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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
May 24, 2016
9:30 a.m.

BEFORE:

HONORABLE SUSAN RICHARD NELSON, U.S. DISTRICT COURT JUDGE

HONORABLE JANIE S. MAYERON, U.S. MAGISTRATE JUDGE

FORMAL STATUS CONFERENCE

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

2 IN OPEN COURT

3 (Commencing at 9:33 a.m.)

4 JUDGE NELSON: We are here this morning in the
5 matter of the National Hockey League Players' Concussion
6 Injury Litigation. This is MDL number 14-2551.

7 Let's begin by having Counsel note your appearances.
8 Let's begin with the Plaintiffs.

9 Mr. Zimmerman.

10 MR. CHARLES ZIMMERMAN: Good morning, Your Honors.
11 Charles Zimmerman for the Plaintiffs.

12 MR. STEPHEN GRYGIEL: Good morning, Your Honors.
13 Steve Grygiel for the Plaintiffs.

14 MR. BRIAN GUDMUNDSON: Good morning, Your Honors.
15 Brian Gudmundson on behalf of the Plaintiffs.

16 MR. DAVID CIALKOWSKI: Good morning. Dave
17 Cialkowski for the Plaintiffs.

18 MR. CHRISTOPHER RENZ: Good morning, Your Honors.
19 Chris Renz for the Plaintiffs.

20 MR. STUART DAVIDSON: Good morning, Your Honors.
21 Stuart Davidson on behalf of the Plaintiffs.

22 MR. JEFFREY KLOBUCAR: Morning, Your Honors. Jeff
23 Klobucar on behalf of the Plaintiffs.

24 Appearing telephonically this morning for the
25 Plaintiffs is Brian Penny from the Goldman, Scarlato, Penny

1 firm; Tom Byrne from Namanny Byrne & Owens; Bill Gibbs from
2 Corboy & Demetrio; James Anderson from Heins Mills & Olson;
3 Dave Goodwin from the Gustafson Gluek firm; and Rob Shelquist
4 from Lockridge Grindal Nauen.

5 JUDGE NELSON: Very good. Thank you.

6 Mr. Beisner.

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

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

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

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

15 MR. DANIEL CONNOLLY: In addition, Your Honors,
16 David Zimmerman and Julie Grand are listening in by telephone
17 from the NHL; Shep Goldfein and Jessica Miller from Skadden
18 Arps; and Linda Svitak from Faegre Baker Daniels.

19 JUDGE NELSON: Very good. All right.

20 Let's turn to our agenda, then.

21 Mr. Martino.

22 MR. MATTHEW MARTINO: Good morning again. Matt
23 Martino for the NHL.

24 For the Defendant's document production, so we have
25 one issue for each -- for the NHL document production, we have

1 the Plaintiffs' second request for documents. We've now met
2 and conferred with the Plaintiffs. The NHL has agreed to make
3 rolling productions of the game videos that were requested by
4 the Plaintiffs. The first production will take place today or
5 tomorrow, and then we'll follow on there. We've agreed to
6 give an update to them again next week with the second batch.

7 JUDGE NELSON: Okay.

8 MR. MATTHEW MARTINO: For the Board of Governors
9 production, the only outstanding issue remains Calgary.
10 Calgary has agreed to collect documents for an additional
11 Governor, Alvin Libin, and we should be in a position to
12 produce any responsive documents by the end of this week.

13 JUDGE NELSON: Very good.

14 MR. MATTHEW MARTINO: And that's it.

15 JUDGE NELSON: All right. Very good.

16 Any response?

17 Yes, Mr. Gudmundson.

18 MR. BRIAN GUDMUNDSON: Nothing much further from the
19 Plaintiffs, Your Honor, other than to say we look forward to
20 receiving the Calgary Flames production, and we'll get back
21 with you if there are any issues.

22 JUDGE NELSON: Great. All right.

23 Master Complaint named Plaintiff discovery.

24 Mr. Beisner.

25 MR. JOHN BEISNER: Your Honor, I think we can

1 probably treat two and three together as we did at the last
2 conference, and I can be very brief on this. Your Honor,
3 we're -- I just wanted to raise and ask for a little
4 assistance from the Court on the medical records collection
5 issue, and I'm referring to the collection efforts for the six
6 named Plaintiffs proposed to be class representatives.

7 Your Honor, I think as we've talked about before,
8 one of the issues we've had is that we didn't get a very
9 complete identification of medical treaters from Plaintiffs in
10 the first place. For example, Mr. Nicholls, one of the named
11 Plaintiffs, his initial interrogatory response identified no
12 one. When we started working on this using the authorization,
13 we've ultimately found 28. And some of these, he readily
14 identified during his deposition. So, we're not sure why we
15 didn't get those in the first place.

16 Mr. LaCouture is a similar situation. Four were
17 identified in his initial interrogatory response; and there
18 again, we found 28, including several psychologists and
19 psychiatrists who we think are pretty important to all of this
20 that were the subject of extensive discussion with Dr. Cantu
21 during the examination process. So, we just found out about
22 that. It was the first time we'd heard about them.

