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UNITED STATES DISTRICT COURT
DISTRICT OF MINNESOTA

In re: National Hockey League
Players' Concussion Injury
Litigation

MDL No. 14-2551 (SRN/JSM)

(ALL ACTIONS)

St. Paul, Minnesota
Courtroom 7B
August 6, 2015
1:00 p.m.

BEFORE THE HONORABLE :

SUSAN RICHARD NELSON, U.S. DISTRICT COURT JUDGE

JANIE S. MAYERON, U.S. DISTRICT COURT MAGISTRATE JUDGE

STATUS CONFERENCE

Official Court Reporter: Heather Schuetz, RMR, CRR, CCP
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I N D E X

Page:

Scheduling of Future Hearings..... 6, 48

Status of Defendant's Document Production..... 11

Status of Master Complaint Plaintiffs' Doc. Production
and Plaintiff Fact Sheets..... 15

Status of U.S. Clubs' Document Production..... 19

Status of Board of Governors' Document Production..... 20

Status of Deposition Scheduling..... 24

Third-Party Discovery Update..... 29

Medical Information Production..... 30

PMI Privilege Objections in Depositions..... 31

Named Plaintiff Medical Examinations..... 34

Privilege Log Challenge Protocol..... 44

Confidentiality Designation Challenge Protocol..... 45

NHL's PMI Privilege Log..... 49

Deposition Time Allotment..... 50

1 P R O C E E D I N G S

2 IN OPEN COURT

3 (Commencing at 1:02 p.m.)

4 JUDGE NELSON: Good afternoon, everybody. We are
5 here today in the matter of the National Hockey League
6 Players' Concussion Injury Litigation. This is 14-md-2551.

7 Let's begin with the Plaintiffs and have you note
8 your appearances, please.

9 MR. CHARLES ZIMMERMAN: Good afternoon, Your Honors.
10 Charles Zimmerman for the Plaintiffs.

11 MR. STEPHEN GRYGIEL: Good afternoon, Your Honors.
12 Steve Grygiel for the Plaintiffs.

13 MR. MARK DEARMAN: Mark Dearman, Robbins Geller, for
14 the Plaintiffs.

15 MR. MICHAEL CASHMAN: Good afternoon, Your Honor.
16 Michael Cashman, Zelle Hoffman, for the Plaintiffs.

17 MR. SCOTT ANDRESON: Good afternoon. Scott
18 Andreson, also for the Plaintiffs.

19 MR. DAVID GOODWIN: Good afternoon. David Goodwin,
20 Gustafson Gluek, for the Plaintiffs.

21 MR. JAMES ANDERSON: Good afternoon. James Anderson
22 on behalf of the Plaintiffs.

23 MR. JEFFREY KLOBUCAR: Good afternoon, Judge. Jeff
24 Klobucar with Bassford Remele on behalf of the Plaintiffs.
25 Appearing telephonically today, we have Steve Silverman from

1 the Silverman, Thompson firm; Stu Davidson from the Robbins
2 Geller firm; Brian Penny from the Goldman, Scarlato firm; Tom
3 Byrne from the Namanny, Byrne firm; Bill Gibbs from Corboy
4 Demetrio; and Hart Robinovitch from Zimmerman Reed.

5 JUDGE NELSON: Thank you.

6 From the Defense?

7 MR. JOHN BEISNER: Good afternoon, Your Honors.

8 John Beisner on behalf of Defendant, NHL.

9 MR. DANIEL CONNOLLY: Good afternoon, Your Honor.

10 Dan Connolly on behalf of Defendant, NHL.

11 MR. MATTHEW MARTINO: Good afternoon. Matt Martino
12 for the NHL.

13 MR. M. JOE WINEBRENNER: Good afternoon, Your Honor.
14 Joe Winebrenner of Faegre Baker Daniels for the NHL.

15 MR. CHRISTOPHER SCHMIDT: Good afternoon, Your
16 Honor. Chris Schmidt on behalf of the nonparty U.S. Clubs.

17 MR. DANIEL CONNOLLY: And, Your Honor, in addition
18 we have David Zimmerman and Julie Grand from the NHL listening
19 via telephone. We also have from Shepard Goldfein and Jessica
20 Miller from Skadden, Arps appearing by phone; and finally
21 Joseph Baumgarten from Proskauer Rose listening on the
22 telephone.

23 JUDGE NELSON: Thank you. I thought we would start
24 out by doing schedules, so let me tell you what my calendar
25 shows. And then I think we need -- or perhaps don't need to

1 schedule some informal conferences. So, today we have a
2 formal conference. August 24th we have an informal
3 conference.

4 Everybody agree with that?

5 September 3rd, a formal conference. October 1, a
6 formal conference. November 5th, a formal conference. And we
7 have one scheduled for December 3rd, but I need to change
8 that. So, what I'd like to do now is try to schedule some
9 informal conferences, if you believe that would be helpful,
10 and change the December 3rd conference.

11 So, do you believe that we should schedule an
12 informal conference between September 3rd and October 1st?

13 MR. CHARLES ZIMMERMAN: For the Plaintiffs, Your
14 Honor, I think we do. There are going to be a lot of moving
15 parts, so I think with the Court's consent, I think it would
16 be helpful.

17 MR. JOHN BEISNER: We agree, Your Honors. Obviously
18 I think having it on the calendar helps. If we conclude
19 they're not necessary, obviously we can communicate that to
20 the Court, but I think to hold a date for those would make
21 sense.

22 JUDGE NELSON: All right. So, it seems to me, then,
23 that the week of the 15th or 22nd makes the most sense.
24 Actually, it's the 14th. The 14th works for the Court. That
25 is Monday, September 14th, in the afternoon so you could fly

1 in, in the morning.

2 Any objections to that for an informal conference?

3 MR. DANIEL CONNOLLY: Your Honor, I think that's
4 Rosh Hashanah.

5 MR. CHARLES ZIMMERMAN: Wouldn't you know it's the
6 guy who doesn't celebrate Rosh Hashanah. I had no idea.
7 Thank you (laughter).

8 JUDGE NELSON: All right. Let's come up with a
9 different date, then. What about Wednesday, September 16th?
10 All right. Why don't we make it 1:30 p.m. So, Wednesday,
11 September 16th at 1:30 p.m. for an informal. All right. All
12 right.

13 Then we'll have a formal on October 1st. And is
14 there consensus that we ought to pick some time in October for
15 an informal? I see nodding.

16 MR. CHARLES ZIMMERMAN: Yes, Your Honor.

17 JUDGE NELSON: All right. So, it seems to me it
18 ought to be the week of the 13th or the 20th.

19 MR. CHARLES ZIMMERMAN: Just for the record, if --
20 I'm going to be out of town the whole week of the 20th and the
21 following week. So, if we could do it the week of Columbus
22 day, which is a holiday, so maybe the week of the -- either
23 the 13th, 14th, possibly the 15th.

24 JUDGE NELSON: Okay.

25 MR. CHARLES ZIMMERMAN: I'm not critical to it, as

1 it's informal. There are other people.

2 JUDGE NELSON: I have a big drug case going to trial
3 then. But what we could do, if it's okay with you, is
4 schedule it for 3:00 and let the jury go home early.

5 Does that sound okay?

6 MR. CHARLES ZIMMERMAN: On which day?

7 JUDGE NELSON: Well, it would be either the 13th,
8 14th, 15th, or 16th. I think I'd better not do it earlier in
9 the week. Let's do it either the 15th or the 16th. Any --

10 MR. JOHN BEISNER: Your Honor, I have conflicts on
11 the 15th and the 16th. Sorry.

12 JUDGE NELSON: All right. How about the 14th?

13 MR. JOHN BEISNER: 14th works fine, but I -- if that
14 works for the Court. I didn't mean to --

15 JUDGE NELSON: Yeah, I'll pick the jury on the 13th,
16 so I think I'm okay on the 14th.

17 MR. JOHN BEISNER: Thank you, Your Honor.

18 JUDGE NELSON: So October 14th, which is a
19 Wednesday, as well, at 1:30 p.m. for an informal -- no, excuse
20 me, 3:00. 3:00. Wednesday, October 14th, 3:00 p.m. for an
21 informal.

