightcard/pre2014> (last visited Apr. 2, 2014).

player's stick during an NHL game.⁴³⁷ In 2011, Barch was suspended for one game due to his utterance of a racial slur at an opposing player during an NHL game.⁴³⁸

232. There were two other fights between Barch's and Gallant's teammates during the September 19, 2013 NHL preseason game,⁴³⁹ which is symbolic of the type of extreme and unnecessarily violence still afflicting the NHL. Ryan Carter ("Carter") and Travis Hamonic ("Hamonic") were two of the players that also fought in the September 19, 2013 game.⁴⁴⁰ When Carter's and Hamonic's teams played again on March 1, 2014, Carter and Hamonic fought again.

233. In the March 1, 2014 game, Carter skated full speed and delivered the following hit on Hamonic's teammate:



234. Seconds later, Hamonic attacked Carter, as depicted below:

⁴³⁷ Mike Heika, *Barch sticks it to Wings Stars enforcer loses some teeth, shows grit with his quick return*, THE DALLAS MORNING NEWS, Jan. 30, 2009, at 10C.

⁴³⁸ Harvey Fialkov, *Panthers' Barch suspended*, SUNSENTINEL, Jan. 5, 2012, http://articles.sun-sentinel.com/2012-01-05/sports/fl-florida-panthers-barch-suspended-0106-20120105_1_racial-slur-panthers-coach-kevin-dineen-erik-gudbranson.

⁴³⁹ Travis Betts, *Game Recap, (Penalty Summary) (Sept. 19, 2013)*, <http://islanders.nhl.com/gamecenter/en/recap?id=2013010038> (last visited Apr. 2, 2014).

⁴⁴⁰ *Id.*



235. When Hamonic attacked Carter, there were less than five minutes left in the game and Hamonic's team was losing 5 goals to 1.⁴⁴¹ The announcer recounting the incident stated, "That's a retaliatory attack."⁴⁴² Minutes before Hamonic attacked Carter on March 1, 2014, Hamonic had just attacked Carter's teammate, Steve Bernier ("Bernier"), as depicted below:



⁴⁴¹ *Id.*

⁴⁴² *Ryan Carter vs Travis Hamonic Mar 1, 2014*, <https://www.youtube.com/watch?v=CQE9qEjAl6U> (last visited Apr. 2, 2014).



236. As pictured above, the refs stood watching, letting Bernier and Hamonic fight. Giving the play-by-play of the fight between Bernier and Hamonic, the announcer said, “Travis Hamonic, you know is a tough, aggressive guy. But with a couple concussions this year, you are not sure that’s what you want him to get involved in. But emotions are becoming more apparent with Travis. That would be a concern for me. Yeah, you know what? You need him to play his tough game. His physical game. and he certainly can’t afford to take a good solid punch in the head area.”⁴⁴³ Another announcer interjected, “Well, he’s a feisty guy. He competes. He doesn’t like losing. Of course who does? But taking it out on Bernier. Willing combatant in his own right who has some toughness to him. Travis able to land a pretty hard right.”⁴⁴⁴

237. The extreme violence from the September 19, 2013 and March 1, 2014 NHL games is symbolic of the hundreds of other violent incidents that have happened and will continue to happen this NHL season and that will also induce head trauma. According to hockeyfights.com, as of March 30, 2014:

⁴⁴³ *Steve Bernier vs Travis Hamonic Mar 1, 2014*, https://www.youtube.com/watch?v=WKK4RqXpV_c (last visited Apr. 2, 2014).