23 Here's the issue, Your Honor, because I don't want
24 to go into further complaint about that. The authorizations
25 that the Court authorized that we would receive from Plaintiff

1 in the order initially entered on this subject -- let me
2 rephrase that. This was the proposal that we had in our
3 interrogatory to Plaintiffs -- correct myself on that -- but
4 it was consistent with the one that the Court approved for the
5 Fact Sheets, has a durational limit of one year, which has now
6 run out. And it ran out a while ago, so we've been unable to
7 continue that process.

8 We first asked Plaintiffs to get new authorizations
9 from these six on May 2nd and have asked for those several
10 times. We don't have them. And so conscious of our deadline,
11 we'd just like to ask again on the record that Plaintiffs get
12 authorizations, new authorizations from those six that will
13 allow us to complete that collection process.

14 Thank you.

15 JUDGE NELSON: Okay.

16 Any objection to that?

17 MR. BRIAN GUDMUNDSON: Your Honor, I'd just like to
18 address some of the things raised by Mr. Beisner.

19 First of all, he raises issues with two of the class
20 reps and none of the others for good reason. I'm sure there
21 are no issues with them. This is the first I've heard of
22 Mr. LaCouture having 28 -- a total of 28 providers. I guess
23 Nicholls has 28 providers, and LaCouture apparently has 28
24 providers that weren't disclosed, for a total of 56. We've
25 been receiving letters from defense counsel highlighting these

1 issues, which I've felt we've been responsive to.

2 We have no issues providing new authorizations. It
3 just comes as a surprise to hear of all these providers that
4 didn't exist. We'd be and have been happy to work with them
5 on these. Obviously, there's memory issues for some of these
6 folks. But if there are time issues or anything like that,
7 the authorizations won't stand in the way; we'll provide
8 those. I have seen, again, letters from time to time with a
9 list of -- more like a chart of difficulties they have come
10 into with different facilitates that say, oh, well, this
11 person's name is spelled with an "I" in our records and so we
12 need a new authorization. And while it's a bit frustrating
13 for us to have to continue to address those piecemeal, I --
14 it's my expectation or hope that we're addressing those in due
15 course and that we'll be providing those.

16 I would like to work to get through any issues with
17 that on our side, if there are. But again, this is the first
18 time we've heard that there are 56 providers that were not
19 listed. And we'd be happy to follow up with Mr. Nicholls and
20 Mr. LaCouture about that, but there are no such issues with
21 any other reps as far as I know.

22 JUDGE NELSON: And you're willing to provide the new
23 authorizations?

24 MR. BRIAN GUDMUNDSON: Certainly. Sometimes it
25 takes a minute to track some of these folks down and to get

1 them sent in, but I will make special notes to take care of
2 that.

3 JUDGE NELSON: Very good. Thank you.

4 MR. JOHN BEISNER: Your Honor, I appreciate
5 Counsel's willingness to address that, and I think it is a
6 critical timing issue since we're getting close to the period.

7 Let me address two things, though. This is an issue
8 with respect to all of the named Plaintiffs. I won't bother
9 the Court with it, but just to make sure the record with
10 Plaintiffs is complete, I'll give them a list that we've
11 compiled of, in one column, the short list of providers that
12 were identified in the interrogatory response and then the
13 column of the additional ones we found. This problem exists
14 with all six of the named Plaintiffs.

15 And a lot of these that, you know, we're most
16 concerned about in this column of late identification is
17 because they readily talked about these doctors in the
18 deposition. One of them for Mr. Nicholls, his personal
19 physician that he's been seeing regularly for years who he
20 talked about during the deposition and it was never identified
21 to us. And as I said earlier, with respect to Mr. LaCouture,
22 there was a psychologist and a psychiatrist that he raised and
23 spent a lot of time talking with Dr. Cantu about during the
24 examination and concerned about treatment he was receiving
25 from them, very front of mind for him, who was never

1 identified to us. And this psychiatrist had prescribed
2 treatment for him, which we think is pretty relevant to the
3 analysis.

4 So, in any event, I -- we don't need to belabor this
5 issue, but I'll provide Plaintiffs with this listing so we
6 have them all. They should have this information. The
7 contractor provides the records to both sides at the same time
8 when they're received. And we're getting this list from the
9 records that they have found, so this information has been
10 available to both sides at the same time if one goes and looks
11 at the records.

12 Thank you, Your Honor.

13 JUDGE NELSON: Thank you.

14 Mr. Gudmundson.

15 MR. BRIAN GUDMUNDSON: Just a very, very brief
16 rejoinder about how this process has worked out. We've always
17 been very clear that this process was limited by memory for a
18 lot of these guys and have been very forthcoming and
19 forthright in our willfulness to supplement as new records
20 come in, and so I think the Court is well aware of our
21 position and our willfulness to work with defense counsel to
22 get this resolved.