22 Okay. Then November 5th is the next formal. It's a
23 little tricky now in November finding a time, but let's see if
24 we can. So, I am out of town from the week of the 16th. And
25 November 5th is the formal. So, we either have to do it the

1 next week or the week of Thanksgiving. Do we want to try to
2 not do one in November? I think that's the better way to
3 approach it. Okay.

4 All right. And finally we have our -- oh, we have
5 to change our December 3rd. Here are dates that I could do
6 it: The 1st, the 7th, the 8th, or the 11th.

7 MR. CHARLES ZIMMERMAN: All of those are fine with
8 me.

9 MR. JOHN BEISNER: I think those all work. And
10 perhaps if we're not doing the interim in November, the
11 earliest date might make sense.

12 JUDGE NELSON: Okay. December 1st. Okay.
13 December 1st is a Tuesday, and we'll do that at 1:30. And
14 that's a formal conference.

15 MR. CHARLES ZIMMERMAN: The only issue there, Your
16 Honor -- and it doesn't matter to me because I live here --
17 but it's the weekend after Thanksgiving. And so if you have
18 to travel on Monday, that's going to be a bear of a day to
19 travel because that's right after Thanksgiving holiday.

20 JUDGE NELSON: They seem okay with it.

21 MR. JOHN BEISNER: We're okay.

22 MR. CHARLES ZIMMERMAN: Thank you, Judge.

23 JUDGE NELSON: Okay. All right. I guess finally --
24 this will be even trickier to find a date in mid-December. Do
25 we want to try to do that for an informal? So, I would

1 suggest the week of the 15th -- 14th. The only date I can't
2 do it is Thursday the 17th. So, what about -- when do you
3 prefer to travel on the defense side? I guess that's really
4 what it comes down to, if it matters to you. We could do it
5 on the -- Tuesday the 15th. Okay. So, December 15th, which
6 is a Tuesday, at 1:30. And that's an informal conference.

7 All right. Then shortly I'm going to issue some
8 dates in 2016. Just take a look at them, and if they don't
9 work, we can change them. But I'll issue some preliminary
10 dates pretty soon.

11 Okay. Let's move on, then, to the agenda. Shall we
12 start with the status of Defendant's document production?

13 Mr. Martino.

14 MR. MATTHEW MARTINO: Good afternoon, Your Honor.
15 Matt Martino for the NHL.

16 Document production, I think we're coming down to
17 the end here. On the production front itself, what we have
18 left is primarily documents coming out of the PMI review.
19 Particularly in light of the Court's order on PMI, we're
20 revisiting some of those. But we hope to provide that
21 production next week. That would be documents that have been,
22 you know, through that second review process and then have
23 been determined not to have PMI. We'll have another privilege
24 log -- I think this will be the final privilege log -- that
25 will come either tomorrow or early next week. We'll also

1 have -- and that's attorney-client privilege. We'll have one
2 or two additional PMI logs, again one likely tomorrow or early
3 next week, and then one following up maybe a week after that,
4 hopefully have that all done either by the end of next week or
5 very early the following week.

6 Text messaging, we're in the process of collecting.
7 That process is underway. We're looking to finish collecting
8 the text messages by the end of next week, and then production
9 will begin shortly thereafter.

10 I think that's -- for the NHL, that's the production
11 update.

12 JUDGE NELSON: Very good.

13 MR. MATTHEW MARTINO: Thank you.

14 JUDGE NELSON: Plaintiffs wish to respond?

15 MR. CHARLES ZIMMERMAN: Scott Andreson is going to
16 comment on that.

17 JUDGE NELSON: Okay.

18 MR. SCOTT ANDRESON: Good afternoon, Your Honor --
19 he might as well just stay here because it'll go quick. A
20 couple of questions related to the update that we got. In
21 terms of the PMI documents, it would be helpful to know a
22 quantity, and I don't know if you have a estimate.

23 MR. MATTHEW MARTINO: No -- I'm sorry.

24 MR. SCOTT ANDRESON: Go ahead.

25 MR. MATTHEW MARTINO: I know that originally we had

1 been reviewing something on the order of 15,000 documents for
2 PMI, and then there were families of those, as well. So, we
3 were producing the families, as well. So, my guess is the
4 production would be in the 20,000 range, but I'm not exactly
5 sure. I don't want to --

6 MR. SCOTT ANDRESON: Right.

7 MR. MATTHEW MARTINO: That's just a total estimate
8 for us.

9 MR. SCOTT ANDRESON: Got it. Okay. And the timing
10 of that is you think those documents will start rolling out
11 next week?

12 MR. MATTHEW MARTINO: No, I think we should be able
13 to produce all of those documents by the end of next week.

14 MR. SCOTT ANDRESON: Okay.

15 MR. MATTHEW MARTINO: That's the goal --

16 MR. SCOTT ANDRESON: They're all going to come in --

17 MR. MATTHEW MARTINO: Yeah, in one --

18 MR. SCOTT ANDRESON: Got it. And in terms of the
19 texts, same sort of question. What was the --

20 MR. MATTHEW MARTINO: Text, we've just got --

21 MR. SCOTT ANDRESON: (Inaudible due to overlapping
22 speakers) --

23 MR. MATTHEW MARTINO: Oh, I'm sorry --

24 COURT REPORTER: One at a time, please.

25 MR. MATTHEW MARTINO: Yeah, sorry --

1 MR. SCOTT ANDRESON: Yeah. It would be helpful to
2 know timing, basically. So, if you collect them all by the
3 end of next week, to have an estimate -- and this just relates
4 to deposition scheduling and other things. It would be
5 helpful to have an idea of when we're going to expect to
6 actually get the documents produced.

7 MR. MATTHEW MARTINO: Yeah, we have no idea on
8 quantity on those because we're collecting those right now and
9 into next week. My guess is that that will be a small volume
10 of documents, which means that the review process will go
11 really quickly. So, you know, I don't have an exact time on
12 that, but I would think it wouldn't take more than a week or
13 two after collection is finished to sort of produce those
14 documents, I mean, depending on the volume. If the volume
15 turns out to be larger, which I don't anticipate, you know, we
16 can work with the Plaintiffs to try to roll them out. But my
17 thought now would be we just sort of produce them as we get
18 them.

19 MR. SCOTT ANDRESON: And again, that really only --
20 and we can cross the bridge when it comes to it. But it may
21 matter in terms of, if it's not going on to come all at
22 once --

23 MR. MATTHEW MARTINO: Sure.

24 MR. SCOTT ANDRESON: -- it may be helpful to
25 prioritize like we've done in the past with respect to

1 deponents that are coming up. But we'll let you finish your
2 collection and then we'll deal with that.

3 JUDGE NELSON: Well, I think we can just agree to do
4 that. Right, Mr. Martino? That --

5 MR. MATTHEW MARTINO: We're always prioritizing
6 whatever depositions are coming up, of course.

7 JUDGE NELSON: Okay.

8 MR. SCOTT ANDRESON: Do you want to deal with Board
9 of Governors now or should we just go in the order, seeing as
10 how we're standing here? Is that something, is that you or is
11 that a different --

12 MR. MATTHEW MARTINO: No, that will be me, but sort
13 of -- there was a Club we kind of had.

14 MR. SCOTT ANDRESON: We'll go in whatever order they
15 choose, Your Honor. That's fine.

16 JUDGE NELSON: Okay.

17 Plaintiffs' document production and Plaintiffs' Fact
18 Sheets.

19 Mr. Cashman.

20 MR. MICHAEL CASHMAN: Good afternoon, Your Honor.
21 The Plaintiffs have produced all their documents. That's
22 complete. The Plaintiffs will be providing a privilege log
23 for the handful of documents that are responsive and
24 privileged. We'll be doing that next week. With respect to
25 Plaintiff Fact Sheets, we have provided those, with the

1 exception of three or four individuals who we're still
2 attempting to provide those Fact Sheets and we intend to do so
3 ASAP. We also -- I have received a -- some deficiency claims
4 on the Fact Sheets that we've submitted, and we're addressing
5 those pursuant to the schedule that's set forth in the Fact
6 Sheet order.

