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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)

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St. Paul, Minnesota  
Courtroom 7B  
April 19, 2016  
9:30 a.m.  
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BEFORE THE HONORABLE:

SUSAN RICHARD NELSON, UNITED STATES DISTRICT COURT JUDGE

JANIE S. MAYERON, UNITED STATES MAGISTRATE JUDGE

**FORMAL STATUS CONFERENCE**

Official Court Reporter: Heather Schuetz, RMR, CRR, CCP  
U.S. Courthouse, Ste. 146  
316 North Robert Street  
St. Paul, Minnesota 55101

1 A P P E A R A N C E S

2 For the Plaintiffs:

3 **ZIMMERMAN REED, PLLP**

4 Charles S. Zimmerman, Esq.  
5 Brian C. Gudmundson, Esq.  
6 1100 IDS Center  
7 80 S. 8th St.  
8 Minneapolis, MN 55402

9 **CHESTNUT CAMBRONNE, P.A.**

10 Christopher P. Renz, Esq.  
11 17 Washington Ave. N., Ste. 300  
12 Minneapolis, MN 55401-2048

13 **HELLMUTH & JOHNSON, PLLC**

14 Michael R. Cashman, Esq.  
15 8050 W. 78th St.  
16 Edina, MN 55439

17 **BASSFORD REMELE, P.A.**

18 Scott Andreson, Esq.  
19 33 S. 6th St., Ste. 3800  
20 Minneapolis, MN 55402-3707

21 **GOLDMAN SCARLATO & KARON, P.C.**

22 Brian D. Penny, Esq.  
23 101 E. Lancaster Ave., Ste. 204  
24 Wayne, PA 19428  
25

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For the Defendant:

**SKADDEN, ARPS, SLATE, MEAGHER & FLOM, LLP**

John H. Beisner, Esq.  
1440 New York Ave. NW  
Washington, DC 20005

**FAEGRE BAKER DANIELS**

Daniel J. Connolly, Esq.  
Joseph M. Price, Esq.  
2200 Wells Fargo Center  
90 S. 7th St.  
Minneapolis, MN 55402

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

2 IN OPEN COURT

3 (Commencing at 9:37 a.m.)

4 JUDGE NELSON: We thought we'd have lovely weather  
5 for you folks out of town, right?6 We are here this morning in the matter of the  
7 National Hockey League Players' Concussion Injury Litigation.  
8 This is civil file number 14-mdl-2551.9 Let's begin with the Plaintiffs and have you note  
10 your appearances for the record if you would.11 MR. CHARLES ZIMMERMAN: Good morning, Your Honors.  
12 Charles Zimmerman for the Plaintiffs.13 MR. STUART DAVIDSON: Good morning, Judge. Stuart  
14 Davidson on behalf of the Plaintiffs.15 MR. STEPHEN GRYGIEL: Good morning, Your Honors.  
16 Steve Grygiel for the Plaintiffs.17 MR. MICHAEL CASHMAN: Good morning, Your Honor.  
18 Michael R. Cashman for the Plaintiffs.19 MR. BRIAN GUDMUNDSON: Good morning, Your Honors.  
20 Brian Gudmundson, Zimmerman Reed, for the Plaintiffs.21 MR. BRIAN PENNY: Good morning. Brian Penny for the  
22 Plaintiff.23 MR. CHRISTOPHER RENZ: Good morning. Chris Renz for  
24 the Plaintiffs.

25 MR. SCOTT ANDRESEN: Good morning, Your Honors.

1 Scott Andresen also for the Plaintiffs.

2 And on the telephone this morning, we have Tom  
3 Byrne, Dan Nordin, James Anderson, and Bill Gibbs.

4 JUDGE NELSON: Very good.

5 Mr. Beisner.

6 MR. JOHN BEISNER: Good morning, Your Honors. John  
7 Beisner on behalf of Defendant NHL.

8 MR. DANIEL CONNOLLY: Good morning, Your Honors.  
9 Dan Connolly also on behalf of Defendant, NHL.

10 MR. JOSEPH PRICE: Your Honors, Joe Price on behalf  
11 of the NHL. Good morning.

12 MR. DANIEL CONNOLLY: And for the record, Your  
13 Honor, on the telephone we have David Zimmerman and Julie  
14 Grand from the NHL, and Shep Goldfein and James Keyte from  
15 Skadden Arps.

16 JUDGE NELSON: Very good. All right.

17 Shall we begin our status conference today. But we  
18 don't have Mr. Martino here. I don't know what to do in his  
19 absence.

20 Mr. Connolly.

21 MR. DANIEL CONNOLLY: Yes, we don't know what to do  
22 either, Your Honor, without Mr. Martino here.

23 I think everything is -- is -- is going to pace.  
24 There was a request on Friday from Plaintiffs for some  
25 additional information regarding the Calgary documents, and

1 we're taking it under advisement. But otherwise, everything  
2 is complete.

3 JUDGE NELSON: All right.

4 Anything the Plaintiffs wish to be heard about the  
5 Defendants' production?

6 MR. BRIAN GUDMUNDSON: Not much more, Your Honor.  
7 Just to say that the request we made on Friday was regarding  
8 Calgary Flames and Mr. Connolly said it was about the volume  
9 of documents which, after three productions, remains very low.  
10 And we simply asked for, in lieu of further documents, should  
11 there be none, that we just receive a simple Declaration  
12 that's all been looked for and that all litigation holds have  
13 been complied with. And we have yet to hear back, and we'll  
14 square that away in short order.

15 JUDGE NELSON: Okay. Sounds good.

16 Okay. Motion to amend Plaintiff Fact Sheets. I  
17 think where that stands is that last night I received a brief  
18 from the NHL. Do -- you apparently each wish to be heard on  
19 the subject. Okay.

20 MR. JOHN BEISNER: Yes, Your Honor. And before I go  
21 any further, I just wanted to state for the record that  
22 Mr. Martino's absence this morning is not a boycott. He is  
23 ill, so --

24 JUDGE NELSON: Or maybe he wanted to stay back and  
25 vote in the primary.

1 MR. JOHN BEISNER: Maybe that's it. I have a  
2 feeling that's not the reason.

3 Your Honor, on the Fact Sheet motion, I guess I  
4 would just note a couple of things because the landscape has  
5 changed a little since we first filed this motion, and I just  
6 wanted to clarify that a bit. When we originally filed the  
7 motion, as Your Honor may recall, we were operating under the  
8 understanding that Plaintiffs' intent was to modify all of the  
9 non-Master Complaints to conform to the Master Complaint,  
10 particularly with respect to the question whether the  
11 Plaintiffs in those non-Master Complaints were seeking  
12 compensation for current injury, not the longterm brain  
13 disease allegations that are now Class Two, but the current  
14 injury.

15 And so the issue that -- the exchange we had that  
16 prompted the motion was Plaintiffs saying, no, the Amended  
17 Complaint -- and there was discussion about the *Syngenta* case  
18 and so on -- will have the effect of amending those. Your  
19 Honor had an exchange with Mr. Cashman about, well, what do we  
20 do with the fact that there are sworn statements from a lot of  
21 these Plaintiffs out there saying, we are seeking compensation  
22 for current injury, which is not what the Master Complaint  
23 says.

24 So, that -- that's what prompted the motion was our  
25 effort to get the record straight, get everything clear that

1 this was what everybody had decided to do was to conform to  
2 the Master Complaint. Now we've -- we've gone off in an  
3 entirely different direction because, as I understand  
4 Plaintiffs' filings, they're saying that's not what we want to  
5 do. They've walked away from that position, and they've said  
6 the Master Complaint doesn't change anything else. We don't  
7 hear about *Syngenta* anymore.