⁴⁴⁴ *Id.*

(a) In the 2013-2014 NHL regular season thus far, there have been a total of 444 fights, involving 282 players.⁴⁴⁵ Out of 1,118 games, 346 had fights.⁴⁴⁶ Of those games with fights, 75 had more than one fight.⁴⁴⁷ For the preseason, there were a total of 100 fights in 104 games, involving 149 players, with 59 games involving at least one fight.⁴⁴⁸

(b) In the 2012-2013 NHL regular season, there were a total of 347 fights, involving 245 players.⁴⁴⁹ Out of 720 games, 264 had fights.⁴⁵⁰ Of those games with fights, 66 had more than one fight.⁴⁵¹

(c) In the 2011-2012 NHL regular season, there were a total of 546 fights, involving 321 players.⁴⁵² Out of 1,230 games, 423 had fights.⁴⁵³ Of those games with fights, 98 had more than one fight.⁴⁵⁴ For the preseason, there were a total of 72 fights in 108 games, involving 115 players, with 49 games involving at least one fight.⁴⁵⁵

⁴⁴⁵ *NHL Fight Stats*, <http://www.hockeyfights.com/stats/> (last visited Mar. 30, 2014).

⁴⁴⁶ *Id.*

⁴⁴⁷ *Id.*

⁴⁴⁸ *Id.*

⁴⁴⁹ *Id.*

⁴⁵⁰ *Id.*

⁴⁵¹ *Id.*

⁴⁵² *Id.*

⁴⁵³ *Id.*

⁴⁵⁴ *Id.*

⁴⁵⁵ *Id.*

(d) In the 2010-2011 NHL regular season, there were a total of 645 fights, involving 348 players. Out of 1,230 games, 458 had fights.⁴⁵⁶ Of those games with fights, 117 had more than one fight.⁴⁵⁷ For the preseason, there were a total of 115 fights in 106 games, involving 183 players, with 67 games involving at least one fight.⁴⁵⁸

(e) In the 2009-2010 NHL regular season, there were a total of 714 fights, involving 341 players.⁴⁵⁹ Out of 1,230 games, 493 had fights.⁴⁶⁰ Of those games with fights, 171 had more than one fight.⁴⁶¹ For the preseason, there were a total of 164 fights in 109 games, involving 209 players, with 74 games involving at least one fight.⁴⁶²

(f) In the 2008-2009 NHL regular season, there were a total of 734 fights, involving 355 players.⁴⁶³ Out of 1,230 games, 509 had fights.⁴⁶⁴ Of those games with fights, 173 had more than one fight.⁴⁶⁵ For the preseason, there were a total of 151 fights in 111 games, involving 183 players, with 70 games involving at least one fight.⁴⁶⁶

⁴⁵⁶ *Id.*

⁴⁵⁷ *Id.*

⁴⁵⁸ *Id.*

⁴⁵⁹ *Id.*

⁴⁶⁰ *Id.*

⁴⁶¹ *Id.*

⁴⁶² *Id.*

⁴⁶³ *Id.*

⁴⁶⁴ *Id.*

⁴⁶⁵ *Id.*

⁴⁶⁶ *Id.*

(g) In the 2007-2008 NHL regular season, there were a total of 664 fights, involving 324 players.⁴⁶⁷ Out of 1,230 games, 473 had fights.⁴⁶⁸ Of those games with fights, 143 had more than one fight.⁴⁶⁹ For the preseason, there were a total of 121 fights in 105 games, involving 164 players, with 63 games involving at least one fight.⁴⁷⁰

(h) In the 2006-2007 NHL regular season, there were a total of 497 fights, involving 292 players.⁴⁷¹ Out of 1,230 games, 384 had fights.⁴⁷² Of those games with fights, 87 had more than one fight.⁴⁷³ For the preseason, there were a total of 92 fights in 105 games, involving 138 players, with 55 games involving at least one fight.⁴⁷⁴

(i) In the 2005-2006 NHL regular season, there were a total of 466 fights, involving 276 players.⁴⁷⁵ Out of 1,230 games, 357 had fights.⁴⁷⁶ Of those games with fights, 80 had more than one fight.⁴⁷⁷ For the preseason, there were a total of 108 fights in 111 games, involving 138 players, with 67 games involving at least one fight.⁴⁷⁸