23 JUDGE NELSON: Okay. Well, I continue to urge you
24 to be diligent about it.

25 U.S. Clubs' document production. Anything to

1 report?

2 MR. CHRISTOPHER RENZ: Morning, Your Honor. Chris
3 Renz on behalf of Plaintiffs.

4 As you know, we've continued to meet and confer on
5 PMI issues that we've addressed before the Court. We received
6 a stipulation just yesterday from the U.S. Clubs that we
7 anticipate, with a little fashioning, will provide a final
8 resolution of the issues. And so I think that we won't have
9 any more issues as to the PMI with the U.S. Clubs.

10 JUDGE NELSON: Very good. That's good news.

11 MR. CHRISTOPHER RENZ: Thank you.

12 JUDGE NELSON: Okay.

13 Who wishes to report on third-party discovery?

14 MR. JOHN BEISNER: Your Honor, I can start with the
15 first one on the list, that's the National Hockey League
16 Players' Association. And we're nearing, as I understand it
17 from the PA's counsel, nearing completion of that production.
18 We still have a few issues to work through with them. When I
19 refer to, quote, their production, I'm referring both to
20 production pursuant to the subpoena that we've issued to the
21 Players' Association itself and then we have six either -- I
22 think there was one U.S. subpoena and five letters rogatory
23 that Your Honor authorized that have gone to six consultants
24 that the PA has used. I think the PA production is virtually
25 complete, and we're nearing completion on the consultants'

1 production.

2 Not to jump ahead, I would note that we've scheduled
3 depositions for several of the consultants as set forth in the
4 report to the Court. And I also wanted to note, Your Honor,
5 that since we issued -- uh, sent in this report, we've asked
6 the PA, with copies to Plaintiffs' counsel, to set depositions
7 of three PA personnel -- Ian Pulver, Maria Dennis, and Paul
8 Kelly -- so that's one supplement to actually, I guess, the
9 deposition part of our report. But since we're on the subject
10 of the PA, I thought I would mention that now.

11 JUDGE NELSON: Very good.

12 MR. STUART DAVIDSON: Your Honor, just --

13 JUDGE NELSON: Yes, please.

14 MR. STUART DAVIDSON: Good morning. Stuart Davidson
15 on behalf of the Plaintiffs.

16 Just from the Plaintiffs' perspective, we're not
17 aware of any issues with respect to the third-party subpoenas
18 that the NHL has issued -- actually, any of the third-party
19 subpoenas in A through F. We understand those to be moving
20 forward or completed without issue. We did serve a subpoena
21 on Dr. Kevin Guskiewicz who's listed as number 5G.
22 Dr. Guskiewicz recently responded to this subpoena. I
23 understand -- we understand now that Dr. Guskiewicz has been
24 retained by the NHL. Our discovery requests did not concern
25 any matters regarding that retention.

1 We are still, I believe still waiting for the
2 document production to actually take place and I'm hopeful
3 that that happens sooner rather than later as, because as
4 Mr. Beisner indicated, time is running out on the discovery
5 process.

6 And as far as 5H goes on CLS, I think the Court is
7 aware of the schedule for --

8 JUDGE NELSON: Yes, which is the next hearing.
9 Right?

10 MR. STUART DAVIDSON: Correct.

11 JUDGE NELSON: And you have a briefing schedule in
12 place for that, yes.

13 MR. STUART DAVIDSON: Correct.

14 MR. DANIEL CONNOLLY: Your Honor, Dan Connolly, just
15 updating that.

16 I'll go in reverse order. On the CLS Strategies, we
17 have agreed that it will be heard in the courtroom on -- at
18 the time of the next informal conference, so on June 9.
19 Plaintiffs -- the CLS opening brief is due today. We've
20 agreed to -- they're going to file their paper today, and the
21 NHL's response is due June 2.

22 JUDGE NELSON: Okay.

23 MR. DANIEL CONNOLLY: And just backing up on item
24 5B, the Chubb Insurance matter, we've been proceeding in front
25 of Judge Mayeron on that. And I think that's -- I've just

1 been listening in, so I've been out of the fray but have been
2 interested and I think that's proceeding. And that's -- those
3 are all the matters that I have on that topic.

4 MR. BRIAN GUDMUNDSON: Just very briefly, Your
5 Honor. The -- Mr. Connolly just set forth the briefing
6 schedule for the CLS motion, and we've got a -- their
7 opposition due June 2 and the hearing on June 9. We have not
8 yet requested a reply of the Court. We were going to wait
9 until we saw the papers, but we do fully anticipate requesting
10 a reply. And so I don't know if it's your pleasure to address
11 that now or if we address it at the time. We would presumably
12 be able to turn it around in very short order.