8           They're saying those Complaints are what they are,  
9 and there's a resistance to changing the Plaintiff Fact Sheets  
10 saying that's the position of those claimants, that they are  
11 seeking compensation for current injury. So, I'm going  
12 through that history because the original purpose of the  
13 motion seems to have evaporated. We've made the point that we  
14 believe that there is a conflict, as we set out in the papers.  
15 And as Your Honor was questioning Plaintiffs about at the last  
16 status conference, a conflict between class counsel for the  
17 class members saying, we aren't seeking compensation for  
18 present injury, yet simultaneously asserting in the Complaints  
19 filed by their private clients, those that they have signed up  
20 as clients presently, not those in the class but those that  
21 they signed up presently, that they are asserting claims for  
22 present injury.

23           So, that -- we believe that is a conflict that has  
24 Rule 23(a)(4) implications. I guess where this leaves me,  
25 Your Honor, is it seems to me at this point it's Plaintiffs'

1 call what they want to do on that. We asked for an order for  
2 Amended Fact Sheets to make sure the record was clear, but now  
3 the Plaintiffs seem to be saying the record as it is is the  
4 way they want it to be. I guess that is -- is their option at  
5 this point.

6 But we strongly believe that is a conflict, that it  
7 has Rule 23(a)(4) ramifications, but -- and I think Your Honor  
8 may wish to opine upon that question. But it's -- it's sort  
9 of what Plaintiffs want to do, that's their position, and  
10 they're going to have to face the consequences for it.

11 JUDGE NELSON: A couple things. First of all, I  
12 haven't studied the brief because it came in last night. But  
13 my brief review of it suggests ships passing in the night a  
14 little bit here. And I think that's sort of what you're  
15 suggesting, Mr. Beisner, so let me ask you this question. The  
16 Plaintiffs believed, at least as expressed in their brief,  
17 that the concern had to do with whether the new Complaint was  
18 a substantive consolidated Complaint including all of these  
19 other State actions, or whether it remained an administrative  
20 Complaint.

21 What I glean from, again, a very brief review of  
22 your briefs -- so I probably shouldn't even be going here  
23 without studying it more carefully -- was that that doesn't  
24 matter, that that's not the question, that even if this were  
25 an administrative Complaint, that the fact that these

1 Plaintiffs can't go forward without opting out of the class is  
2 sufficient to create this issue about conflict.

3 Am I saying that right?

4 MR. JOHN BEISNER: Your Honor, I think that's  
5 fundamentally right, but let me clarify a couple of things  
6 about the record. They are saying that the issue, now they're  
7 saying, is about whether this is an administrative versus  
8 consolidated Complaint.

9 JUDGE NELSON: Right.

10 MR. JOHN BEISNER: And my point was the record is  
11 clear that originally I think Mr. Cashman has had several  
12 on-the-record conversations with the Court saying that it was  
13 intended to be a consolidation. There was a discussion with  
14 the Court about the *Syngenta* case where that's how the Court  
15 dealt with the issue, that's what they intended to do, and I  
16 think that was the reason Mr. Cashman explained to the Court  
17 why they didn't want to deal with the Fact Sheets was because  
18 the new Complaint just addressed all of that.

19 I said to the Court, Your Honor, there are sworn  
20 interrogatory answers out there in which the non-Master  
21 Complaint Plaintiffs -- or at least a substantial number of  
22 them -- have said we are asserting claims for present injury  
23 and you can't make that disappear with a new pleading. So,  
24 I'm not sure it's ships passing in the night as much as it's  
25 Plaintiffs with two different ships and now they've changed

1 ships --

2 JUDGE NELSON: But isn't the NHL saying here -- and  
3 perhaps correctly, I don't know, I haven't had a chance to  
4 read the cases -- but that even if -- even if this is not a  
5 consolidated Complaint, even if this is an administrative  
6 Complaint, the fact that there are those sworn statements out  
7 there by these Plaintiffs, even though they're in state  
8 actions, they would have to opt out of this, that their  
9 statements are fair consideration at the class certification  
10 stage.

11 MR. JOHN BEISNER: Yes, Your Honor. That's exactly  
12 what we're saying, with one qualification. They're not in  
13 State actions, they're all in actions before this Court.

14 JUDGE NELSON: That's true.

15 MR. JOHN BEISNER: So, they're all claims that are  
16 before this Court, so the inconsistency is all in actions  
17 within this Court's jurisdiction. But, Your Honor, you've  
18 summarized it -- with that minor caveat, you've summarized it  
19 perfectly.

20 JUDGE NELSON: Okay. So, if that is correct, then,  
21 this must be simply a disagreement of the law that -- about  
22 the law that I would address at class certification time. Is  
23 that right?

24 MR. JOHN BEISNER: Your Honor, that's an option for  
25 the Court. And that's fundamentally what we've been saying is

1 that -- and that's what I was trying to say earlier is that  
2 when we dealt with this originally, it was to get the record  
3 straight to be consistent with what we understood Plaintiffs  
4 to be stating as their purpose. They've now changed that  
5 statement. They're basically saying we want to leave things  
6 as they are and, you know, I think we're effectively saying  
7 we're putting Plaintiffs on notice here that as the record now  
8 stands, there appears to be a substantial problem under  
9 23(a)(4).

10 JUDGE NELSON: The Court would be resistant to some  
11 kind of advisory ruling on this because I want to see all of  
12 the materials for class certification before I reach a  
13 decision about this, you see?

14 MR. JOHN BEISNER: Well, I think that's right, but  
15 I'm not sure that -- to be clear, that anything else would  
16 effect this. This is a -- you have to satisfy the  
17 requirements of 23(a)(4). If you don't satisfy that,  
18 regardless if anything else is satisfied or not satisfied,  
19 that's the end on class certification. And I think the facts  
20 that are needed to resolve this issue are pretty much there as  
21 it is now. But again, that's -- that's Plaintiffs' choice if  
22 they want to proceed on that basis.

23 JUDGE NELSON: Okay.

24 Let me hear from Mr. Cashman.

25 MR. MICHAEL CASHMAN: Well, Your Honor, let me --

1 let me start with this issue about, um, alleged conflict.

2 First of all, the Court is correct: That's a class  
3 certification issue. And so this is all premature and it's --  
4 and it's way off base from where we started about whether  
5 there should be any Amended Fact Sheets. To the extent this  
6 issue is addressed, it's properly addressed at the class  
7 certification stage. Now --

8 JUDGE NELSON: Now, you know, I don't disagree with  
9 that; of course, that's what I've just said. But I think the  
10 reason that I got concerned was that if you didn't appreciate  
11 that that's what their position was, you might have missed  
12 this opportunity to amend the Fact Sheets to avoid that  
13 problem, which is why I just wanted this briefing so everybody  
14 would be aware of everybody's position here. I didn't want  
15 there to be some allegation later on that they were  
16 blindsiding you.

17 MR. MICHAEL CASHMAN: Well, Your Honor, they -- they  
18 were blindsiding us, as we pointed out in the papers, by  
19 putting in the brief that they put in last night. But putting  
20 that aside for the moment, we think these issues are largely  
21 addressed by the Third Circuit's decision that just came down  
22 yesterday in the *NFL* case, and the Court addressed at length  
23 this issue about potential conflicts, both between counsel and  
24 class representatives.

25 And with respect to class counsel, I think that's on

1 page -- primarily on Page 34 of the Third Circuit's opinion.  
2 And there, the issue was raised about whether one of the  
3 subclass counsel in the *NFL* case had a conflict because he  
4 also represented individual Plaintiffs in individual  
5 Complaints who are alleging current injuries. And the Court  
6 pointed out that's not a conflict for counsel because the  
7 individual Complaints did not allege that any of these people  
8 had qualifying diagnoses.

9 So, transferring that to this case, none of the  
10 underlying individuals in the underlying Complaints are  
11 alleging what would be qualifying neurodegenerative diseases  
12 that would put them in Class Two, so there is no conflict of  
13 counsel. Again, this is something that would be properly  
14 addressed at the class certification stage.