⁴⁶⁷ *Id.*

⁴⁶⁸ *Id.*

⁴⁶⁹ *Id.*

⁴⁷⁰ *Id.*

⁴⁷¹ *Id.*

⁴⁷² *Id.*

⁴⁷³ *Id.*

⁴⁷⁴ *Id.*

⁴⁷⁵ *Id.*

⁴⁷⁶ *Id.*

⁴⁷⁷ *Id.*

⁴⁷⁸ *Id.*

(j) In the 2003-2004 NHL regular season, there were a total of 789 fights, involving 340 players.⁴⁷⁹ Out of 1,230 games, 506 had fights.⁴⁸⁰ Of those games with fights, 172 had more than one fight.⁴⁸¹ For the preseason, there were a total of 137 fights in 124 games, involving 168 players, with 79 games involving at least one fight.⁴⁸²

(k) In the 2002-2003 NHL regular season, there were a total of 668 fights, involving 321 players.⁴⁸³ Out of 1,230 games, 464 had fights.⁴⁸⁴ Of those games with fights, 139 had more than one fight.⁴⁸⁵ For the preseason, there were a total of 143 fights in 120 games, involving 165 players, with 78 games involving at least one fight.⁴⁸⁶

(l) In the 2001-2002 NHL regular season, there were a total of 803 fights, involving 348 players.⁴⁸⁷ Out of 1,230 games, 519 had fights.⁴⁸⁸ Of those games with fights, 172 had more than one fight.⁴⁸⁹ For the preseason, there were a total of 122 fights in 109 games, involving 168 players, with 67 games involving at least one fight.⁴⁹⁰

⁴⁷⁹ *Id.*

⁴⁸⁰ *Id.*

⁴⁸¹ *Id.*

⁴⁸² *Id.*

⁴⁸³ *Id.*

⁴⁸⁴ *Id.*

⁴⁸⁵ *Id.*

⁴⁸⁶ *Id.*

⁴⁸⁷ *Id.*

⁴⁸⁸ *Id.*

⁴⁸⁹ *Id.*

⁴⁹⁰ *Id.*

(m) In the 2000-2001 NHL regular season, there were a total of 684 fights, involving 329 players.⁴⁹¹ Out of 1,230 games, 469 had fights.⁴⁹² Of those games with fights, 155 had more than one fight.⁴⁹³ For the preseason, there were a total of 126 fights in 122 games, involving 167 players, with 72 games involving at least one fight.⁴⁹⁴

238. Tens of thousands of extremely violent incidents inducing head trauma have already happened in years past and will continue to happen unless the NHL is held to account for its misconduct through this lawsuit.

V. TOLLING OF THE STATUTES OF LIMITATIONS

239. Plaintiffs and members of the Class could not have discovered through the exercise of reasonable diligence, did not know, and could not have known that the NHL was and is committing wrongdoing, including but not limited to: (i) subjecting and continuing to subject Plaintiffs and the Class to the imminent risk of head trauma and, as a result, devastating and long-term negative health consequences; (ii) failing to and continuing to fail to warn Plaintiffs and the Class of the risks and consequences of head trauma; (iii) concealing material scientific and anecdotal information from Plaintiffs and the Class about the risks and consequences from head trauma; and (iv) failing to institute policies and protocols that could have and will protect Plaintiffs and the Class from suffering or exacerbating head trauma sustained during practice or in games.

⁴⁹¹ *Id.*

⁴⁹² *Id.*

⁴⁹³ *Id.*

⁴⁹⁴ *Id.*

240. The NHL affirmatively concealed and continues to conceal its wrongdoing from Plaintiffs and the Class. The NHL instituted purposefully-ineffective studies and changes that were solely calculated by the NHL to fool and mislead Plaintiffs, the Class and the public into ceasing investigation into the risks and consequences of head trauma and the NHL's wrongdoing. The NHL had and has superior knowledge of its wrongdoing, that there was and is an imminent threat of head trauma for NHL players, and the risks and consequences of head trauma to NHL players. Plaintiffs and the Class did not have this knowledge and could not have had this knowledge through reasonable diligence.

241. Accordingly, all applicable statutes of limitations have been suspended with respect to any claims by Plaintiffs and the Class and, moreover, the NHL is estopped from relying on any statutes of limitations defenses of this action.

VI. CLASS ACTION ALLEGATIONS

242. Plaintiffs brings this action their behalf and as a class action on behalf of all former and current NHL players (the "Class").