13 JUDGE NELSON: So June 9 is a Thursday?

14 MR. BRIAN GUDMUNDSON: Um --

15 MR. DANIEL CONNOLLY: Yes.

16 JUDGE NELSON: Okay. All right. And can you get me
17 something on -- by noon on Tuesday, say?

18 MR. BRIAN GUDMUNDSON: Yes.

19 JUDGE NELSON: Okay.

20 MR. BRIAN GUDMUNDSON: Certainly. Thank you, Your
21 Honor.

22 JUDGE NELSON: Okay. So, just to be clear, that's
23 14th, am I right? No. No, no, no, no. Take that back.
24 Yeah. Just a second. Seventh. June 7th. Okay. All right.

25 MAGISTRATE JUDGE MAYERON: With respect to Chubb

1 Insurance, on June 3, I'm having another status conference
2 with Plaintiffs' counsel and with Chubb's counsel. Chubb is
3 in the process of doing a sampling of 38 files, some of which
4 have been computerized, others that they're having to retrieve
5 from archives and do a hand review on. And that will assist
6 us in developing or putting our arms around the cost and time
7 to do a review of possibly other files.

8 The other part that is ongoing is Chubb has filed
9 their supplemental brief on the issue of notice, and I believe
10 the Plaintiffs yesterday filed their supplemental response on
11 that issue. So, that is -- we're virtually done with the
12 briefing on that and we'll be in a position, then, to address
13 the issue on notice which is the subject of the supplemental
14 briefing. This is notice to the retirees that their IMEs
15 could possibly be turned over as part of this process.

16 JUDGE NELSON: Okay. Anything else on third-party
17 discovery?

18 **(None indicated.)**

19 JUDGE NELSON: Letters rogatory, anything to follow
20 up there?

21 MR. STUART DAVIDSON: Nothing from the Plaintiffs --
22 oh, is there something? I spoke out of turn.

23 MR. BRIAN GUDMUNDSON: I'm delivering an update on
24 behalf Mr. Penny who's on the phone today, and that is that
25 we've been informed by Canadian Club counsel that he has

1 received documents from the Canadian Clubs at long last, and
2 we should be receiving them this week possibly.

3 JUDGE NELSON: Great. That's good news.

4 Yes, did somebody else get up to speak?

5 Mr. Connolly?

6 MR. DANIEL CONNOLLY: I was just going to say what
7 Mr. Davidson had said, which is we didn't have anything to
8 supplement, but (laughter)...

9 JUDGE NELSON: Okay. All right.

10 I do have the deposition scheduling. Any particular
11 comments for my attention, Mr. Grygiel?

12 MR. STEPHEN GRYGIEL: Very briefly, Your Honor.
13 We've been working together with Mr. Beisner on the scheduling
14 of third-party discovery, in particular lately in terms of the
15 who, the what, the where, the order of the deposition, and
16 who's going to reserve what time. And that's been working
17 quite smoothly. I anticipate by the end of this week or at
18 the latest mid next week having some other names to
19 Mr. Beisner and his colleagues about who else we think we will
20 want to depose to fill out our tranche of deponents. But I've
21 been looking at documents, obviously, before we make that
22 decision. Thank you, Your Honor.

23 JUDGE NELSON: Very good. You bet.

24 MR. JOHN BEISNER: Your Honor, I don't think I have
25 anything to add. I mentioned the PA depositions earlier. The

1 one other thing -- I don't know if the Court gets out a
2 magnifying glass to check the differences between the parts of
3 this report that seem to have some redundancy to them, but I
4 did want to note that I think in the last report, we mentioned
5 there had been a potential dispute about the duration of
6 the --

7 JUDGE NELSON: Yes.

8 MR. JOHN BEISNER: -- Rizos deposition, and I just
9 want the Court to be advised that has been resolved.

10 JUDGE NELSON: Sort of like your kids, Mr. Beisner,
11 if you don't hear any more complaining, I ignore it
12 (laughter).

13 MR. JOHN BEISNER: Well, I just thought you'd want
14 to know we can check that one off.

15 JUDGE NELSON: Okay. All right. Anything about
16 either Plaintiffs' medical examinations or IMEs?

17 MR. DAVIDSON: So, good morning again, Your Honor.
18 Stuart Davidson -- I'm sorry -- I'm not supposed to move
19 these, am I?

20 JUDGE NELSON: I don't know what Heather's rules are
21 (laughter).

22 MR. DAVIDSON: So taking the Plaintiffs' medical
23 examinations first, as the Court will recall, there was a
24 situation where one of the named Plaintiffs, Steven Ludzik,
25 unfortunately withdrew from the case and therefore the Amended

1 Complaint was left without a Class Two representative; those
2 are the individuals who have personal injuries. As a result,
3 the Court ordered that many of the named Plaintiffs -- that's
4 Mr. LaCouture, Mr. Leeman, Mr. Nicholls, and Mr. Peluso -- be
5 examined at our request by doctors that we have retained, and
6 those examinations have taken place.