15 And then the Third Circuit also addressed --

16 JUDGE NELSON: Mr. Cashman, isn't the argument here  
17 that class counsel in the Master case is seeking fewer damages  
18 for Class One recipients than counsel with the private clients  
19 are seeking? Isn't that the conflict?

20 MR. MICHAEL CASHMAN: Well, that's --

21 JUDGE NELSON: Class One --

22 MR. MICHAEL CASHMAN: I suppose that's what the NHL  
23 might say, but that is what was addressed in the *NFL* case.  
24 And as I just mentioned and the Court said, that's not a  
25 conflict. That's not a class counsel conflict --

1           JUDGE NELSON: All right. So this is just a  
2 disagreement among the parties about, ultimately when I see  
3 the class certification briefing, whether I think there's a  
4 conflict or not, right? So I guess the real question then --  
5 and I don't mean to cut you off and I'll let you make your  
6 whole record -- is where do we go from here with the pending  
7 motion which is a motion to amend the Plaintiff Fact Sheets?

8           MR. MICHAEL CASHMAN: Well, you know, fundamentally,  
9 Your Honor, the problem that exists here is that the NHL is  
10 trying to create a false construct on class certification by  
11 raising this issue at this point. And it's just -- it  
12 really -- wholly inappropriate --

13          JUDGE NELSON: Well, I think they're willing to  
14 concede -- I mean, I think they're willing to perhaps withdraw  
15 their motion and not require you to -- or seek to require you  
16 to amend the Plaintiff Fact Sheets. They're just saying, hey,  
17 if you don't do it, we're going to make this argument at class  
18 certification.

19          MR. MICHAEL CASHMAN: I have no doubt they would  
20 make these kind of arguments no matter what we did on the Fact  
21 Sheets. The -- with respect to the Fact Sheets, the bottom  
22 line there is that there's no justification for the amendment  
23 that they -- that they seek. Mr. Beisner is incorrect about  
24 there being any change in position. We did have a -- a  
25 discussion and we had a discussion with the Court about

1 whether individual Plaintiffs might or might not choose to  
2 conform to the Master Amended Complaint. But it -- it only  
3 becomes a relevant issue if and when an individual Plaintiff  
4 chooses to conform to the Master Amended Complaint. That  
5 hasn't happened. And as I think I pointed out before, there's  
6 no justification for the Amended Fact Sheets on the current  
7 state of the record.

8           Nothing has changed from when we first had our  
9 Master Amended Complaint. So, from our perspective, the  
10 motion to compel Amended Fact Sheets should be summarily  
11 denied. And as it relates to these issues that we think have  
12 been improperly raised about adequacy of counsel and the  
13 adequacy of the class representatives, we need the opportunity  
14 to fully brief that at the class certification stage. That  
15 would be one of the class certification elements.

16           I just want to -- before I leave that point, want to  
17 note that the Third Circuit also addressed the class  
18 representative conflict issue at length, and I think if the  
19 Court reads the Third Circuit opinion in this respect -- and I  
20 think it starts around Page 35, but the most pertinent  
21 discussion, I think, Your Honor, is on Page 38, 39, and 40 of  
22 the Third Circuit opinion. And when the Third Circuit talks  
23 about all the reasons why in that case there was no conflict  
24 between the class representatives and the class they were  
25 representing, I think the Court can see that all those apply

1 here.

2           So, again, we'll brief that fully at the appropriate  
3 time at the class certification stage. And we will, at that  
4 time, address whatever issues there are, including the issues  
5 that the NHL has -- has raised in the brief that they -- that  
6 they filed last night. And again, that -- again, we just  
7 don't think that's really playing by the rules. We warned the  
8 Court that this was going to happen. I think the Court will  
9 recall that when we had this discussion about this  
10 supplemental briefing, I think I suggested that the NHL should  
11 go first so that they could identify the issue.

12           And the NHL objected to that, and we pointed out  
13 that we had -- we had meet and confers, Mr. Zimmerman and I  
14 had meet and confers with Mr. Beisner and Connolly and we  
15 said, exactly what do you think the issue is? And, well, we  
16 don't know, you can read the record, we don't know, we were  
17 surprised that the Court wanted to hear anything about this.  
18 And then we get the brief we saw last night, and that's just  
19 not really playing fair. Let's all be more forthright here is  
20 what we request.

21           JUDGE NELSON: So Mr. Cashman, your preference now  
22 going forward is that I deny the motion for Plaintiff Fact  
23 Sheets and we're done with this issue and everybody is on due  
24 notice -- gosh, I don't know what's going on here, this mic  
25 doesn't like me -- everybody is on due notice of this

1 conflict --

2 MR. MICHAEL CASHMAN: Precisely, Your Honor.

3 JUDGE NELSON: Okay. Thank you.

4 MR. MICHAEL CASHMAN: Thank you.

5 JUDGE NELSON: You bet.

6 Mr. Beisner.

7 MR. JOHN BEISNER: Your Honor, I just want to note  
8 briefly for the record -- I don't want to belabor the issue --  
9 I guess I'm a little taken aback by the criticism of our  
10 raising this issue. Keep in mind that back on January 27th in  
11 Plaintiffs' brief to the Court on our motion to compel a  
12 complete response to the first set of interrogatories, they --  
13 they said that Plaintiffs' prior representations that a Master  
14 Complaint -- they asserted at that point that the Master  
15 Complaint wasn't such a procedural device. And I'm quoting  
16 from their brief: Such a Complaint supercedes and controls  
17 all underlying individual actions.

18 That's what Plaintiffs stated, so I really don't  
19 want to be standing here saying we're improperly raising  
20 issues to the Court. When we saw that but were simultaneously  
21 being told by Plaintiffs' counsel that they didn't want to  
22 amend those underlying Fact Sheets and it wasn't necessary  
23 and, you know, now we're getting suggestions in depositions  
24 that clients weren't consulted about this change and didn't  
25 authorize the withdrawal of compensation, it's sending up all

1 sorts of red flags.

2 So, I think we were well within our rights to raise  
3 this issue. Nothing more needs to be said on the subject, but  
4 I just want to make the record. We didn't make this up. It  
5 was a problem with our being suspicious about what was really  
6 going on with these claims, and I think it's now laid on the  
7 record that this conflict does exist.

8 Your Honor, with respect to the Third Circuit  
9 decision, I think your initial question is the right one. The  
10 conflict that's addressed by the Third Circuit is really one  
11 of the capacity of counsel to represent different groups of  
12 claimants. It's -- it's -- it's, can you represent Class One  
13 and Class Two in this case? It's entirely different from a  
14 very palpable conflict of class counsel asking for one thing  
15 for the class that they purport to represent but asking for  
16 something entirely different and more aggressive and frankly  
17 for compensation for current injury for their private clients,  
18 while with respect to the class that they purport to  
19 represent, they're not seeking. It raises huge issues, we  
20 think, as I've said repeatedly, on the adequacy of  
21 representation.

22 There's a different level of zealous representation  
23 between the two. And under the *Shutts* case, we have, as  
24 Defendants, standing to raise that issue. But I think in  
25 terms of resolution on this, Your Honor, I think you have it

1 right. It's Plaintiffs' choice. We made the motion, and --

2 JUDGE NELSON: Do you want me to deny it or do you  
3 want to withdraw it?

4 MR. BEISNER: I think, Your Honor, if it's denied, I  
5 guess in some ways it's being moot because they're basically  
6 acknowledging that the concern that we raise, the whole thing  
7 that motivated it, was correct; that they're seeking  
8 different -- different relief for their private clients than  
9 they are for members of the putative class. So, if that's --

10 JUDGE NELSON: Well, I don't want my ruling to  
11 suggest that the Plaintiffs are conceding anything here.  
12 Okay? I think everybody is on notice of everybody's positions  
13 here, and we'll just leave it at that in terms of -- for a  
14 later date when I have full briefing on class certification.  
15 For now, I don't see any reason to compel any further  
16 amendment to the Plaintiff Fact Sheets, and so I deny the  
17 motion.