7 I do just want to make one comment, as the Court
8 knows, that the parties agreed on a Defendant Fact Sheet. And
9 within the next day or two, we will be providing I think an
10 agreed Defendant Fact Sheet order that sets forth the time
11 within which those should be provided.

12 JUDGE NELSON: Okay.

13 MR. MICHAEL CASHMAN: Mr. Beisner has anything to
14 add on this point?

15 MR. JOHN BEISNER: Sure, Your Honor. I would just
16 note that we do have a number of issues with respect to the
17 Fact Sheets. Nothing that requires the Court's attention
18 today, but in particular we do have a number of deficiencies.
19 The majority have blanks in them and so on that we need to
20 deal with. And we've, as Mr. Cashman has noted, provided a
21 list of those that need addition, so these may be some things
22 that we'll need to talk about at the informal discovery
23 conference, but I think they're something we're working
24 through for now.

25 The main concern is that we've got 18 who did not

1 give us complete medical waivers, nothing to answer, just that
2 they weren't filled out fully and we're fearful that the
3 medical providers we need to go through to get information are
4 pretty technical about those. There are things, I guess, we
5 could write in, but I'm not comfortable adding those to
6 something that somebody's already signed.

7 So, that's what we really need priority to. That's
8 such a long timeline item that we need to get those as quickly
9 as we can, but we'll work with Mr. Cashman to work that
10 through, but just wanted to flag that we do have a number of
11 issues with respect to the Fact Sheets, but again nothing that
12 requires attention today.

13 JUDGE NELSON: Let's try to focus on that at the
14 informal, then, okay?

15 MR. MICHAEL CASHMAN: I just want to note with
16 respect to the Fact Sheets, we are working on the
17 deficiencies, but I think it's important to keep in mind that
18 when we've discussed these all along, these Fact Sheets are
19 being provided in anticipation really of whatever the Court
20 might decide on class certification. You'll recall that we've
21 had that discussion and that's -- I think we had the
22 discussion that the Fact Sheets aren't going to be used for
23 class certification purposes or any other purposes, just
24 looking down the road. So, while we are addressing these
25 issues promptly and we'll provide the information, I just

1 wanted to keep the Fact Sheet issue in context.

2 JUDGE NELSON: That may be true, Mr. Cashman, but
3 the Plaintiffs do have to completely fill out the Fact Sheets
4 and the medical authorizations.

5 MR. MICHAEL CASHMAN: Correct, Your Honor, and we
6 will.

7 JUDGE NELSON: All right.

8 MR. JOHN BEISNER: And, Your Honor, again, I don't
9 want to revisit this now. I think we had this discussion with
10 the Court previously when the schedule was set. I don't think
11 there's anything out there indicating that this information is
12 not relevant to class certification. This keeps popping up.
13 And, again, the schedule has been set, we should have it, we
14 can worry about usage later. But I think the schedule is set
15 and we should abide by it.

16 JUDGE NELSON: In fact, it's come up a couple of
17 times, and I think Mr. Zimmerman and Mr. Beisner were going to
18 talk about class certification and what was usable for class
19 certification, so I think that ought to take place.

20 MR. MICHAEL CASHMAN: Thank you, Your Honor.

21 MR. CHARLES ZIMMERMAN: Just so you know, Your
22 Honor, we had a meet and confer. We have had some discussions
23 already on that issue. There's some exchange of letters going
24 on, so that issue has not been lost on us.

25 JUDGE NELSON: Okay. All right.

1 Yes, Mr. Schmidt.

2 MR. CHRISTOPHER SCHMIDT: Good afternoon, Your
3 Honor. Chris Schmidt on behalf of the nonparty U.S. Clubs to
4 give an update on our document production.

5 So, to date, the ten Clubs have completed their
6 first round of production on July 21st consistent with this
7 Court's order and produced over 80,000 pages. We are on track
8 to complete the production for the remaining 13 U.S. Clubs by
9 the end of August, consistent with this Court's order, as
10 well. We anticipate that there will be approximately the same
11 amount, if not somewhat more documents, in the -- in the
12 second production. And we're moving at all due speed. We're
13 also mindful of making sure we get our productions done on a
14 prioritized basis in line with the depositions. There's a
15 deposition of one of the employees with one of the Clubs that
16 will come up later in August, and that production, for
17 example, has already taken place. So I think we're making
18 very good progress and moving at all due speed.

19 JUDGE NELSON: Okay. Very good.

20 MR. CHRISTOPHER SCHMIDT: Thank you.

21 JUDGE NELSON: Any response to that?

22 MR. CHARLES ZIMMERMAN: I don't think so.

23 MR. SCOTT ANDRESON: No, Your Honor. That's
24 helpful. Thank you.

25 JUDGE NELSON: How about that, Mr. Schmidt.

1 MR. CHRISTOPHER SCHMIDT: Rare, but we'll take it
2 (laughter).

3 JUDGE NELSON: Rare moment. That's right.

4 MR. CHARLES ZIMMERMAN: Not so much on the next one,
5 though.

6 JUDGE NELSON: Board of Governors.

7 MR. MATTHEW MARTINO: So, for the Board of
8 Governors, we've now produced for 15 of the Governors. That's
9 half of the 30. We will make another production next week,
10 and that will include the additional Governors to be deposed
11 so that all the documents will be produced by the end of next
12 week for all deponents. And then for the remaining Governors,
13 we are on track to finish by the end of August as the Court
14 ordered.

15 JUDGE NELSON: Very good. Why don't -- I'll bet you
16 need to stay there.

17 MR. MATTHEW MARTINO: I was going to slide over.

18 JUDGE NELSON: You guys could call each other on the
19 phone and have this discussion, too. But if this helps,
20 that's fine.

21 MR. SCOTT ANDRESON: These agendas, they get put
22 together shortly before these meetings and there's all kinds
23 of people talking to all kinds of different people. So, Matt
24 and I don't talk as frequently as you might think.

25 A couple of just things to note, I think. I don't

1 know that there's questions so much, but we have in the
2 agenda, or what's behind the agenda, the list of all the
3 documents that were produced. I believe Your Honor has that.
4 And there's a couple of things that I just simply want to
5 highlight and maybe bookmark.

6 It's a little bit troubling to see that for a little
7 less than half of the Board of Governors that have produced
8 documents have produced 7 documents or less, which really,
9 quite frankly, I don't doubt in the least that they have been
10 requested to provide whatever documents they have that are
11 responsive. It just simply suggests to us that we may very
12 well need to be going to the alternate Governors.

13 Each of these teams has a primary Governor, and you
14 remember we just sort of put a placeholder there saying, hey,
15 we reserve the right to seek documents from alternates if
16 necessary. And when you look at the discrepancy between, for
17 instance, one of the owners who's got almost 2,000 documents
18 and all the people around him that have somewhere between 1
19 and 7 suggests that people are discussing items that are
20 responsive to this litigation, it just may not be the primary
21 Governor for some of these teams.

22 JUDGE NELSON: How many alternate Governors are
23 there?

24 MR. SCOTT ANDRESON: It varies from team to team.
25 Some of them, I think, have two alternates; some of them might

1 have as many as four alternates.