7 Three of the Plaintiffs -- Mr. LaCouture, Nicholls,
8 and Leeman -- were seen by Dr. Cantu and a neuropsychologist
9 in Boston at Dr. Cantu's request. We are informed that the
10 reports from Dr. Cantu will be complete in time to be produced
11 by May 31st. The other named Plaintiff who was examined was
12 Michael Peluso; and unfortunately, due to some severe
13 psychological issues that Mr. Peluso had at the time and
14 continues to have, he was unable to travel to Boston for -- to
15 be examined by Dr. Cantu. So, instead, he was -- we referred
16 him to Dr. Kerri Lamberty who is a neuropsychologist at the
17 Noran neurology clinic, and she completed her exam and
18 actually completed her report. That's the only report that we
19 have.

20 Mr. Peluso was also recently seen by his treating
21 neurologist, Dr. Steven Stein, who's local here in the Twin
22 Cities who has been treating Mike for a seizure disorder that
23 was caused by a concussion that he had back in the 1990s. We
24 are informed that Dr. Stein's report will also be completed by
25 May 31st.

1 So, we are on schedule. The question that I would
2 ask -- I would like to know is, does the Court want to receive
3 copies of these reports? We are obviously going to serve them
4 on the NHL, but I don't know if the Court has advised whether
5 it would like to see copies --

6 JUDGE NELSON: The Court would like to see copies,
7 please.

8 MR. STUART DAVIDSON: So we will make sure that Your
9 Honor gets those.

10 The related issue to these reports is that we are
11 likely -- well, we are certain to be asking for leave to amend
12 the Complaint. We are doing this -- well, the entire purpose
13 of this exercise was because of Mr. Ludzik's withdrawal from
14 the case. So, we believe that we are going to be able to
15 substitute in one, if not more, of the current named
16 Plaintiffs. We're not going to add any new Plaintiffs at this
17 very late date, but one of the current Plaintiffs as a Class
18 Two representative.

19 We are not sure exactly what we're going to do or
20 who we're going to ask to do that for until we actually see
21 the reports, so I can't be in a position today to tell you who
22 we'd like to substitute in as a Class Two representative. It
23 seems to me that this will also be an opportune time for us to
24 amend the class definition for Class Two a little. That will
25 also depend on the evaluations and the reports of the doctors

1 to see exactly what, if anything, these gentlemen are
2 diagnosed with.

3 So, what -- and we are -- and I'm, of course, happy
4 to brief this and file a formal motion for leave and
5 demonstrate good cause. I don't expect that we would have to
6 amend anything in the Complaint other than with respect to the
7 class allegations, but that's what we are likely going to want
8 to do after the reports are finalized. I don't necessarily
9 think that there's any prejudice to the NHL in this regard.
10 Depositions have already been taken of a couple of the
11 representatives, but I don't think this will impact that or
12 the depositions that are upcoming.

13 And it seems to me that it would be more beneficial
14 to amend the Complaint now and crystallize the class
15 allegations now as opposed to doing what we have a right to
16 do, which is move to certify whatever class we want with
17 whatever representatives we want at the class certification
18 stage. I don't think that would be appropriate to do in this
19 case. I'd rather tell the NHL now, this is our -- these are
20 our class representatives for these classes, this is how the
21 class is defined, and then move on from there. So, that's --

22 JUDGE NELSON: Have you met and conferred with the
23 NHL at all on this?

24 MR. STUART DAVIDSON: No. I just spoke first with
25 Mr. Connolly about that this morning. And I guess I'm jumping

1 ahead a little bit, but the last agenda item is with respect
2 to the Ludzik dismissal stipulation. I understand that the
3 Court asked that the Ludzik stipulation dismissal be filed in
4 the master case with respect to all actions, as opposed to
5 Mr. Ludzik's individual case. And I'll fall on the sword on
6 that one, which is the reason why it hasn't been filed yet is
7 because we had asked Mr. Connolly to add in a sentence
8 regarding the dismissal without prejudice of all of the Class
9 Two claims, we asked that a phrase be added that it would be
10 subject to Plaintiffs' right to seek leave to amend or add
11 additional class representatives, and that dispute prevented
12 it from being filed on time.

13 That's my fault, quite frankly, but I think that if
14 we are given leave to amend the Complaint, that that issue,
15 that concern that we had about the impact of that stipulation
16 on the Class Two claims would really be moot.

17 JUDGE NELSON: Okay.

18 MR. STUART DAVIDSON: That's it.

19 JUDGE NELSON: Mr. Beisner?

20 MR. JOHN BEISNER: Your Honor, I'm not sure that
21 there's much to be said on our part until we see what
22 Plaintiffs are proposing on this. I would just confirm, which
23 I hear Plaintiffs saying, they acknowledge that there would
24 need to be a motion for leave filed and possibly debated, but
25 we should meet and confer about that in advance.

1 But I do note, you know, the prejudice part may be
2 in the eye of the beholder. We've proceeded with discovery
3 and some of the depositions based on the class definitions
4 that we came up with after the first amendment process which
5 Your Honor will recall took a while to work through. But I'm
6 not -- we won't prejudge that here except to say that we need
7 to see what's being proposed here and whether there will be
8 need for any additional discovery that may disrupt the
9 schedule. But let's -- let's see what the proposal is on that
10 first.