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

19 JUDGE NELSON: Mr. Cashman.

20 MR. MICHAEL CASHMAN: Your Honor, I would just like  
21 to make one comment so the record is clear because I think  
22 this is typical of what we see going on.

23 Mr. Beisner makes reference to this -- to Docket 91,  
24 Plaintiffs memorandum in opposition to Defendant National  
25 Hockey League's motion to compel a complete response to the

1 first set of interrogatories. And there is discussion in that  
2 pleading about the effect of a Master Complaint. And contrary  
3 to what Mr. Beisner is representing here, that pleading really  
4 underscores what we said in our supplemental memorandum that  
5 we submitted on the motion to compel Amended Fact Sheets.

6 And the purpose of a Master Complaint is so that  
7 common issues can be addressed; and, for example, that a  
8 motion to dismiss can be directed towards the Master Amended  
9 Complaint. Those kinds of purposes of the Master Amended  
10 Complaint do not convert it into a substantive Complaint that  
11 wipes out all the individual Complaints in an MDL. And I  
12 think when the Court reads Docket 91, they'll see precisely  
13 that and how it fits right into the context of the cases we  
14 cited in our supplemental memorandum and that we discussed  
15 long ago about why we should have a Master Amended Complaint  
16 in the first place, to make the -- the handling of common  
17 issues in this case run more smoothly.

18 So, the record should reflect, again, this is a  
19 misdirection, and I think that we really need to have some  
20 more forthrightness here when we're dealing with these kind of  
21 issues. Thank you.

22 JUDGE NELSON: Okay.

23 Is everybody satisfied with the state of the record  
24 now on this position?

25 Mr. Zimmerman.

1           MR. ZIMMERMAN: Yes. Thank you, Your Honor. I  
2 think we are satisfied with the state of the record. I think  
3 that -- it's very difficult to respond to sort of these gross  
4 accusations of conflict and not being vigorously representing  
5 a class of injured versus a class that wants medical  
6 monitoring versus individual Complaints that are out there  
7 that are part of the tagalong process where some of the same  
8 counsel that are before you today are representing Plaintiffs  
9 in tagalongs.

10           And they throw up all this smokescreen about these  
11 conflicts and these differences, and then they cited --  
12 John -- Mr. Beisner was just citing some deposition testimony  
13 of, I think it was a Bernie Nichols if I'm not mistaken,  
14 saying that he may not have completely understood something  
15 that the -- was being asked of him. But I think the bottom  
16 line here, Your Honor, is that we do have to be very clear  
17 with one another. We have to be clear that this is an MDL,  
18 that there are class allegations, it's medical monitoring, and  
19 it's personal injury.

20           There are tagalong cases that have personal injury  
21 claims, and that there's this claim under 23(a)(4) that at  
22 class certification, they're going to raise some kind of  
23 conflict of interest that jumps out from the *Amchem* cases and  
24 its progeny, which I think we're trying to say to the Court in  
25 the context of the football case were completely and totally

1 addressed by the Third Circuit and we will walk in those  
2 footsteps and we will show how we are complying with the *juris*  
3 *prudence* of the Third Circuit when it comes to how we will  
4 represent the various interests between the class, the medical  
5 monitoring, the personal injury class that we will attempt to  
6 certify, and the tagalong cases.

7           And we will be vigorous in protecting those  
8 interests so that the Court can be assured that they are being  
9 adequately represented by counsel of record. But to raise  
10 this under some guise of Plaintiff Fact Sheets and Amended  
11 Complaints and misunderstandings about the meanings of the  
12 Amended Complaints is really sending us down kind of a -- a  
13 sojourn that we just don't need to be on. And I'm glad we've  
14 straightened it out today, Your Honor, and we can move on from  
15 that because we spend an awful lot of time and spend an awful  
16 lot of briefing kind of going in places where we -- I just  
17 don't think we needed to go.

18           JUDGE NELSON: Okay. I need to say one more thing  
19 for the record. The Defendants correctly cited to the record  
20 and pointed out that the Court expressed concern about this  
21 issue, but I don't want that to be misconstrued that I've  
22 somehow agreed with that or I've ruled. What I want to make  
23 very clear is that I can't possibly rule until I have full  
24 class certification briefing.

25           So, yes, I expressed a concern. Do I have an

1 opinion about this? No. Okay? Just to be clear.

2 Okay. All right. Let's move ahead to medical  
3 records.

4 MR. JOHN BEISNER: Your Honor, I think if you don't  
5 mind, the next item on the list was the Master Complaint named  
6 Plaintiff discovery, but they sort of combine into the medical  
7 records issue.

8 JUDGE NELSON: Okay. Hold on.

9 MR. JOHN BEISNER: Am I looking at a wrong agenda?

10 JUDGE NELSON: I don't know, maybe I'm looking at  
11 the wrong agenda.

12 MR. JOHN BEISNER: I think we were on item three.

13 JUDGE NELSON: Oh, okay. You are right. Master  
14 Complaint named Plaintiffs --

15 MR. JOHN BEISNER: But to magically make this all  
16 right, I think we can combine three and four, so we're in the  
17 same -- same place.

18 JUDGE NELSON: Okay. All right.

19 MR. JOHN BEISNER: Your Honor, I don't think we have  
20 an issue ripe for court consideration on this but did want to  
21 mention, because it came up at the last conference, ongoing  
22 discussions with respect to the named Plaintiff discovery and  
23 the medical records. And I do take some umbrage at this  
24 suggestion of misdirection because the problem is we're not  
25 getting straight answers from Plaintiffs on the earlier issue

1 or on this one.

2           Your Honor, what the issue we have here on the named  
3 Plaintiff discovery is that, as we laid out to the Court in  
4 the Nichols deposition, we got from Mr. Nichols a lot of  
5 responses basically disowning what was stated in his  
6 interrogatory responses at some point saying he had not  
7 reviewed the responses that were placed before him. We then  
8 noted that we never got verifications for those, asked  
9 Plaintiffs for those, and basically asked Plaintiffs to review  
10 those interrogatory responses since they're not holding up in  
11 deposition.

12           And we had the same problem with the second named  
13 Plaintiff deposition where they're not holding up there either  
14 and asked Plaintiffs to go back and review these so that we've  
15 got a straight, correct set of responses from Plaintiffs when  
16 we take these depositions. What we got in response was a  
17 verification signed and dated now of these interrogatory  
18 responses that clearly aren't right. And in particular we  
19 have discovered large numbers of medical treaters for each of  
20 these named Plaintiffs, or at least most of these named  
21 Plaintiffs, that were never disclosed in the record but still  
22 they're signing verifications now that those short lists that  
23 we got earlier are correct.

24           And so we're just left with very inadequate, very  
25 incomplete discovery and no effort, I think, to get that

1 remedied. And it's a real problem with respect to the medical  
2 records collections. And to be clear, we're talking about the  
3 class representatives here. We're not talking about the  
4 others.

5 But that -- that's where we stand. We still don't  
6 have verifications for some of these Plaintiffs on these  
7 answers that were given a year ago, and so we've got a  
8 significant issue there. What -- we'll make a motion if need  
9 be, but I think what we're really asking here is that  
10 Plaintiffs go back, really review these responses with the  
11 representatives and make sure that they're full and complete  
12 and verified now. And that's true with respect to the  
13 treaters. We're getting answers in the Nichols deposition,  
14 he's got a physician that he goes to regularly that wasn't  
15 identified in the interrogatory response. We're just not  
16 getting complete answers here.