2 MR. MATTHEW MARTINO: Or more.

3 MR. SCOTT ANDRESON: And a lot of times it is the
4 team owner or others in the ownership structure. A General
5 Manager is almost always an alternate Governor but, you know,
6 it could be a Club President on some levels, Executive Vice
7 Presidents. So, one of the things that we're going to have to
8 do, I think, when we get the next production is come back to
9 the NHL and say, you know, look, it seems to us that we need,
10 for instance, you know, if the Chicago Blackhawks' Governor
11 has produced two documents, we need to go to the alternate
12 Governors and make a request saying, which of these people is
13 the person who has the most information about these subjects.
14 So, for now, you know, I just want to, like you say, bookmark
15 the fact that we're going to have to come back to this because
16 it doesn't strike us as fitting with what we expected.

17 JUDGE NELSON: Very good.

18 Mr. Martino?

19 MR. MATTHEW MARTINO: Yeah. I just wanted to note
20 that we understand that and we have discussed, prior to this,
21 that they, you know, had the right to come back for alternates
22 and we would meet and confer on that. I will note that a
23 number of the alternates are General Managers for whom the
24 Clubs are already producing documents. So, there again, they
25 will get a number of alternate Governors' documents so that

1 may be part of the meet-and-confer process, say the person who
2 does know the most other than the Governor is the person who
3 you're already getting documents from the Clubs.

4 JUDGE NELSON: Thank you.

5 MR. JOHN BEISNER: I don't want to steal your
6 thunder, but a related additional point is the teams -- and
7 maybe Chris, you can speak to this -- have different ways of
8 retaining documents. I mean, some of the Governors keep
9 materials but others are within the production that Chris is
10 dealing with, looking through the team files. So I think to
11 say that a particular Governor had two documents, it may be
12 that those documents that they handled at some point are
13 being -- are within the team's possession, which you might
14 expect that they might send them there. So I think to suggest
15 that there's, you know, they haven't found the right vein to
16 find the gold here may be the fact that it's the teams that
17 have the materials and that production is occurring
18 separately.

19 JUDGE NELSON: Okay. Well, maybe you can make some
20 inquiries to find out whether alternate Governors have
21 documents or have retained documents and have a meet and
22 confer so you can discuss it.

23 MR. MATTHEW MARTINO: Understood.

24 MR. CHARLES ZIMMERMAN: Let me just put a finer
25 point on that because I think that's exactly what Scott was

1 asking is I think the inquiry needs to be made. I mean, I
2 think the suspicion arises that it doesn't make sense, but the
3 conclusion can't be drawn. But if the inquiry is made whether
4 alternative Governors do have the documents, that's great.
5 Then we can have the answer. Right now the suspicion can go
6 either way. It could be they've already been produced in some
7 other way or the alternate has them and we have to seek them.
8 So, to the extent that we can drive that to the ground, we'll
9 all be better off and save ourselves some time.

10 JUDGE NELSON: All right. So why don't you folks
11 make the inquiries, why don't you have a meet and confer
12 before the next informal. Okay.

13 All right. Deposition scheduling.

14 MR. STEPHEN GRYGIEL: Good afternoon, Your Honor.
15 Steve Grygiel for the Plaintiffs.

16 I'm pleased to say of the depositions that we have
17 scheduled, 11 have been done, if my arithmetic is right; 10
18 remain to be taken but are all scheduled with dates; and I
19 understand that their document production has been
20 prioritized. And where that leaves us is for me to identify
21 our next tranche of deponents, which I plan to do in fairly
22 short order. However, a couple of points there.

23 Obviously hearing today about the production time
24 for text messages and hearing today about the PMI log and
25 anticipated production, I'm thinking, obviously, as we get

1 down towards the second tranches of discovery, we want to make
2 sure we're using our time efficiently and frankly I want to
3 make sure I'm deposing the right people. I certainly want to
4 see what these documents, particularly texts, show before I
5 send out notices. I don't want to miss the right person, and
6 obviously that can happen in any deposition schedule where you
7 take a couple depositions hindsight suggests you might not
8 have done.

9 I mean, we've deposed Jim Gregory and today it's
10 Mr. O'Neill, and apparently neither one of them really was too
11 terribly conversant with the issues that bring us here today,
12 despite their jobs at the NHL. I want to make sure we're
13 deposing the right people, so I'm hopeful of seeing more
14 documents before I send out my next notice. On that point,
15 the NHL has served a subpoena, I think it was September the
16 12th on -- it's due September 12th, the subpoena *duces tecum*
17 on the NHLPA.

18 And as the Court is aware, one of the arguments the
19 NHL makes in this case is that they have to deal with the
20 NHLPA on player safety issues and, in a more pointed fashion,
21 that the NHLPA is sometimes an obstacle to achieving certain
22 safety goals that the NHL itself would like to see achieved.
23 That makes me really want to see what these documents show
24 before I designate too many more deponents. There are 40
25 categories in that document production, and just the first

1 five of which, of course, seem to go right to the heart of the
2 matter.

3 Obviously we're very interested in what the NHLPA
4 has to say about that, all of which, Your Honor, is a long way
5 of saying we've got more deponents that I could identify quite
6 quickly. I'm just a little loathe to do it because I want to
7 make sure that I don't use depositions, burn depositions as
8 the saying goes, without doing it in a way that's most
9 advantageous for developing a record in the case.

10 Otherwise, we're making good progress, and we don't
11 have anybody else standing to be scheduled, as I understand
12 it.

13 JUDGE NELSON: Very good.

14 MR. STEPHEN GRYGIEL: Thank you, Your Honor.

15 JUDGE NELSON: Mr. Beisner.

16 MR. JOHN BEISNER: Your Honor, if I may just for a
17 moment on the NHLPA subpoena and the timing issues on that, I
18 do want to express a concern that we are mindful of the
19 schedule the Court has established here. I think Your Honor
20 told us pretty clearly at the last informal discovery
21 conference that there may be need for minor adjustment as we
22 get toward the finish line, that your hope is that we stick
23 with that. And I think with that in mind, I would hope that
24 we'd charge ahead on getting things scheduled. And we have a
25 few issues that we want to address in that regard, as well.

1 But I don't think the NHLPA subpoena ought to be a
2 reason to justify delay of any sort. We finally went ahead
3 and served the subpoena. We assumed Plaintiffs would be
4 asking for this information some time ago. But since no
5 request was made for those documents at a time when you would
6 have expected, we went ahead and asked for it. I mean, the
7 Players Association is the collective bargaining agent for the
8 class members that they're purporting to represent.
9 Responsibility for dealing with the player safety issues, as
10 Mr. Grygiel deserved, a lot of interaction with the League,
11 working together on precisely the issues involved in this
12 case.

13 They retained their own consultants to look at these
14 issues, and what we're seeing is engaged in a substantial
15 amount of communications with the players about the risk that
16 are alleged to be at issue in this case. So, we finally went
17 ahead and served the subpoena, but I don't think we ought to
18 be -- this ought to provide any justification for overall
19 delay here because we went ahead and did it. We assumed
20 Plaintiffs would be very interested in that extremely
21 important part of the case. I think the Players Association
22 will respond as quickly as they can, but in any event, just
23 wanted to make the note that we went ahead and did this
24 finally, but it's probably something that one would have
25 expected to get the whole story on the analysis here that

1 might have been done earlier.

2 JUDGE NELSON: Okay. Why don't you give the Court
3 an update at the next informal conference about the NHLPA's
4 response to the subpoena so I can get -- have a sense of
5 whether this is going to require court intervention here or
6 elsewhere or what the timing will be.

7 MR. JOHN BEISNER: Sure. And, Your Honor, I would
8 note, as well, we have a couple of more subpoenas that we will
9 be getting out. The NHLPA hired some consultants that will
10 have some documents on these issues. They met with a number
11 of individuals, it turns out including some of the folks that
12 I think Plaintiffs have identified as experts on their side of
13 the case along the way. We need to get that information, as
14 well, but we'll get those subpoenas out shortly. We just are
15 trying to confirm with the Players Association who they are
16 and conferring with them about the subpoena about what they're
17 able to produce directly and what we need to go to those
18 additional third-parties to get. But we'll get those out
19 promptly, as well.

