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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
July 28, 2016
11:00 a.m.

BEFORE THE HONORABLE SUSAN RICHARD NELSON
UNITED STATES DISTRICT COURT JUDGE

FORMAL STATUS CONFERENCE

Official Court Reporter: Heather Schuetz, RMR, CRR, CRC
U.S. Courthouse, Ste. 146
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1 P R O C E E D I N G S

2 IN OPEN COURT

3 (Commencing at 11:06 a.m.)

4 THE COURT: We are here this morning in the matter
5 of the National Hockey League Players' Concussion Injury
6 Litigation. This is 14-MDL-2551.7 Let's take appearances. We'll begin with the
8 Plaintiffs. Mr. Zimmerman.9 MR. CHARLES ZIMMERMAN: Good morning, Your Honor.
10 Charles Zimmerman for the Plaintiffs.11 MR. STUART DAVIDSON: Good morning, Your Honor.
12 Stuart Davidson, also on behalf of the Plaintiffs.13 MR. WILLIAM SINCLAIR: Good morning, Your Honor.
14 Bill Sinclair on behalf of the Plaintiffs.15 MR. MICHAEL CASHMAN: Morning, Your Honor. Michael
16 Cashman on behalf of the Plaintiffs.17 MR. JEFFREY BORES: Good morning, Your Honor.
18 Jeffrey Bores on behalf of the Plaintiffs.19 MR. JEFFREY KLOBUCAR: And good morning, Your Honor.
20 Jeffrey Klobucar on behalf of the Plaintiffs. Appearing
21 telephonically for the Plaintiffs this morning is Tom Byrne
22 from the Namanny, Byrne & Owens firm; James Anderson from
23 Heins Mills & Olson; Brian Penny from the Goldman Scarlato
24 firm; and William Gibbs from the Corboy Demetrio firm.

25 THE COURT: Very good.

1 And the Defense?

2 MR. JOHN BEISNER: Good morning, Your Honor. John
3 Beisner on behalf of Defendant, NHL.

4 MR. DANIEL CONNOLLY: Good morning, Your Honor. Dan
5 Connolly on behalf of Defendant, NHL.

6 MR. MATTHEW MARTINO: Good morning, Your Honor.
7 Matt Martino for the NHL.

8 MS. LINDA SVITAK: Good morning, Your Honor. Linda
9 Svitak on behalf of the NHL.

10 THE COURT: Very good.

11 And Mr. Connolly?

12 MR. DANIEL CONNOLLY: And Your Honor, in addition,
13 Shep Goldfein and Jessica Miller are on from Skadden Arps.

14 THE COURT: Very good. All right.

15 Well, should we start with the beginning of the
16 agenda, or is there anything else that the parties wish to
17 raise first?

18 MR. CHARLES ZIMMERMAN: I don't think there's
19 anything -- I don't think we have to go out of order from the
20 agenda.

21 THE COURT: Okay.

22 MR. CHARLES ZIMMERMAN: So we can just go through
23 the agenda.

24 THE COURT: All right. Then we'll hear from
25 Mr. Martino.

1 MR. MATTHEW MARTINO: Good morning again. Matt
2 Martino for the NHL.

3 I'm pleased to say that document production for the
4 NHL and the Board of Governors has been completed.

5 THE COURT: I went through it, and I couldn't find
6 anything in there that wasn't -- so very good.

7 MR. MATTHEW MARTINO: Thank you.

8 MR. STUART DAVIDSON: On behalf of --

9 THE COURT: Yes, Mr. Davidson.

10 MR. STUART DAVIDSON: On behalf of the Plaintiffs,
11 we have nothing else to add, and so far everything looks to be
12 in order.

13 THE COURT: Great. That's terrific.

14 All right. Medical records collection.

15 Mr. Beisner?

16 MR. JOHN BEISNER: Your Honor, on that subject,
17 there was a call yesterday with Mr. Altman from our office and
18 Mr. Cashman working through some of those issues, and I think
19 it's just best to say we're continuing to work those through.
20 There are a number of open issues there on collecting those,
21 including some that pertain -- still pertain to the proposed
22 class representatives but nothing for the Court to act on this
23 morning.

24 THE COURT: Thank you.

25 Any response from the Plaintiff?

1 MR. MICHAEL CASHMAN: Good morning, Your Honor.
2 Yes. We have been working through these. There's nothing for
3 the Court to decide, but just as a preview, some of these, I
4 think, are potentially issues that are not solvable by either
5 side because some of these, some of these so-called medical
6 collection issues call for the Plaintiffs to probe their
7 memories about what they remember about whether they saw this
8 doctor or went to this hospital.

9 So, we are investigating those things to the best of
10 our ability, but I just want the Court to be aware and Counsel
11 to be aware that some of these things may not be solvable.
12 So, if we get to that point, perhaps there will be a need for
13 discussion. But right now, there's no issue that needs to be
14 decided.

15 THE COURT: Okay. Let's try to reach some
16 resolution or impasse by the next informal conference so we
17 can tee this up for decision. Okay? Okay.

18 All right. The Plaintiff Fact Sheets, perhaps,
19 while you're up there.

20 MR. MICHAEL CASHMAN: I guess -- I'm sure that
21 Mr. Beisner will stand up and say there are a few that are
22 still outstanding, and we've been working very hard to get
23 these. I think there are -- I think there are four right now
24 that we need to get. I think two or three of them are
25 imminent. We do have some individuals who are out of the

1 country, and so I -- I've asked Mr. Beisner for a little bit
2 of patience while we get these. We're working very hard to
3 get them, and I hope we have them very shortly.