17 JUDGE NELSON: Mr. Cashman.

18 MR. MICHAEL CASHMAN: Well, Your Honor, I guess I  
19 have to take umbrage in turn at Mr. Beisner saying they aren't  
20 getting complete information. I've told the Court the last  
21 time, and I'll repeat it again, because the NHL tries to hold  
22 Bernie Nichols up as the poster child for alleged inadequate  
23 discovery responses. And I told the Court then and I say  
24 again, with respect to Mr. Nichols and all of the other named  
25 representatives, I can say categorically that they all did

1 review and approve all of the discovery responses that they  
2 provided.

3           And like any discovery responses, they do their best  
4 based on their memory, but let's recall that the NHL asked  
5 some ridiculously overbroad questions asking for every medical  
6 provider they ever had, back to the age of 15 years old. Many  
7 of these people are 45 years old, 50 years old. Is it really  
8 surprising that they don't remember every medical provider  
9 they may have had? We gave the NHL medical release  
10 authorizations for all six of these named Plaintiffs. They  
11 had the opportunity, and they have vigorously pursued it, to  
12 go to every medical provider that the Plaintiffs identified.

13           And they knew going into this that when they went to  
14 one medical provider, those records would likely show  
15 additional medical providers. And that's exactly what's --  
16 what's happened. So, to cast aspersions, which is what  
17 Mr. Beisner is doing, on the honesty of the -- of the  
18 Plaintiffs is just not right, and to suggest that counsel  
19 haven't done their job is just not right. All of these  
20 individuals have fully complied with their -- with their  
21 responsibilities.

22           Now, if Mr. Beisner comes to us and says, will you  
23 supplement these based on this additional information for this  
24 particular interrogatory, of course we'll look into that, and  
25 we have done that when he's come to us. When he has come to

1 us and said, this medical provider has a propriety form, would  
2 you please get that executed, we've sent that to the  
3 individual -- to the appropriate counsel and it's been done.  
4 So, it's simply not true to say that they're not getting  
5 everything that exists that these individuals remember and/or  
6 have possession of when it comes to the -- to the discovery  
7 that's been served.

8 All that being said, if we get a straight request  
9 that we don't think this -- this particular interrogatory is  
10 complete for this reason, will you supplement, we'll respond.  
11 But to cast just general aspersions that they're not getting  
12 what they want is not accurate. So, hopefully this doesn't  
13 result in motion practice because motion practice should not  
14 be necessary on this if we get some forthright dealing from  
15 the NHL.

16 Thank you.

17 JUDGE NELSON: Thank you.

18 All right. Let's -- Mr. Beisner.

19 MR. JOHN BEISNER: Your Honor, I don't want to  
20 prolong this, but I just did want to note for the record, we  
21 have made the request to Plaintiffs for these straightforward  
22 responses in a letter dated March 24th, two letters, one with  
23 respect to the first set and one with respect to the second  
24 set, and laid out in detail what we saw in the Nichols  
25 deposition was inaccurate. I mean -- and this is not stuff

1 you forget.

2           Mr. -- Mr. Nichols gave us the name of his current  
3 physician who he regularly sees, which was clearly asked for.  
4 We never got that. And true, Mr. Cashman is right that we've  
5 expended a lot of money doing detective work on that, but we  
6 shouldn't have to find and we hadn't found his current  
7 practitioner because there was no connection between prior  
8 treatment and that physician. We shouldn't have to do that  
9 with respect to the named Plaintiffs in the litigation.

10           These were not questions about forgetfulness, these  
11 were questions about his current symptoms. And he went  
12 through and said, well, I don't have that or, I do have that  
13 and it's not in there. I mean, we should not have to, on  
14 these very fundamental -- these aren't memory tests --  
15 questions that we're concerned about. It's about who's your  
16 current doctor and these sorts of things.

17           So it looks like we may need to file a motion on  
18 this, but that's -- that's the situation. And we're not  
19 questioning the honesty of the folks, but there needs to be a  
20 rigorous process to get that information from them.

21           JUDGE NELSON: Thank you.

22           MR. BRIAN GUDMUNDSON: Your Honor, I hate to  
23 hog-pile and do serial presenters on this issue, but I did  
24 want to address an important issue, and that is the fact that  
25 police work and detective work that the NHL has done that may

1 cause what Mr. Beisner threatens to be pending motion  
2 practices is flat out wrong, at least in the case of Dave  
3 Christian. We received a letter from him about supposed  
4 inaccuracies and insufficiencies and misstatements in  
5 Mr. Christian's medical records and disclosures of his  
6 providers, and it turned out that the NHL was completely  
7 wrong.

8 What Mr. Cashman suggested, which was presenting  
9 individual issues with specific questions to us for  
10 remediation if necessary based on the record is totally  
11 appropriate. But to say that motion practice is needed to  
12 correct the lies of the Plaintiffs, it goes both ways in that  
13 instance. We may have to bring our own motions because I can  
14 tell you that when we were presented with a letter that Dave  
15 Christian hasn't given all of his providers and he was in a  
16 car accident that he didn't disclose, totally false.

17 So I just wanted to make sure that the record is  
18 clear that this -- these allegations that Plaintiffs are  
19 wholesale the ones who are to blame for the issues that are  
20 before the Court on this issue is not necessarily true.

21 JUDGE NELSON: Thank you.

22 MR. BRIAN GUDMUNDSON: Thank you.

23 JUDGE NELSON: Okay. I'm just going to call for  
24 diligence, of course, on both sides, a meet and confer on this  
25 issue before the next conference. Hopefully we won't need

1 motion practice.

2 All right. Mr. Schmidt is also not here. Who  
3 wishes to address, if any, the U.S. Clubs' document  
4 production?

5 Mr. Renz.

6 MR. CHRISTOPHER RENZ: Your Honor, thank you.  
7 Briefly, Chris Renz on behalf of the Plaintiffs.

8 I feel like I come up here and tell you the same  
9 thing every time. A large part of that is, from the  
10 Plaintiffs' perspective, is that we get to a certain point and  
11 we're prepared to bring that motion to your attention, and  
12 then the U.S. Clubs secrete a little more information. And  
13 that's where we are now. We have information that we've been  
14 asking for. It has been produced, but in heavily-redacted  
15 form.

16 We've now had two meet and confers, including as  
17 late as, I believe, last Wednesday or Thursday, and we are  
18 trying to determine whether this last step is -- is --  
19 whether, essentially, the documents are worth pursuing via  
20 motion practice to you, although there are significant  
21 differences of opinion on whether there's a legal basis for  
22 that, the extent of their redaction.

23 So, we will let you know if we're doing that. It  
24 will be before the next formal status conference.

25 JUDGE NELSON: Okay. Very good.

1 MR. CHRISTOPHER RENZ: Thank you, Your Honor.

2 JUDGE NELSON: All right.

3 Before we get into third-party discovery and before  
4 I forget, I think it was Mr. Zimmerman who raised a concern  
5 about the next -- the date for the next status conference, and  
6 then we were unable to come up with a -- a date. Right now on  
7 the calendar, we have a hearing date on the Cantu motion next  
8 week on the 26th, and we have a status conference on May 24th.  
9 But we have nothing in between. Now, possibly we don't need  
10 anything in between, but we don't have an agreed date for an  
11 informal between April -- between now and May 24th.

12 Let me hear from both sides about whether you think  
13 there's a need for that or whether you've been able to come up  
14 with a date or how we should handle that issue.