20 JUDGE NELSON: Where is the NHLPA located?

21 MR. JOHN BEISNER: They are -- they have an office
22 in Canada. They also have counsel in the U.S., as well. So,
23 but the subpoena has been served to counsel in the U.S.

24 JUDGE NELSON: Okay.

25 MR. CHARLES ZIMMERMAN: Of course I appreciate John

1 doing some of our discovery for us, so I appreciate that
2 effort. You can continue as vigorously as you might enjoy.

3 John and I talked about this the other night about
4 what was the purpose of the PA subpoena, what -- we were
5 interested in getting the documents, of course, before the
6 deposition. So, we're conferring on this, and he also said
7 last night that there were some others that you were going to
8 be subpoenaing, so we've got our eye on this and it comes as
9 no surprise. But it just -- it's another layer of discovery
10 that we just have to keep our eye on so that it doesn't wag
11 the dog. And the role of the NHLPA, the Players Association,
12 in the litigation, I don't know it's fair to argue what role
13 it plays or doesn't play. But certainly the information is
14 relevant, and we all want to get at it, and it is part of that
15 discovery program.

16 JUDGE NELSON: Okay.

17 Third-party discovery. Anything else to discuss on
18 third-party discovery?

19 MR. SCOTT ANDRESON: I think that's me, Your Honor.
20 And there's just a brief, brief update on this. There are
21 some subpoenas that were outstanding beyond to the Clubs to
22 some third-party, different organization, trade organization
23 insurers, the Canadian Clubs. We needed the benefit of your
24 order, which was just recently issued, because several of
25 those entities wanted to see that before they responded. So,

1 we're now going to, I think, start a meet-and-confer process
2 in respect to what Your Honor ordered, and hopefully that will
3 get resolved. And if they then choose not to comply with the
4 subpoena at that point, we may be back in front, but we're
5 hoping that that won't be necessary.

6 So, that's -- and then with respect to the Canadian
7 Clubs, we have drafted the letters of request. As Mr. Penny I
8 think informed you at the last informal conference, they are
9 insisting we go through the letters rogatory process. But
10 here again, having just received your order, that order is
11 going to be supplied to the Canadian Clubs' counsel and at
12 least we will then start the process with that guidance of
13 trying to get the information from the Canadian Clubs.

14 JUDGE NELSON: Very good.

15 MR. CHARLES ZIMMERMAN: I think Brian Penny -- I
16 think Brian Penny, is he on the line? No? Okay.

17 MR. BRIAN PENNY: I am, but I hesitate to speak up,
18 being on the conference call.

19 JUDGE NELSON: That's true. Those were the rules.
20 You can't talk when you're listening, so --

21 MR. CHARLES ZIMMERMAN: Only listen, okay. Were you
22 listening carefully, Brian (laughter)?

23 JUDGE NELSON: We'll talk about it at the informal,
24 I think. Okay. All right.

25 Medical information production.

1 MR. DANIEL CONNOLLY: Your Honor, similar to what
2 Mr. Martino and Mr. Andreson said, we thank the Court for the
3 time and attention and guidance you've given us with the
4 recent ruling. That gives the NHL and its constituent bodies
5 the guidance we need to comply and the direction we need to
6 produce the information. We have a call tomorrow morning --
7 tomorrow afternoon with Plaintiffs' counsel to meet and confer
8 about the next steps in the production, and we hope to be able
9 to advise the Court at the next informal discovery conference
10 the conclusions both sides have reached on that issue.

11 JUDGE NELSON: Very good.

12 MR. CHARLES ZIMMERMAN: I think that's pretty much
13 all we can say at this point. We're talking about it.

14 JUDGE NELSON: Okay. All right.

15 How about the medical information privilege
16 objections in depositions? My memory is that you were going
17 to drill down to some smaller document.

18 Mr. Schmidt?

19 MR. CHRISTOPHER SCHMIDT: Thank you, Your Honor. I
20 believe counsel -- we've conferred on this issue and we've
21 made a lot of progress.

22 I also want to echo the comments of Mr. Connolly.
23 Thank you for the consideration and the time that you put into
24 the order that you issued. I know there's lots of briefing
25 and argument, and we appreciate the Court's patience and

1 attention. With that guidance and along with our ongoing meet
2 and confers, I think we've narrowed the issues and your
3 suggestion that if any questions come up that we can't resolve
4 in a deposition, we will come to the Court's attention and ask
5 for your assistance. That's proved very valuable in the past
6 in some prior depositions, so I think that's a good way to
7 proceed here.

8 JUDGE NELSON: Okay.

9 MR. CHRISTOPHER SCHMIDT: Thank you.

10 JUDGE NELSON: You bet.

11 MR. SCOTT ANDRESON: Mr. Schmidt and I are two for
12 two, because we agree. We think that the order --

13 JUDGE NELSON: What's going on today here
14 (laughter)?

15 MR. SCOTT ANDRESON: We think that the order that
16 you issued does provide enough guidance for the parties to go
17 and take depositions. And if we have issues and they
18 interpret it differently than we do, we'll have to come back
19 and revisit that. But trying to do that in isolation would
20 likely prove very difficult. Thank you.

21 JUDGE NELSON: Okay. Very good. You bet.

22 MR. SCOTT ANDRESON: Oh, I do have one other
23 thing -- I apologize -- and this will probably require
24 Mr. Schmidt's attention, and that is related to Mr. Connolly's
25 point and the teams' production of documents, is we -- what --

1 I guess the question I have is -- are the teams going to be
2 providing a PMI log of the documents that have been withheld,
3 number one? And number two, for the 10 teams whose documents
4 were already produced, are we going to be revisiting any of
5 that in light of the Court's order?

6 MR. CHRISTOPHER SCHMIDT: Yes, and yes. We will --
7 we will produce a log, and we will also consider very
8 carefully this Court's guidance in anything that we put on the
9 log or if we've held it back for second-level review to just
10 go ahead and produce it or to redact it or do whatever is
11 appropriate in light of the Court's order.

12 JUDGE NELSON: And do you hope to accomplish that by
13 the end of August?

14 MR. CHRISTOPHER SCHMIDT: So, I think more
15 realistically, we're looking end of September to complete the
16 logs for all 23 teams. What I would like to do is focus on
17 finishing the 13 in -- through the end of August, and then
18 finish our second-level review of the PMI issues during
19 September timeframe and have that fully completed by the end
20 of September.

21 JUDGE NELSON: Okay. As long as you're, at the same
22 time, prioritizing for depositions.

23 MR. CHRISTOPHER SCHMIDT: We will. We will.

24 JUDGE NELSON: Okay.

25 MR. CHRISTOPHER SCHMIDT: Thank you, Your Honor.

1 MR. CHARLES ZIMMERMAN: And I can't resist it.
2 That's a two-month process, so you understand my concern about
3 the entire discovery program taking longer than we
4 anticipated. Mr. Schmidt, in good faith, is asking for two
5 months for a very discrete issue having to do with PMI,
6 privilege logs, and re-looking at the things in light of the
7 order and he wants a two-month process. So I just want the
8 bookmark to be in that when I come back to Your Honor asking
9 for a little more time for the program.

10 JUDGE NELSON: It's not lost on me. That's right.
11 Okay. And honestly, I think we've talked about this before,
12 if you and Mr. Beisner want to sit down and come up with a
13 reasonable proposal to extend the schedule, I would certainly
14 entertain it. Okay.