243. This action is properly maintainable as a class action under Rule 23.

244. The Class is so numerous that joinder of all members is impracticable.

245. There are questions of law and fact which are common to the Class and which predominate over questions affecting any individual Class member. The common questions include, *inter alia*, the following:

(a) Whether the NHL breached its duty to warn and protect the Class of the risks and consequences of head trauma.

246. Plaintiffs' claims are typical of the claims of the other members of the Class and Plaintiffs do not have any interests adverse to the Class.

247. Plaintiffs are adequate representatives of the Class, have retained competent counsel experienced in litigation of this nature and will fairly and adequately protect the interests of the Class.

248. The prosecution of separate actions by individual members of the Class would create a risk of inconsistent or varying adjudications with respect to individual members of the Class which would establish incompatible standards of conduct for the party opposing the Class.

249. Plaintiffs anticipate that there will be no difficulty in the management of this litigation. A class action is superior to other available methods for the fair and efficient adjudication of this controversy.

250. The NHL acted on grounds generally applicable to the Class with respect to the matters complained of herein, thereby making appropriate the relief sought herein with respect to the Class as a whole.

COUNT I - NEGLIGENCE

251. Plaintiffs incorporate by reference all paragraphs, except under other Counts, as if fully set forth herein.

252. The NHL had and has a duty to take all reasonable steps to protect Plaintiffs and the Class from the risks and consequences of head trauma. The NHL breached that duty to protect Plaintiffs and the Class by creating, fostering, and promoting a culture of extreme violence, including violence from fighting, where head trauma to Plaintiffs and the Class has been and is imminent. The NHL breached that duty to protect Plaintiffs and the Class by failing to establish reasonable rules and protocols for preventing head trauma and minimizing the effects of head trauma, including during games and practice. What changes the NHL made to its violent construct were purposefully-ineffective and solely calculated by the NHL to fool and mislead

Plaintiffs, the Class and the public into ceasing investigation into the risks and consequences of head trauma and the NHL's wrongdoing.

253. The NHL had a duty to take all reasonable steps to warn Plaintiffs and the Class about the risks and consequences of head trauma. The NHL breached that duty to warn Plaintiffs and the Class by failing to inform Plaintiffs and the Class about the scientific research on the negative health effects of head trauma and about anecdotal evidence from the negative health effects of head trauma from its own NHL players.

254. As a direct and proximate result of the NHL's breach of its duties, Plaintiffs and the Class have and will continue to suffer injuries.

255. Plaintiffs, on behalf of themselves and the Class, seek damages, including punitive damages, and equitable relief against the NHL, including but not limited to medical monitoring program that appropriately cares for former and current NHL players, as a result of the lifelong health problems they have and will suffer as a result of the NHL's misconduct.

COUNT II - INTENTIONAL HARM

256. Plaintiffs incorporate by reference all paragraphs, except under other Counts, as if fully set forth herein.

257. The NHL has intentionally created, fostered, and promoted a culture of extreme violence, including violence from fighting. The NHL has known that, due to such violence, head trauma to Plaintiffs and the Class has been and is imminent. The NHL has known that head trauma to Plaintiffs and the Class has and will have devastating and long-term negative health effects. Despite this knowledge and to maintain its revenue stream from its violent construct, the NHL has and does intentionally subject Plaintiffs and the Class to head trauma.

258. The NHL purposefully failed to establish reasonable rules and protocols for preventing head trauma and minimizing the effects of head trauma, including during games and

practice. What changes the NHL made to its violent construct were purposefully-ineffective and solely calculated by the NHL to fool and mislead Plaintiffs, the Class and the public into ceasing investigation into the risks and consequences of head trauma and the NHL's wrongdoing.

259. The NHL failed to inform Plaintiffs and the Class about the scientific research on the negative health effects of head trauma and about anecdotal evidence from the negative health effects of head trauma from its own NHL players.

260. As a direct and proximate result of the NHL's misconduct, Plaintiffs and the Class have and will continue to suffer injuries.