15 Mr. Cashman?

16 MR. MICHAEL CASHMAN: Your Honor, to the -- to the  
17 extent we're going to have an argument on the NHL's motion to  
18 compel Dr. Cantu's written protocol, we're going to file a  
19 responsive pleading today. I submit that the Court should  
20 summarily deny that and could do so right now, and the reason  
21 is --

22 JUDGE NELSON: Well, I can't do it without your  
23 brief, but --

24 MR. MICHAEL CASHMAN: Well, I guess you'll get my  
25 brief. I don't even think you need my brief to summarily deny

1 this motion because it's crystal clear that this is premature  
2 expert discovery. This is another part of the scheme by the  
3 NHL to expedite class certification discovery in total  
4 disregard of the Court's existing schedule on class  
5 certification and in total disregard of the schedule on expert  
6 discovery.

7           You put on top of that the fact that the Plaintiffs  
8 agreed to provide the NHL with the ability to videotape  
9 Dr. Cantu examining two individuals, so they know very, very  
10 well exactly what Dr. Cantu has done in these examinations.  
11 They do not need any more advance expert discovery, and they  
12 don't need any advance jump on preparing for class  
13 certification with this written protocol.

14           So, again, I'll put in my brief. That's a preview  
15 of part of what I will say, but I submit the Court could deny  
16 it summarily right now. I think it's a totally inappropriate  
17 motion. It's a third bite at the apple on this thing.

18           They've, again, mischaracterized what Dr. Cantu is  
19 doing. He's never said that he's diagnosing CTE. They  
20 mischaracterized what we have discussed in the meet and confer  
21 process. And all this is just a smokescreen for the public  
22 relations efforts. So, what we will -- we submit that it  
23 should be summarily denied. If we're going to have a hearing,  
24 the 26th would be fine by me, although I'd ask if the Court  
25 could do it in the morning as opposed to the afternoon on that

1 day.

2 JUDGE NELSON: Hmm, okay, I don't have my April  
3 calendar here. I'll have to look into that. Perhaps my clerk  
4 has my April calendar, and we'll take a look at April 26th and  
5 see if there's time in the morning. Okay. Thank you.

6 MR. MICHAEL CASHMAN: Thank you.

7 JUDGE NELSON: Mr. Beisner, a brief response to  
8 that, although I'd rather hear the argument formally, but go  
9 ahead.

10 MR. JOHN BEISNER: No, Your Honor, I was just going  
11 to say I think we do need --

12 JUDGE NELSON: An informal?

13 MR. JOHN BEISNER: Argument on that -- oh, the  
14 informal, to address your precise question on that, I'm not  
15 sure if we're getting together with the Court on -- for the  
16 hearing on that date, and presumably if we have any crisis,  
17 can raise at that point. It does provide an opportunity to  
18 talk with the Court if we have any other issues. I realize  
19 that's only a week down the road, but I'm not sure there's a  
20 need for an informal --

21 JUDGE NELSON: Before May 24th?

22 MR. JOHN BEISNER: Correct, Your Honor.

23 JUDGE NELSON: Okay.

24 MR. JOHN BEISNER: I would just say I would urge the  
25 Court to leave it on the calendar. There's been a lot of

1 developments with respect to the examination. I think the  
2 Court was advised that we were moving the calendar for  
3 Cantu -- Dr. Cantu to conduct these examinations in May. Now  
4 they're occurring in April.

5 Now we understand from looking at the videos of that  
6 that there's a neuropsychological exam process that's part of  
7 this that was never disclosed to the Court or to us as part of  
8 that motion. So, I think there's a lot we need to discuss  
9 about what's -- what's going on with these -- these exams  
10 because they're a little different posture because the Court  
11 did move the schedule back a couple of months to deal with  
12 this. Things are happening earlier, but then there's other  
13 things happening here that were not mentioned to the Court or  
14 to us.

15 So, I would urge to leave it on the calendar. I  
16 think like the earlier motion, it's a bit of a moving target,  
17 but I think it's worthy of the Court's consideration on the  
18 record next Tuesday.

19 JUDGE NELSON: Okay.

20 MR. MICHAEL CASHMAN: Your Honor, just to clarify  
21 the record, we've told the Court and we've told opposing  
22 counsel from the beginning that Dr. Cantu and his team would  
23 be doing examinations, and the Court set a deadline for that  
24 to occur. It doesn't -- we never said and the Court never  
25 said and there's no reason why anything should be expedited

1 when we have a deadline that everybody has been operating  
2 under. Again, what you're hearing is just an effort to  
3 subvert and circumvent the expert discovery deadlines.

4 JUDGE NELSON: Okay. All right.

5 **(Discussion off the record between judge and law**  
6 **clerk.)**

7 JUDGE NELSON: Okay. April 26th at 9:30. Will that  
8 work for everybody?

9 MR. CHARLES ZIMMERMAN: That's the hearing?

10 JUDGE NELSON: For the hearing, yes.

11 MR. MICHAEL CASHMAN: That's fine, Your Honor. Is  
12 that in person or telephonically?

13 JUDGE NELSON: In person.

14 MR. MICHAEL CASHMAN: Thank you.

15 JUDGE NELSON: And Mr. Zimmerman, do you wish to  
16 address whether we need an informal?

17 MR. CHARLES ZIMMERMAN: Yeah, that's all I was going  
18 to address.

19 JUDGE NELSON: Okay.

20 MR. CHARLES ZIMMERMAN: It was for -- it was the  
21 May 10 setting was a problem because I have a conflict with  
22 another hearing and tried to move it to the afternoon and then  
23 you had a -- your conflict. I believe that we should have  
24 these informals and these formals. I think it's working. You  
25 can see there's just tons of issues that just keep popping up.

1 And unless we keep our hands on this, they -- these tend to  
2 grow into trees before we can nip them as weeds. So, I think  
3 we should have -- I think we have a -- should reset the May 10  
4 one, if we can. I -- like I said, I --

5 JUDGE NELSON: No, I think what I -- I misspoke in  
6 the e-mail and it turns out that I have a speech I have to  
7 give at noon that day and a hearing at 3, so I didn't think --

8 MR. CHARLES ZIMMERMAN: Right.

9 JUDGE NELSON: -- that was going to fit in. But  
10 I'll give you some dates to consider if the Plaintiffs feel  
11 that it would be useful. I don't have many dates,  
12 unfortunately, because this is around the corner. But on  
13 May 9th, I would be available at 3:00.

14 MR. CHARLES ZIMMERMAN: That would work for me if  
15 that works for --

16 JUDGE NELSON: I start a trial on May 16th is the  
17 problem. And so we've done this before where I've had a trial  
18 and we've met at 4:00, and that would work for May 16th, 17th,  
19 or 18th. I could meet you at 4:00, but I have a criminal  
20 trial during the rest of the day. May 19th and May 20th are  
21 just completely booked. So, those would be the options before  
22 the May 24th formal conference.

23 MR. CHARLES ZIMMERMAN: Okay. So, as I understand  
24 it, the options are May 9th at 3:00; 16th, 17th, 18th at 4:00?

25 JUDGE NELSON: Right.

1 MR. CHARLES ZIMMERMAN: We can -- you don't have to  
2 respond now or you can, but we can probably make one of those  
3 work for sure.

4 JUDGE NELSON: Okay. All right.

5 All right. Okay --

6 MR. JOHN BEISNER: Your Honor --

7 JUDGE NELSON: Yes.

8 MR. JOHN BEISNER: -- if I may, it may help us  
9 remedy this. The latter three dates, 16, 17, 18, do not work  
10 for us. However, May 9th at 3 p.m. would. So, if we want  
11 to -- and again I don't want to interrupt your consulting with  
12 counsel, but I just thought I'd mention that now so we might  
13 be able to resolve that.

14 JUDGE NELSON: Should we just go with May 9th at  
15 3 p.m.?

16 MR. CHARLES ZIMMERMAN: Yeah, that's fine, Your  
17 Honor.

18 JUDGE NELSON: All right. We got a date. All  
19 right.

20 All right. Let's turn to third-party discovery  
21 then.

22 MR. JOHN BEISNER: Your Honor, I'll start on the  
23 first one, which is the National Hockey League Players'  
24 Association. Just a status report on that, the Association  
25 itself is close to completing its discovery. We have a few

1 issues that we're following up with them on in response to our  
2 subpoena, but we're advised that the last major tranche of  
3 documents, subject to working out some issues, have been  
4 produced. And those have been shared with Plaintiffs'  
5 counsel, as well.