15 MR. CHARLES ZIMMERMAN: And we're doing that, Your
16 Honor. I just couldn't resist.

17 JUDGE NELSON: All right. Very good.

18 All right. IMEs.

19 MR. JOHN BEISNER: Yes, Your Honor, on that front
20 wanted to provide an update on where we were on that.
21 Mr. Zimmerman and Mr. Grygiel and Mr. Dearman were kind enough
22 to sit down with Mr. Connolly and myself on July 22nd to focus
23 on the claims in the case and to be more specific about that.
24 I think we had two areas of discussion. One was to talk about
25 the range of claims that Plaintiffs view as being in the case

1 on a timeline basis, and I think we got an understanding from
2 Plaintiffs on that, whether it's focused on the risk of brain
3 diseases or also includes claims, for example, for medical
4 expenses in the immediate aftermath of concussions that were
5 experienced.

6 And I think we reached an understanding on that.
7 And then we also talked about the six named Plaintiffs and
8 specifically the symptoms that they allege at this point to
9 try to get an understanding of what's appropriate for an IME.
10 The fly in the ointment is that I tried to memorialized this
11 so we could hand it to our experts to look at in black and
12 white and have nudged Counsel a few times to get back to say,
13 did I get this down right, and we need to hear back from
14 counsel on that. But I think, Your Honor, the thing to do in
15 an effort to keep this moving consistent with what
16 Mr. Zimmerman said is to set a schedule to place this before
17 the Court, assuming we don't reach agreement on that.

18 What I'd propose, Your Honor, is that we put this on
19 the calendar for discussion at the September 3rd formal
20 conference. I think it may -- we could try to do it and I'd
21 love to do it at the informal conference. And it may be that
22 when we finish our discussion we can, but failing that, to
23 have a briefing schedule on that for the September 3rd
24 conference --

25 JUDGE NELSON: But that would really require

1 briefing pretty soon. Do you think you're in a position to do
2 that?

3 MR. JOHN BEISNER: I think we can. And what we were
4 proposing to do is we would file briefing on August 18th.
5 Plaintiffs respond, perhaps, around August 27th; if there's
6 need for reply brief on the 31st, we could get that into Your
7 Honor. But I think given the timing on this, we've been
8 talking about this since back in June and I think we really
9 need to come to grounding on this because it's going to hold
10 up getting depositions completed of named Plaintiffs and, of
11 course, the exams will take a while regardless of what the
12 Court -- just the logistics of getting those done will take a
13 while. So, that's what we would propose is briefing for that
14 time. That's a schedule I throw out, and I think it's doable
15 by September 3rd.

16 JUDGE NELSON: All right.
17 Response?

18 MR. MICHAEL CASHMAN: Good afternoon, Your Honor.
19 This is the first we've heard of a proposal for a
20 briefing schedule, and we think this is premature. So,
21 backing up a couple steps, we are going to respond to the
22 letter that Mr. Beisner sent. That discussion that
23 Mr. Beisner referenced was really some questions they had
24 about the nature of our claims. We'll respond to that letter.
25 But really there wasn't the kind of fulsome discussion that we

1 would expect about the justification for the IME protocols
2 that we discussed at the last informal, in particular the
3 extremely invasive protocols.

4 We've been in consultation with our experts, and we
5 need to see more from the NHL about what they have in mind and
6 why they think it's necessary to really make our discussions
7 with our experts fruitful and meaningful. And I think that
8 the schedule that Mr. Beisner proposed is really putting the
9 issues way ahead of where they need to be. We haven't
10 completed that meet-and-confer process. We haven't had the
11 opportunity to do the fulsome investigation that we would like
12 to do with our experts after we hear what they really proposed
13 and why they think they need it.

14 So, what we suggest is we revisit this issue at the
15 next informal conference. We can have further meet and
16 confers in the meantime with opposing counsel. And at that
17 time, we can talk whether and when a briefing schedule would
18 be appropriate.

19 JUDGE NELSON: All right.

20 MR. JOHN BEISNER: Your Honor, I guess I'm very
21 concerned about this. We've been talking about this now for
22 months. We gave a full proposal to Plaintiffs back in June.
23 The meeting in New York on the 22nd admittedly was not to talk
24 about the IME. But during the meeting, the meet and confer we
25 had last time, Mr. Cashman said, you misunderstand what our

1 allegations are about symptoms.

2 Well, we had the meeting in New York, and it seemed
3 to me that pretty much what we heard from Counsel then about
4 symptoms was consistent with what the IME we had given
5 earlier. We planned to make some adjustments on that, but we
6 hadn't heard back from Plaintiffs on this issue. And it's
7 just -- this has got to move along. You know, I don't
8 think -- I know Plaintiffs don't want us to do this. They
9 don't want to get into this. But we have an entitlement to
10 prepare our case, as well, and just to say not engage with us
11 on this, you know, this letter has been out there for weeks
12 now memorializing what the allegations are.

13 JUDGE NELSON: And I understand that you're taking
14 these for class certification purposes, which makes me scratch
15 my head a little bit. But -- and that you're giving up your
16 right to take them at a -- the normal time, which would be
17 closer to trial, to give the jury some sense of what the
18 medical conditions of these folks are. I have to tell you,
19 I -- you know, to make a proposal for a very invasive, lengthy
20 IME for class certification purposes, I think I said at the
21 last conference, give me some authority, and I haven't seen
22 anything.

23 MR. JOHN BEISNER: That's what we want to do is make
24 our motion on this. Maybe we just make the motion and maybe
25 that gets this rolling along. But, Your Honor, there's a --

1 we have Supreme Court -- the Supreme Court has said on this
2 issue in this context that the key thing you have to do is
3 figure out whether these people are in the class that they
4 purport to be in. It's a fundamental due process right.

5 And now that we've gotten into the discussion about
6 what these symptoms are, it -- frankly from a medical
7 perspective, our view is that these allegations don't make any
8 sense and the Court has got to satisfy itself that people have
9 what they allege here to fit in these class to be proper class
10 representatives. It's a fundamental due process issue that
11 the Supreme Court has laid out in this issue. And I -- it's
12 unfortunate that, you know, we need to deal with this at this
13 stage, but this -- this is -- this is where the rubber meets
14 the road in terms of whether these are proper class
15 representatives.

16 JUDGE NELSON: Well, we all know how this is going
17 to play out. You know, there's going to be conflicting expert
18 testimony on the subject, isn't there?

19 MR. JOHN BEISNER: Well, no, I don't -- I don't
20 think there necessarily will be because if you have definitive
21 tests that tell you what the status is of the individuals,
22 there shouldn't be a dispute about that. But I think what
23 we're arguing in the abstract, Your Honor. We need to brief
24 this, get it on the record. We've tried to go through a
25 meet-and-confer process to understand what the allegations

1 of the individuals are. And I think that's -- that's -- that
2 is the next step. I think unless we've got a schedule to get
3 this done, it's not going to happen. And we don't want to
4 jeopardize the class certification schedule on this.

5 MR. MICHAEL CASHMAN: Your Honor, if I may, all I'm
6 saying is that what they're proposing is premature. It's
7 quite ironic the way that they want to push this issue, as
8 you've noted. And the time we've had to wait for multitude of
9 the discovery we've sought. All we're saying is we need to
10 complete the meet-and-confer process, and we haven't had a
11 meet-and-confer process at all, I submit, on the IME protocol
12 that they request. They asked some questions about, well,
13 what's the -- what are the nature of your claims?

14 Well, they have our Complaint, they have our
15 interrogatories. They can draw their own conclusions from
16 those if they want, but they still haven't had the meet and
17 confer with us about the IME protocols that they request. And
18 we talked about this at the informal conference. And I
19 thought the Court's instruction was pretty clear then that we
20 needed to have that detailed discussion.

21 So, I think it's a perfectly reasonable approach
22 that we discuss this in greater detail at the next informal
23 conference. And if they really want these IMEs on the
24 expedited schedule they're talking about -- I don't think it's
25 reasonable, but let's have the detailed meet and confer about

1 those protocols, and it hasn't happened yet.