11 Your Honor, one other issue I wanted to raise -- and
12 I'm jumping ahead to the IME part of this, but I think it's
13 relevant here. At the informal discovery conference, we
14 shared with Your Honor a May 9th letter that we sent to the
15 Plaintiffs' counsel group regarding the IMEs we were
16 conducting. At the end of that letter, there was a request on
17 our part to add to the IME list a fifth named Plaintiff in the
18 Master Complaint, Mr. Larson. Plaintiffs have agreed to
19 permit that examination, so we will include that in the
20 schedule so there's no issue for the Court there.

21 The question, I guess, I had was whether there has
22 been an examination by Plaintiffs -- I realize this was not
23 part of what Your Honor ordered earlier, but again I don't
24 know if Mr. Larson is in the picture for -- as a candidate to
25 be changed to Class Two or whatever. But if so, just wanted

1 to inquire, if I may here on the record, about whether an
2 examination has been conducted of Mr. Larson of which we
3 should be aware before we conduct the IME to which Plaintiffs
4 have agreed with respect to him. If I may ask that at this
5 point.

6 JUDGE NELSON: Sure. Sure. And come on up,
7 Mr. Gudmundson. But I just want to step back just to close
8 the loop on the leave to amend issue. After the reports are
9 produced, which should be by the end of the month, let's all
10 review the reports and then have you meet and confer and we'll
11 discuss it, we'll put it on the agenda for the June 9th
12 conference to discuss how to proceed at that point.

13 MR. STUART DAVIDSON: Sounds like a good plan.
14 Thank you.

15 JUDGE NELSON: Okay.

16 Mr. Gudmundson?

17 MR. BRIAN GUDMUNDSON: Your Honor, regard -- and,
18 Mr. Beisner, regarding Reed Larson, we do not have any
19 examination of him presently scheduled. And we -- if that
20 changed, I would be happy to give Mr. Connolly or Mr. Beisner
21 a call and let them know the particulars about that.

22 JUDGE NELSON: Okay. That answers the question.

23 All right. Mr. Beisner?

24 MR. JOHN BEISNER: Your Honor, if I may move onto
25 the IMEs that we touched on earlier. We're going through a

1 process now with trying to get the pieces of that scheduled.
2 And again referring to the May 6th -- I misspoke earlier, it
3 was a May 6th not a May 9th letter, we've gotten some
4 information back from Plaintiffs as to the questions that we
5 posed in that letter regarding logistics. Mr. LaCouture has
6 indicated that the facilities we've proposed in Boston for his
7 pre-IME blood testing and MRI, but we're still waiting to hear
8 back from Plaintiff Leeman and Nicholls as to location. And
9 we need to work through the location of Mr. Peluso's
10 pre-examination testing, but that will be done here in the
11 Minneapolis area.

12 As to the IMEs themselves, the only confirmation
13 we've had is Mr. LaCouture in New York on July 25th and 26th,
14 but we're still waiting to hear back on the proposed dates for
15 Leeman and Nicholls. Mr. Peluso we had proposed for New York;
16 and in light of Plaintiffs' concern about his travel, we have
17 indicated that we would conduct that IME here in the
18 Minneapolis area which works out well because Mr. Larson is in
19 this area, as well, so we'll conduct both of those here.

20 But my main message is we need to hear back from
21 Plaintiffs on the dates proposed in here. This is a very
22 difficult scheduling process because we have five -- five
23 different sets of pre-tests to get scheduled at different
24 locations and the five exams themselves with three
25 professionals needing to go to the locations to conduct those.

1 So, we -- as I said, we haven't heard back on those, but would
2 just ask everyone to note the time sensitivities on that.

3 JUDGE NELSON: Okay.

4 Mr. Davidson?

5 MR. STUART DAVIDSON: First thing I want to say is
6 I -- I thank Mr. Beisner from the bottom of my heart for
7 agreeing to do Mr. Peluso's IMEs here in the Twin Cities.
8 That was a substantial concern that I had, that Mr. Peluso
9 had, and that his doctors had. And for that, I wanted to
10 thank Mr. Beisner in open court on that.

11 Mr. Beisner is correct that he sent the letter
12 asking for confirmation from these four gentlemen for their
13 pre-IME testing and their neurological testing. And we
14 indicated through, I think, Mr. Zimmerman or Mr. Cashman that
15 Mr. LaCouture was fine with whatever they wanted to do. The
16 only thing I would ask Mr. Beisner is, we -- I sent
17 Mr. Beisner an e-mail about a week, a week and a half ago,
18 asking for some confirmation of logistics for Mr. LaCouture's
19 testing, where's he going, who's he seeing, when's he seeing
20 folks, what time does he need to be where in New York City, at
21 Boston General or Mass General, and -- because we need to make
22 travel arrangements.