6           There's also third-party subpoenas that we have put  
7 out for six of the Players' Association medical consultants.  
8 Five of those ended up being in Canada and are subject to the  
9 letters rogatory, and then one is in the U.S. And the  
10 protocols for dealing with the Canadian ones have been worked  
11 out. There were some discussions that are going on with  
12 respect to scope, but I think that production will commence  
13 soon, both with the five requests to the Canadian-based  
14 consultants and the one to the U.S.-based consultant.

15           So, no issues, I think, at this point for the Court  
16 to consider from the NHL's perspective.

17           JUDGE NELSON: Okay.

18           Anybody wish to respond?

19           Chubb, I presume, we're still working on that?

20           JUDGE MAYERON: Yes. We had -- actually I received  
21 the *in camera* documents from Chubb on Friday, and I think it's  
22 either tomorrow or it's sometime this week, later this week, I  
23 will be meeting with representatives of the NHL and Chubb to  
24 go over -- I'm sorry, Plaintiffs and Chubb to go over what  
25 this is going to look like, cost and burden. And my

1 understanding is counsel of those parties have been meeting in  
2 preparation for their conference with me later this week.

3 MR. BRIAN PENNY: Yes. Good morning, Your Honors.  
4 Brian Penny.

5 As you suggested, we have had several meet and  
6 confers, Mr. Loney and I, both before and after Your Honor's  
7 order. And we've exchanged some of the information that was  
8 required. You just mentioned that Mr. Loney has given you the  
9 three claim files that you requested. He's also exchanged  
10 with me the aggregate spreadsheet, claims filing spreadsheet,  
11 and the claim-by-claim spreadsheet in redacted form. We've  
12 also been working together to try to find a method to  
13 determine which claims and how many claims were filed by  
14 retired players. I'm hoping to have a little bit of  
15 information on that before we meet with you on Thursday  
16 morning.

17 And the other thing that we've been talking about is  
18 we gave to Chubb authorizations for 14 players' medical  
19 records, and in exchange they gave us back the unredacted data  
20 lines from the claim-by-claim spreadsheet for those players.  
21 With that information, we identified two or three claim files  
22 that we thought might be by retired players, and we're hoping  
23 that we can get the production of those claim files from Chubb  
24 so that when we meet with Your Honor, we're all looking at the  
25 same documents because Plaintiffs' counsel can't see what was

1 submitted to you *in camera*, but with the authorizations  
2 hopefully there is some information that we can all look at  
3 together to determine or argue about how burdensome some of it  
4 might be or how to go about redacting some of the IMEs.

5 So, that's what we've been up to.

6 JUDGE NELSON: Very good. Thank you.

7 Yes, Mr. Connolly.

8 MR. DANIEL CONNOLLY: Yes, Your Honor. I'll just  
9 address the other items here on the third-party discovery. As  
10 to Dr. Cantu, we have nothing to present to the Court at this  
11 particular time.

12 As to Drs. McKee and Stern, those materials that we  
13 received in response to the subpoenas were shared with  
14 Plaintiffs' counsel, and we have nothing further at this  
15 particular time to report.

16 As to Mr. Nowinski and the Sports Legacy Institute,  
17 same, we've provided to Plaintiffs' counsel all of the  
18 materials that we received from those individuals.

19 Player agents, same.

20 Mr. -- Dr. Guskiewicz, we're working on that, on the  
21 discovery schedule there.

22 And then finally we have an issue relative to CLS  
23 strategies, that's the Plaintiffs' PR firm. We have a meet  
24 and confer among counsel later this week to discuss that  
25 topic. And just in brief, what we're -- the issue in part

1 there is that there are articles that are being published  
2 under the Plaintiffs' names that the Plaintiffs themselves  
3 haven't authored and -- or at least they have disowned in  
4 the -- in their -- in the -- in their depositions. And we're  
5 just trying to get to the bottom of where these are coming  
6 from, so we're just not sure that what we're seeing in the  
7 media is really being said by the Plaintiffs. So, we're just  
8 trying to get to that issue.

9 JUDGE NELSON: Okay.

10 MR. STUART DAVIDSON: Your Honor, good morning.  
11 Stuart Davidson on behalf of the Plaintiffs.

12 Just with respect to CLS, as now Mr. Connolly has  
13 told you, they've subpoenaed yet another one of our experts;  
14 that raises substantial privilege issues. It also raises  
15 privilege issues for Mr. Beisner and his firm who have also  
16 retained CLS, his clients in other matters. These are issues  
17 that we are going to be addressing with Mr. Beisner and  
18 Mr. Connolly on Thursday.

19 Another issue, obviously -- and I think this Court  
20 could probably understand where we're coming from as to what  
21 the heck the relevance of this all would be, but that's the  
22 secondary issue to the very important privilege issues with  
23 respect to one of our retained experts. So, again, this issue  
24 is not necessarily ripe for Your Honor today. We're going to  
25 talk to defense counsel on Thursday. Hopefully it gets

1 resolved. If not, I foresee a motion to quash in the  
2 foreseeable future.

3 JUDGE NELSON: Okay.

4 MR. STEPHEN GRYGIEL: Your Honor, I also apologize,  
5 if I may just for a moment. I've heard the word "disowned" a  
6 number of times today. It is extremely important in this  
7 case --

8 JUDGE NELSON: Why don't you come on up to the mic.

9 MR. STEPHEN GRYGIEL: It is extremely important in  
10 this case that we understand the Plaintiffs about whom we are  
11 speaking. There are two fundamental truisms. I know many of  
12 them well. The first truism is they use words differently  
13 from the way we do. When you ask a National Hockey League  
14 retiree, were you hurt, many times you will get the answer,  
15 no, I wasn't. And I will say, but you got 30 stitches. And  
16 I'll get the answer back, yeah, but I wasn't hurt. That leads  
17 to some of the disconnect that we've heard about allegedly in  
18 the depositions.

19 The second thing is they have memory issues. For  
20 example, Bernie Nichols didn't disown, as the NHL will tell  
21 you, an article that went out with his name on it. Yes, he  
22 was asked in his deposition, did you write it. That got  
23 Bernie off on very much a wrong foot. Bernie said, no, I  
24 haven't seen it. When Bernie hears the word "write," when I  
25 asked him about this because I know he had seen it before it

1 went out, he'd seen it in his deposition preparation --  
2 obviously there's no secret there -- and he had forgotten  
3 about that the next day, proves two points: They use words  
4 differently.

5 Steve, I didn't write it. It wasn't something I sat  
6 down and typed. I gave information to people. And he had  
7 seen it before, and he testified in his deposition that he  
8 hadn't. I'm here to tell you, Your Honor, with my oath as an  
9 officer of this Court and full fore in front of me, he had.  
10 He simply forgot.

11 I was with two of our Plaintiffs recently. One  
12 night, one of them tells me an enormously colorful story,  
13 really funny. I laughed uproariously for five minutes. The  
14 next morning, he told me the same story again. I didn't want  
15 to say, you had just told me this within the last ten hours.  
16 The fact of the matter is they are not the most reliable  
17 reporters because of some of the issues from which they are  
18 suffering. That's all I think I will say about that, but I  
19 don't think it's fair to say that they disown things. That  
20 doesn't put it into its fullest and fair context. Thank you,  
21 Your Honor.