2 JUDGE NELSON: Mr. Zimmerman, did you want to say
3 something?

4 MR. CHARLES ZIMMERMAN: On July 22nd, which is not
5 even three weeks ago, I traveled to New York with Steve and
6 with Mark for the first time to meet with John on this
7 question. And Jessica was there, and I think another person
8 from the firm was there. And we started talking about what
9 are the allegations: What are the symptoms, who are the class
10 reps, what are they asking in the Complaint, and who are they
11 going to represent? That was on the 22nd.

12 On the 28th, I got a letter from John asking me to
13 confirm certain things that he thought he heard or he did hear
14 or he wanted to confirm in a letter. That's seven days ago.
15 This is a pretty important topic. We need time to discuss it,
16 digest it, get back in touch, have a meet and confer as the
17 Court asked us to do, and try and drive this to a point where
18 we either agree or we disagree. But to jump forward into,
19 let's get briefing and let's get it on the record and let's do
20 this and let's do that just isn't the way that this has been
21 rolling up to now with other discovery disputes and other
22 issues. I think if we just allow the process to play out --
23 what I'm trying to demonstrate is we're in good faith on this.
24 We're trying to get clarity.

25 We're trying to do the right thing. We traveled to

1 meet. We're responding to a letter. The letter is only six
2 days on my desk. I think we have a little more time to get
3 this and get it done right and then bring our legitimate
4 disputes to you when they're ripe and we'll fully discuss
5 them. And if we can't agree, as we always have in the past,
6 we'll brief them and ask for oral argument just like we did on
7 the PMI issue, which as the Court knows took many months and
8 many different discussions.

9 So, this one shouldn't get any less short shrift
10 than that. That's all we're asking. It's important.

11 MR. JOHN BEISNER: Your Honor, I want to correct the
12 record on this because I think that Counsel are not
13 acknowledging the full history on this. We sent Plaintiffs a
14 letter back in June with the protocol that we had proposed.
15 As I noted at the last informal discovery conference, we asked
16 Plaintiffs two or three times before the informal conference
17 to give us reactions, to engage us on that. Silence.
18 Nothing. No response.

19 At the conference, we heard objections raised for
20 the first time, the main one being, well, you've
21 misapprehended the claims that are being asserted here, the
22 symptomology. And so we had the meeting to try to confirm
23 that. All we've asked in this letter is just confirm what you
24 told us at the meeting. That's an hour's review, and we don't
25 have that yet.

1 So, Your Honor, the frustration we're having is that
2 step after step after step we're getting stalled on this. And
3 we're not trying to jam anything here. We just want a -- we
4 want a response on this. And I think it's apparent from the
5 record that there isn't an interest in -- apparently in
6 talking any further about this, and maybe the best thing is
7 just to get this -- get this motion out there. We've left
8 time for additional meet and confer under this, but we're not
9 getting any response on this.

10 And so we're extremely frustrated about this. And
11 to say that there was this meeting in a couple weeks. No.
12 We've been trying to get engaged on this since June. And now
13 we're talking -- now we're getting an objection to maybe try
14 to get this resolved in September. This is not working.

15 JUDGE NELSON: All right. The parties -- the
16 Plaintiffs are ordered to respond to the letter in the next 10
17 days, and the parties are then ordered to have a fulsome meet
18 and confer on this proposed IME protocol and report to me at
19 the August 24th informal. I will then decide whether it's
20 time to brief it or not. I don't think there's been a meet
21 and confer yet on the protocol. I understand both sides'
22 frustrations with this. I think that's the best way to do it.
23 And if we will go ahead with briefing, then we'll brief it in
24 September for the October 1st. Whatever the IMEs are going to
25 look like, you'll have a chance to do them before class

1 certification briefings.

2 MR. MICHAEL CASHMAN: Thank you, Your Honor.

3 JUDGE NELSON: All right. Okay.

4 Privilege log challenge protocol.

5 MR. DANIEL CONNOLLY: Your Honor, on the privilege
6 log challenge protocol, we've raised this with Plaintiffs'
7 counsel, and we've had a telephone conference meet and confer.
8 We've discussed a protocol. We provided Excel spreadsheets
9 that combined all of the privilege log issues. We're ready to
10 go. Plaintiffs have not engaged on this topic, so we're just
11 waiting for them to reach out to us when we will proceed with
12 that.

13 JUDGE NELSON: Okay.

14 MR. SCOTT ANDRESON: I was hoping to go three for
15 three, but I disagree slightly with Mr. Connolly's recitation.
16 I don't think that it's accurate to say that we haven't
17 engaged on it. There, in fact, was a call and I think that
18 the parties have reached an agreement on the protocol that
19 we're going to use for the privilege log challenge. The only
20 thing the NHL is waiting for, which they will get next week
21 sometime, is sort of, here's our proposal for how we do that.
22 Here's some challenges that we have, take a look at it, and
23 give us your reaction. So that process is underway.

24 JUDGE NELSON: Any protocol needs to come to me so I
25 can see whether the Court views it as adequate to evaluate the

1 challenges. Okay?

2 MR. DANIEL CONNOLLY: Very good, Your Honor.

3 MR. SCOTT ANDRESON: Understood.

4 JUDGE NELSON: All right.

5 Confidentiality designation challenge protocol.

6 MR. MICHAEL CASHMAN: Your Honor, I think this is a
7 follow-up on what we discussed at the last informal. And as I
8 indicated then or the parties indicated then, we have an
9 agreement between us on how to present this. We're going to
10 select some exemplar documents and present them to the Court
11 for ruling on some of those documents, which we think will
12 give us guidance on a larger batch and also on the deposition
13 testimony that's been designated as confidential. We've
14 completed the meet and confer on 170-some odd documents.
15 We're not going to be presenting that volume to the Court. A
16 much smaller volume that are representative of the kind of
17 documents which are in dispute, and we hope to do that now in
18 the next two weeks or so and present it to the Court in that
19 fashion.

20 JUDGE NELSON: Okay. I'm going to let Judge Mayeron
21 comment on -- Judge Mayeron is going to assist the Court with
22 this and comment on what she hopes to get from the parties so
23 the Court is able to effectively rule.

24 JUDGE MAYERON: I guess what I would like to know is
25 if the -- if the parties, if Counsel have agreed on a protocol

1 to present that to the Court, I'd like to see what, again --
2 just as Judge Nelson wanted to see -- the protocol that the
3 parties have agreed on to do the privilege log review, given I
4 will be the one doing the review on the confidential
5 designations. If there is a protocol you've agreed to on how
6 to present it to me, I'd like to see it first so that if I
7 need to weigh in or say, you know, I need something more on
8 this or this isn't adequate or this is perfectly fine, I can
9 comment on it before all of a sudden the documents show up in
10 my chambers.

11 So, have you developed a joint protocol to present
12 it to me or to the Court?

13 MR. MICHAEL CASHMAN: We have not developed that in
14 writing, but we'll happily do so. And as I indicated, our
15 objective, the parties' objective was a small number of
16 documents to be presented to the Court, Judge Nelson, for some
17 clear guidance that we can apply on the larger scope. But we
18 will certainly submit the protocol.

19 JUDGE MAYERON: Okay. And if it's helpful to
20 Counsel who are engaged in this discussion -- whether it's
21 you, Mr. Chatman [sic], or whoever -- to get me on the phone
22 to talk about what you're thinking of a protocol or what it is
23 that I would like to make sure I get from you so that I can
24 get through this quickly, I'd be happy to have you contact my
25 chambers and get you all on the phone and together we can work

1 on a protocol that will work for the parties and for my
2 chambers, as well.

3 MR. MICHAEL CASHMAN: If we need assistance, we'll
4 be happy to call. But I think we got agreement, we'll put it
5 in writing, and we'll let the Court know.