23 Mr. LaCouture works full-time. He needs to figure
24 out his schedule with not only his work but with his family
25 and his children. And so the only thing I would ask is that

1 once these individuals have told you they're good to go, if we
2 could move on the logistical issues sooner rather than later,
3 we would appreciate it very much.

4 On Mr. Leeman and Mr. Nicholls, I will put it on
5 myself to make sure that we get back to Mr. Beisner ASAP on
6 their availability and their preferences, so I'll do that.

7 JUDGE NELSON: Thank you.

8 Mr. Beisner?

9 MR. JOHN BEISNER: And I appreciate Mr. Davidson's
10 willingness to do that. And once we get responses from all of
11 them, then we'll have a master schedule with all of that laid
12 out. But until we hear back on availability of Plaintiffs for
13 the exams on the dates we've proposed, it's a little hard to
14 do that. But as soon as we hear from you on that, there will
15 be master schedule with all logistics and tour guides and so
16 on to make sure this works efficiently.

17 JUDGE NELSON: All right. I certainly appreciate
18 the need to move on both fronts, but it -- we can't be giving
19 them the logistics, you know, a week before the exams.

20 MR. JOHN BEISNER: Your Honor, yeah, and you're
21 right, Your Honor. But I guess my point is we sent a letter
22 on May 6th laying out, here are the dates we proposed, tell us
23 if they work, and the locations. And we've only heard back on
24 some and --

25 JUDGE NELSON: No, I understand that, and I think

1 you're going to get a response. But let's just make sure we
2 move quickly.

3 MR. STUART DAVIDSON: The only thing I want to
4 confirm with Mr. Beisner is he wanted all of the testing, the
5 bloodwork, the MRI done by June 15th. Is that kind of a -- a
6 wishy-washy date so that, given the fact that -- you want
7 everybody to be scheduled before logistics are finalized?

8 MR. JOHN BEISNER: Yeah, I think we were just trying
9 to make sure we had that finished in time before the -- the
10 IMEs themselves. But we'll work that through. I mean, we may
11 need to adjust some of these other dates, but as soon as we
12 can hear availability on the dates we've laid out here, I
13 think we'll be able to work that out. We just need to have --
14 we really need to have a couple of days where we concentrate
15 on getting this set, I guess is my point. If you're willing
16 to do it, then I think we've got it.

17 MR. STUART DAVIDSON: We'll get it done.

18 JUDGE NELSON: Sounds good. Okay.

19 Mr. Connolly?

20 MR. DANIEL CONNOLLY: I was going to move on, unless
21 the Court would like to hear more on logistics on the record.

22 JUDGE NELSON: No, that's okay. Thank you.

23 MR. CHARLES ZIMMERMAN: What airline are they flying
24 (laughter)?

25 MR. DANIEL CONNOLLY: This is the issue of the

1 handling of the sealed materials. We talked a little bit
2 about that the other day. As the Court is aware, the --
3 it's -- its preemption ruling was obtained by somebody who had
4 a blog posting, and what we were going to propose and I've
5 talked to Mr. Zimmerman briefly about this is that in the
6 event that the Court issues future sealed orders, in order not
7 to wade through all of the counsel who are on the ECF list and
8 trying to figure who's in and who's out, that they would be
9 sent to Mr. Zimmerman, Mr. Grygiel, and Mr. Davidson on
10 Plaintiffs' side, and Mr. Beisner and myself on Defense side.
11 And then we would be responsible for disseminating them
12 amongst the other appropriate lawyers to receive them.

13 And this is just because the Court has logistics
14 with intervenors and all kinds of other ECF recipients. And I
15 don't have any understanding about how the inappropriate
16 release happened this last time. I don't know what happened,
17 but I just think that this way the lawyers who are responsible
18 for all kinds of other things in this case and communications
19 are -- would be responsible for disseminating those
20 appropriately.

21 JUDGE NELSON: Okay. Very good.

22 I just -- you mentioned something about intervenors.
23 We were very careful just to, this time around, just to make
24 sure that Plaintiffs and Defense counsel got copies.

25 MR. DANIEL CONNOLLY: No, no, I understand that. In

1 fact, we have -- in all our due diligence -- and I just meant
2 that was the last time that we had talked about this issue.

3 JUDGE NELSON: Right.

4 MR. DANIEL CONNOLLY: We looked through that entire
5 list and we don't see anybody who received it who shouldn't
6 have received it. But nonetheless, it got out, and so our
7 proposal was simply that --

8 JUDGE NELSON: Sure.

9 MR. DANIEL CONNOLLY: -- we concentrate it among the
10 people who have done the -- the Executive Committee on
11 Plaintiffs' side and then they would disseminate it further.
12 And as to our side, Mr. Beisner, who keeps everybody informed
13 of everything, would get everybody that information.