22 JUDGE NELSON: Thank you.

23 MR. BRIAN GUDMUNDSON: And I'm going to make just a  
24 very, very quick remark regarding the Dave Christian  
25 deposition in which he testified he, in fact, did

1 substantially edit and they were his own words. So, I wanted  
2 to correct the record. What Mr. Connolly testified to here  
3 apparently about the content of that deposition was wholly  
4 false and the record will bear that out.

5 JUDGE NELSON: Mr. Connolly?

6 MR. DANIEL CONNOLLY: I'm surprised that I caused  
7 such a storm. I did say "disown." Mr. Nichols testified he  
8 had not seen it and that -- that indicates why it's necessary  
9 to figure out exactly what the authorship issues were. We  
10 didn't -- I just wanted to flag the issue for the Court now.  
11 We have a meet and confer coming up. I was in the Christian  
12 deposition. I don't recall the issue as Mr. Gudmundson says  
13 it, but I won't say he's wholly false.

14 What I'll say is that Mr. Christian did not write  
15 the entirety of his article either himself, and that was --  
16 and we can -- I can certainly show you those particular  
17 passages. But we just flag the issue for now. We have a meet  
18 and confer, and it sounds like this is going to be something  
19 that's going to develop for the Court.

20 JUDGE NELSON: Okay.

21 Letters rogatory.

22 MR. DANIEL CONNOLLY: Me again, Your Honor. We have  
23 nothing to report on this. The -- these are moving at pace.

24 JUDGE NELSON: Okay. Very good.

25 Mr. Penny.

1           MR. BRIAN PENNY: Morning, Your Honors. Very brief  
2 update. Mr. Shamie has told me that the production should  
3 start fairly soon and should be complete in about three weeks.  
4 So -- and also there was some documents that we had requested  
5 from Dr. Meeuwisse, who is in Calgary. He kind of fell  
6 through the cracks, so Mr. Shamie and I are negotiating a  
7 protocol for production of his documents, as well.

8           JUDGE NELSON: Maybe we'll actually have this done  
9 by the next formal. Okay?

10          MR. BRIAN PENNY: Yes, Your Honor.

11          MR. DANIEL CONNOLLY: Maybe.

12          JUDGE NELSON: All right.

13          Mr. Connolly.

14          MR. DANIEL CONNOLLY: As to item eight, I was moving  
15 them forward unless Your Honor --

16          JUDGE NELSON: That's fine.

17          MR. DANIEL CONNOLLY: I have been in discussions  
18 with Mr. Anfinson and he sent you an e-mail this morning, and  
19 so I am happy to say that matter is resolved.

20          JUDGE NELSON: I think it's really resolved now.

21          MR. DANIEL CONNOLLY: Yes, Your Honor.

22          JUDGE NELSON: It's been resolved for some time, but  
23 okay.

24          MR. DANIEL CONNOLLY: Well -- yes. Thank you, Your  
25 Honor.

1 JUDGE NELSON: Okay. All right.

2 Anything about deposition scheduling you'd like to  
3 address with the Court?

4 MR. STEPHEN GRYGIEL: Nothing, Your Honor. We've  
5 got a -- excuse me -- a number of dates we've been exchanging  
6 recently, particularly concerning those with the Players'  
7 Association' Association. They've asked Mr. Beisner and I  
8 some questions about Dr. Rizos' deposition. We will be  
9 answering those questions, I understand, in due course. But I  
10 think it's fair to say that all as reported in the report is  
11 accurate, and we are moving ahead properly.

12 JUDGE NELSON: Okay. Very good.

13 MR. DANIEL CONNOLLY: Nothing to add, Your Honor.

14 JUDGE NELSON: All right.

15 All right. I think we've addressed the motion to  
16 compel Cantu protocol until we're going to consider it next  
17 week.

18 MR. CHARLES ZIMMERMAN: Can I just have one moment,  
19 Your Honor?

20 JUDGE NELSON: You can. Of course. Yeah.

21 **(Discussion off the record.)**

22 MR. CHARLES ZIMMERMAN: Discretion would be a better  
23 part of valor. We can move on.

24 JUDGE NELSON: All right. The motion to compel  
25 IMEs, what is there to report on that?

1 MR. DANIEL CONNOLLY: Your Honor, the only thing I  
2 wanted to note on that is Judge Mayeron, in your order, the  
3 March 29th order, there was a notation on Page 4 that if  
4 Plaintiffs continue to take the position that the proposed  
5 testing by the NHL should take less time than that estimated  
6 by Drs. Olanow, Norman, and Finkel, then on or before  
7 April 12th, Plaintiffs shall serve Declarations and so on in  
8 support of that position. I wanted to note that date has come  
9 and gone, and nothing was submitted. So I think that aspect  
10 is ripe for resolution.

11 JUDGE NELSON: Any response, Mr. Cashman?

12 MR. MICHAEL CASHMAN: Nothing further to add, Your  
13 Honor. I mean, I think you can rule on the motion. We do  
14 think the time that Dr. -- that Dr. Olanow proposed is  
15 unreasonable, but we're ready for resolution on the motion.

16 JUDGE NELSON: Okay.

17 All right. The dismissal of Mr. Ludzik -- I'm  
18 sorry, Mr. Connolly --

19 MR. DANIEL CONNOLLY: No, that's what I'm up here  
20 for.

21 JUDGE NELSON: Okay. Good.

22 MR. DANIEL CONNOLLY: Your Honor, I've been in  
23 discussions with Mr. Gibbs about this. We have exchanged  
24 drafts. We're very close, I think, and we should be able to  
25 present something to the Court on this issue very soon.

1 JUDGE NELSON: Okay.

2 And finally privilege log challenge protocol.

3 MR. CHRISTOPHER RENZ: Your Honor, Chris Renz on  
4 behalf of the Plaintiffs.

5 Mr. Connolly and I have been in contact about this  
6 as recently as yesterday, and we also spoke with Magistrate  
7 Judge Mayeron on Friday. There's a briefing schedule set,  
8 starting with our submission this week and continuing on  
9 through the next month and a half. And we'll get those issues  
10 resolved. In relation to the privilege documents, then work  
11 to apply that ruling, again --

12 COURT REPORTER: Can you please move to the mic?

13 MR. CHRISTOPHER RENZ: Sorry. We'll get that issue  
14 resolved as to the clawback documents, and then we'll use that  
15 ruling and apply it to the remainder of our privilege  
16 challenges.

17 JUDGE NELSON: Okay.

18 Mr. Connolly?

19 MR. DANIEL CONNOLLY: That's -- that's my  
20 recollection of our discussions with Judge Mayeron, as well.

21 JUDGE MAYERON: That's correct. And I will be --  
22 Counsel did submit to me a revised protocol in light of our  
23 discussions from last week, and then I'll be issuing an order  
24 that is consistent with that and sets out in that order the  
25 briefing schedule that I already provided to Counsel on

1 Friday.

2 MR. CHRISTOPHER RENZ: Thank you, Your Honors.

3 MR. DANIEL CONNOLLY: Thank you, Your Honors.

4 JUDGE NELSON: All right.

5 Is there anything else you'd like to discuss today?

6 MR. CHARLES ZIMMERMAN: My great friend I found in  
7 John Beisner --

8 MR. STUART DAVIDSON: Can we get a picture of that?  
9 (Laughter.)

10 MR. JOHN BEISNER: I think we did that in an earlier  
11 conference, so nothing further from the NHL.

12 MR. CHARLES ZIMMERMAN: Nothing further.

13 JUDGE NELSON: All right. Very good. Court is  
14 adjourned.

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

16 (Concluded at 10:45 a.m.)

17  
18 \* \* \* \*

19  
20 CERTIFICATE

21 I, Heather A. Schuetz, certify that the foregoing is  
22 a correct transcript from the record of the proceedings in the  
23 above-entitled matter.

24 Certified by: s/ Heather A. Schuetz  
25 Heather A. Schuetz, RMR, CRR, CRC  
Official Court Reporter