261. Plaintiffs, on behalf of themselves and the Class, seek damages, including punitive damages, and equitable relief against the NHL, including but not limited to medical monitoring program that appropriately cares for former and current NHL players, as a result of the lifelong health problems they have and will suffer as a result of the NHL's misconduct.

COUNT III - FRAUDULENT CONCEALMENT

262. Plaintiffs incorporate by reference all paragraphs, except under other Counts, as if fully set forth herein.

263. The NHL has intentionally created, fostered, and promoted a culture of extreme violence, including violence from fighting. The NHL has known that, due to such violence, head trauma to Plaintiffs and the Class has been and is imminent. The NHL has known that head trauma to Plaintiffs and the Class has devastating and long-term negative health consequences. Despite this knowledge and to maintain its revenue stream from its violent construct, the NHL has failed and continues to fail to inform Plaintiffs and the Class about the risks and consequences of head trauma.

264. *Inter alia*, the NHL failed to inform Plaintiffs and the Class about the scientific research on the negative health effects of head trauma and about anecdotal evidence from the negative health effects of head trauma from its own NHL players.

265. The NHL purposefully failed to establish reasonable rules and protocols for preventing head trauma and minimizing the effects of head trauma, including during games and practice. What changes the NHL made to its violent construct were purposefully-ineffective and solely calculated by the NHL to fool and mislead Plaintiffs, the Class and the public into ceasing investigation into the risks and consequences of head trauma and the NHL's wrongdoing.

266. As a direct and proximate result of the NHL's misconduct, Plaintiffs and the Class have and will continue to suffer injuries. The damages suffered by Plaintiffs and the Class are not attributable to any of lack of diligence in investigation.

267. Plaintiffs, on behalf of themselves and the Class, seek damages, including punitive damages, and equitable relief against the NHL, including but not limited to medical monitoring program that appropriately cares for former and current NHL players, as a result of the lifelong health problems they have and will suffer as a result of the NHL's misconduct.

PRAYER FOR RELIEF

WHEREFORE, the Plaintiffs and the Class pray for judgment as follows:

- A. Granting an injunction and/or other equitable relief against the NHL and in favor of Plaintiffs for medical monitoring;
- B. Awarding Plaintiffs compensatory damages against the NHL;
- C. Awarding Plaintiffs punitive damages against the NHL;
- D. Awarding Plaintiffs' such other relief as may be appropriate;
- E. Certifying a class action, appointing Plaintiffs as Lead Plaintiffs and Plaintiffs' Counsel as Lead Counsel; and

F. Granting Plaintiffs their prejudgment interest, costs and attorneys' fees.

JURY TRIAL DEMAND

Plaintiffs demand a trial by jury on all issues so triable in this Complaint.

DATED: April 11, 2014

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MOTION TO TRANSFER (INITIAL MOTION) with Brief in Support. -- 3 Action(s) -- from District of Columbia District Court (1:13-cv-01856), Minnesota District Court (0:14-cv-01140), New York Southern District Court (1:14-cv-02531) - Suggested Transferee Court: D. District of Columbia - Filed by: *Defendant National Hockey League* (Attachments: # (1) Memorandum in Support, # (2) Schedule of Actions, # (3) Proof of Service, # (4) DDC 1:13-1856 Docket Sheet & Complaint, # (5) D Minn 0:14-1140 Docket Sheet & Complaint, # (6) SDNY 1:14-2531 Docket Sheet & Complaint)(Beisner, John)

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MDL No. 2551 Notice will not be electronically mailed to:

The following document(s) are associated with this transaction:

Document description:Main Document

Original filename:n/a

Electronic document Stamp:

[STAMP JPMLStamp_ID=1090522767 [Date=4/25/2014] [FileNumber=463175-0]

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Document description:Memorandum in Support

Original filename:n/a

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Document description:Schedule of Actions

Original filename:n/a

Electronic document Stamp:

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Document description:Proof of Service

Original filename:n/a

Electronic document Stamp:

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Document description:DDC 1:13-1856 Docket Sheet & Complaint

Original filename:n/a

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Original filename:n/a

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Document description:SDNY 1:14-2531 Docket Sheet & Complaint

Original filename:n/a

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