14 JUDGE NELSON: Okay. Very good.

15 Mr. Zimmerman, is that acceptable to you on your
16 side?

17 MR. CHARLES ZIMMERMAN: I don't know who on the
18 Defendant's side leaked that order (laughter), but I'm -- I
19 just don't want -- I don't have any problem with sealed orders
20 coming to me, but I don't want to have like some supersized
21 responsibility to make sure people that I might disseminate it
22 to don't follow my instructions to keep it under seal. I just
23 don't want to be, you know, an insurer of anything like that,
24 and I don't want there to be an implication that I have the
25 power to do that.

1 So, with that understanding, I'm good with that
2 idea. But then what I would do is send it out to my PSC,
3 "This is a sealed order, this is to be kept under
4 confidentiality until something else is decided." But I just
5 don't want to be in the -- called back in and say, well,
6 someone leaked it over there or someone leaked it over there
7 and I'm somehow responsible for that. And I just don't want
8 to get into that briar patch. So, that -- I'm fine with that.

9 I also want to be clear that, you know, when we were
10 talking about things that -- we still do have a service, when
11 we were talking a while back about blood tests and CAT scans
12 and invasive testing, you know, I had complained to the Court
13 a little bit about the Defense sending this out to all kinds
14 of counsel, which I took to be sort of a line in the sand or
15 perhaps a tactic to show how tough the NHL was going to get
16 with players and subject them to these rather difficult tests.

17 And I thought there was kind of a subliminal, if not
18 so subliminal, message in that. And they used -- and they
19 said to the Court, no, no, no, we were just doing it, as our
20 duty is to inform everybody of what's going on in the
21 litigation. It -- at the same token, I had that same concern
22 that everyone would know what's going on in the litigation and
23 that I not be held as the gatekeeper for things that should be
24 disseminated in the ordinary course, and so I don't want to be
25 the censor or the guardian. And with that understanding, I'm

1 good with the sealed order understanding that Mr. Connolly is
2 coming up with.

3 JUDGE NELSON: And I believe the proposal was it
4 would go to you, Mr. Grygiel, and Mr. Davidson. Is that
5 acceptable?

6 MR. STUART DAVIDSON: The only one I'd like to add
7 to that, Your Honor, is liaison counsel, Mr. Klobucar.

8 JUDGE NELSON: Okay. Okay.

9 MR. CHARLES ZIMMERMAN: And that's fine.

10 Are you good with that?

11 MR. DANIEL CONNOLLY: That's fine with us, Your
12 Honors.

13 MR. CHARLES ZIMMERMAN: We don't have to meet and
14 confer on that?

15 MR. DANIEL CONNOLLY: We did out in the hallway.

16 JUDGE NELSON: All right. Very good.

17 MAGISTRATE JUDGE MAYERON: And I'm assuming that
18 would apply obviously to any sealed order by Judge Nelson, but
19 obviously at the extent I would issue a sealed order, as well,
20 it would apply to our chambers. I've got to make sure we're
21 not disseminating it more extensively than it should be.

22 MR. CHARLES ZIMMERMAN: That's correct, Your Honor.

23 MR. DANIEL CONNOLLY: Yes, Your Honor.

24 JUDGE NELSON: Okay.

25 Anything about privilege log challenge protocol or

1 status?

2 MR. CHRISTOPHER RENZ: Your Honor, there is a motion
3 process on the privilege claims, specifically the NHL's
4 clawback claims that is before Magistrate Judge Mayeron.
5 Plaintiffs' motion and accompanying papers are in Defendant's
6 opposition, and supporting *in camera* documentation are in. We
7 expect to receive those documents tomorrow.

8 MR. DANIEL CONNOLLY: Right.

9 MR. CHRISTOPHER RENZ: And we have a reply due
10 shortly. And then as we've indicated before, it's our hope to
11 take Magistrate Judge Mayeron's ruling and apply it throughout
12 the privilege disputes.

13 JUDGE NELSON: Great.

14 MAGISTRATE JUDGE MAYERON: And then after the reply,
15 the NHL will be actually providing the notebooks of the
16 documents with what I've asked for in those notebooks to me.

17 MR. CHRISTOPHER RENZ: That's right.

18 MR. DANIEL CONNOLLY: That's correct, Your Honors.
19 Yep.

20 JUDGE NELSON: Very good. All right.

21 MR. DANIEL CONNOLLY: And I think the last issue, I
22 think it's -- I don't know if the Court wants to hear further
23 on this. This is the -- the Court sent us an e-mail asking
24 that we refile the Ludzik dismissal paper in the main file, as
25 well.

1 JUDGE NELSON: And we're going to hold off on that.

2 MR. DANIEL CONNOLLY: And we'll hold off on that
3 until we talk about it on June 9th. Okay.

4 JUDGE NELSON: Very good. Anything further today?
5 Any issues for the Court?

6 **(None indicated.)**

7 JUDGE NELSON: All right. Court is adjourned.

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

9 (Concluded at 10:15 a.m.)

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CERTIFICATE

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

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

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