6 JUDGE MAYERON: Okay. Thank you.

7 MR. DANIEL CONNOLLY: Your Honors, Dan Connolly.

8 Just a little bit more detail on this. We had two
9 lengthy conversations with Mr. Cashman and company. There
10 were in excess of 150 documents that were discussed. The NHL
11 de-designated 70 of those, so we made a lot of progress. We
12 have provided Plaintiffs' counsel with all the deposition
13 transcripts and which portions we believe should remain
14 confidential and which portions we shouldn't. In large part,
15 that's tied to the underlying documents that are being
16 discussed. We -- what we were hoping to do is, as you've
17 outlined, both judges have outlined, we'll present these
18 issues that we can agree on to the Court. And as you
19 indicated, Judge Mayeron, we'll certainly provide you with a
20 protocol in advance so that we can streamline the
21 decision-making process. We're just about there, and we're --
22 I think we're making good progress.

23 JUDGE NELSON: Very good.

24 MR. MICHAEL CASHMAN: Thank you.

25 JUDGE NELSON: All right.

1 MR. CHARLES ZIMMERMAN: I got to work with Connolly
2 more than Beisner (laughter).

3 Personal question that I'd like to ask. I was just
4 noticing that we have to come back here on the 24th, and I am
5 at a wedding on the 23rd. And I'm not scheduled to come back
6 until late on the 24th, but it sounds like I'm going to be in
7 the eye of the storm on the 24th on the IMEs. Is it possible
8 to move it to the 25th, or is it okay if I'm not there? I
9 just looked at my calendar, and my flight doesn't get into
10 Minneapolis until later in the day on the informal.

11 JUDGE NELSON: Yeah, the 25th I have three motions;
12 and the 26th, I have an all-day hearing. I probably could do
13 a 3:00 p.m. on the 25th.

14 MR. CHARLES ZIMMERMAN: That's fine with me if it's
15 okay with the rest of them.

16 JUDGE NELSON: Okay. 3:00 p.m. on the 25th is the
17 new time for the conference, informal conference.

18 MR. CHARLES ZIMMERMAN: Thank you.

19 Then the next --

20 MR. DANIEL CONNOLLY: Can I just -- Your Honors,
21 just one other issue I forgot to mention when we're talking
22 about the confidentiality designation. I trust, Judge
23 Mayeron, we have some issues with some of the confidentiality
24 designations that the Plaintiffs have. I trust you'd like
25 those brought to you at the same time so that they are handled

1 in parallel.

2 JUDGE MAYERON: If the parties are ready to go on
3 it, that would be great. And I assume the protocol to address
4 one would apply to the other.

5 MR. DANIEL CONNOLLY: That's why I thought that, and
6 I apologize, Mr. Cashman, for not bringing that up before.
7 But we would plan to bring them up in parallel with the Court
8 so we can --

9 JUDGE NELSON: Does that work for you, Mr. Cashman?

10 MR. MICHAEL CASHMAN: We haven't talked about it,
11 but as I'm standing here, I don't think that's going to be a
12 problem. We also had an agreement with respect to the
13 deposition designations as we discussed, and the idea was that
14 we'll put those disputes second so that we can have a narrow
15 group of disputes for the Court to resolve that we hope we can
16 both apply to other documents.

17 MR. DANIEL CONNOLLY: I'm sorry to backtrack, but I
18 think we're in agreement.

19 JUDGE NELSON: Okay. Very good.

20 MR. MICHAEL CASHMAN: Thank you.

21 JUDGE NELSON: All right.

22 The PMI privilege log, is there anything more to say
23 about that?

24 MR. MATTHEW MARTINO: Yeah, I think we referenced
25 that earlier.

1 JUDGE NELSON: All right. Okay.

2 Deposition time allotment?

3 MR. CHARLES ZIMMERMAN: I spoke briefly about this
4 with John. We don't -- the Court doesn't really need to
5 address it, but I just wanted to have it out there. We're
6 getting a little squeezed with six hours on these depositions.
7 We're looking to move them to what the rules provide is seven.
8 We're going to meet and confer on it. And I think we may be
9 able to come to agreement or, if not, we'll bring it before
10 the Court at the next informal.

11 Is that a fair statement? Or not a fair statement?

12 MR. DANIEL CONNOLLY: It's close, but not totally.
13 Your Honors, the Pretrial Order No. 6 addressed the deposition
14 protocol. Paragraph 13 talked about what the process was,
15 which would be six hours per deposition, one hour for the
16 opposing counsel, which includes both NHL and Club counsel or
17 third-party counsel. And so that has been working extremely
18 well through all the depositions that we've had to date.
19 There have been two instances when there has been request for
20 additional time -- well, actually, three instances when there
21 has been request for additional time.

22 The NHL has worked to get that done within one day
23 for Mr. Campbell and for Commissioner Bettman. That was
24 completed. There was one additional deposition when there was
25 an initial request for more time, and then Mr. Cashman did not

1 need that additional time for Mr. Shanahan.

2 So, I think what we have here is working well. We
3 have made adjustments where necessary, but we're following the
4 rules in the Pretrial Order No. 6 as issued in this case, and
5 I don't think that there's any need to adjust that at this
6 present time. But we'll certainly work with Counsel if they
7 identify a specific deposition where they may need additional
8 time.

9 MR. STEPHEN GRYGIEL: Steve Grygiel, Your Honor.

10 I simply say, as this Court has recognized before
11 and as the Advisory Committee notes to the 2000 rule change
12 state: Preoccupation with timing is to be avoided. Rule 30
13 sets forth seven hours for a good reason. I know it's in
14 Pretrial Order 6 that we agreed then to six. We've had now
15 the experience of a number of depositions. And while we
16 haven't complained very much during these depositions that we
17 would really like to have that extra hour and we'd really like
18 to have seven hours as the base from which we then ask for
19 more time, it seems that given the number of documents, the
20 importance of the case and given that Rule 30 does say seven
21 hours, that seven hours would be an appropriate baseline from
22 which to move.

23 And from that, I would like to see that we get,
24 after meeting and conferring, to a modification of that
25 pretrial order. Your Honor, if we don't need seven hours for

1 a particular witness, we're certainly not going to take it.
2 That's not in our interest. But it would help us very much if
3 we had that additional hour so that we could plan our exhibits
4 and perhaps not race as fast as we had to in some of these
5 cases. If you look at the second section of that provision of
6 the rule, it says -- and it uses the mandatory, I believe I'm
7 right -- "The Court must grant additional time if it is
8 necessary for the deponent to be fairly examined."

9 And I think in most of these cases, that showing is
10 going to be presumptively relatively simple to make because of
11 the number of the documents and the importance of the issues.
12 So, I think it's important we meet and confer on this, and I
13 do hope we can come to a seven-hour baseline as the rule
14 provides.

15 JUDGE NELSON: I would suggest that you meet and
16 confer. This would be a good topic to take up at the informal
17 conference. My experience in the past with big cases -- we've
18 all had experiences, but my experience is that we would
19 designate in advance certain depositions that will go beyond
20 the limit. And perhaps that could be part of your
21 meet-and-confer discussion.

22 MR. DANIEL CONNOLLY: Very well, Your Honor. Thank
23 you.

24 MR. CHARLES ZIMMERMAN: Thank you, Your Honor.

25 JUDGE NELSON: Okay.

1 Anything further today? Anybody have anything to
2 raise with the Court?

3 **(None indicated.)**

4 JUDGE NELSON: All right. Then we will see you on
5 August 25th at 3:00 p.m. for the informal conference. Court
6 is adjourned.

7 **(WHEREUPON, the matter was adjourned.)**

8 (Concluding at 2:09 p.m.)

9
10 * * * *

11
12 CERTIFICATE

13
14 I, Heather A. Schuetz, certify that the foregoing is
15 a correct transcript from the record of the proceedings in the
16 above-entitled matter.

17
18 Certified by: s/ Heather A. Schuetz
19 Heather A. Schuetz, RMR, CRR, CCP
20 Official Court Reporter