4 THE COURT: Okay.

5 Mr. Beisner?

6 MR. JOHN BEISNER: No disagreement with any of that.
7 I'd just note -- and we will be patient. But I would just
8 note for the record, we have been patient. Mr. Tselios, who's
9 still missing, was due four months ago, and I think the others
10 were due six months ago. But we'll wait for them to come
11 based on Mr. Cashman's representation that they're in
12 progress.

13 THE COURT: Okay. Let's get that certainly finished
14 by the next status conference, okay?

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

16 THE COURT: Great. All right.

17 Yes, Mr. Davidson.

18 MR. STUART DAVIDSON: I was just going to take the
19 next item on the agenda.

20 THE COURT: Please. Third-party discovery.

21 MR. STUART DAVIDSON: Sure. So -- I shouldn't move
22 that. I'm used to moving things down to accommodate my size,
23 but (laughter) --

24 THE COURT: You know, that podium goes up and down
25 so that it treats everybody equally (laughter).

1 MR. STUART DAVIDSON: So, on third-party discovery,
2 Your Honor, National Hockey League Players' Association, we
3 received documents for. We are still working through them.
4 It's been a little bit of a task since we've been in the
5 middle of PA depositions, as well, but we're doing our best to
6 sort through those documents but have nothing really to report
7 on that.

8 On Chubb Insurance, Mr. Penny, who's on the phone
9 now, and Chubb's counsel have had several discussions
10 regarding the issue of what should and should not be redacted
11 in light of the Court's order. They were unable to agree, so
12 Mr. Penny sent an e-mail to Judge Mayeron to help Plaintiffs
13 and Chubb sort through those issues. And right now they're
14 awaiting word from Judge Mayeron on --

15 THE COURT: Do you know when that e-mail was sent?

16 MR. STUART DAVIDSON: I don't, off the top of my
17 head.

18 THE COURT: Would you have Mr. Penny send that to
19 me, as well?

20 MR. STUART DAVIDSON: Yes.

21 MR. CHARLES ZIMMERMAN: Mr. Penny is on the phone.
22 Can he respond?

23 THE COURT: It's hard --

24 MR. STUART DAVIDSON: Yeah, I'll just --

25 THE COURT: It's kind of in the air, you know. All

1 right.

2 MR. STUART DAVIDSON: The NHL had subpoenaed
3 Dr. Cantu. Dr. Cantu has sent several documents to the NHL in
4 response to that subpoena. I don't have anything to report on
5 that. I don't know if Mr. Connolly does.

6 THE COURT: Mr. Connolly?

7 MR. DANIEL CONNOLLY: Yes, Your Honor. We're
8 reviewing those materials. We will follow up with Plaintiffs
9 later this week as to the status of them.

10 THE COURT: Okay.

11 MR. STUART DAVIDSON: On Dr. Guskiewicz, who
12 Plaintiffs subpoenaed, we understand Dr. Guskiewicz to be a
13 retained expert of the NHL. Dr. Guskiewicz, after several
14 extensions of time to produce documents, produced a little
15 over 300 pages in his first production. We understand from
16 Mr. Lisagar at Skadden that additional documents and what we
17 understand to be the completion of Dr. Guskiewicz's production
18 will be by tomorrow. So we're hopeful that that takes place,
19 and once we have an opportunity to review that entire
20 production, if there are any deficiency concerns, of course we
21 would first raise those with the NHL's counsel who we
22 understand to represent Dr. Guskiewicz.

23 THE COURT: Okay.

24 Yes, Mr. Martino.

25 MR. MATTHEW MARTINO: I just wanted to confirm that

1 the production will be completed by tomorrow.

2 THE COURT: Okay. Very good.

3 MR. STUART DAVIDSON: And finally on third-party
4 discovery, the NHL Team Physicians Society, who we've been
5 working with Mr. Schmidt on, I've been advised that documents
6 were produced by the Physicians Society yesterday. So, at
7 this point in time, we have no issue to raise with the Court.

8 THE COURT: All right.

9 Anything else about third-party discovery?

10 **(None indicated.)**

11 THE COURT: How about letters rogatory?

12 MR. STUART DAVIDSON: So on behalf of Mr. Penny, the
13 Canadian Club document production is substantially complete at
14 the present time. Mr. Penny and Canadian Club counsel are
15 still discussing issues relating to the privilege log but,
16 again, there are no issues to raise with the Court today. And
17 if there are issues, I think that the procedures are to raise
18 them in Canada, anyway.

19 THE COURT: Okay. All right.

20 Any report on the NHL's letters rogatory?

21 MR. DANIEL CONNOLLY: Nothing to update, Your Honor.

22 THE COURT: Very good. All right.

23 All right. Anything about deposition scheduling we
24 should address?

25 MR. JOHN BEISNER: Your Honor, I don't think we have

1 any issues on this either, and I think that at the last
2 informal conference, we reviewed with you all of the dates
3 that fell after the cutoff date and you gave your assent to
4 those changes. But in any event, in case we missed any,
5 they're all set out here in the list. And as I said, I think
6 you reviewed -- we reviewed those with you last time. I don't
7 think we've had any changes since then, and the depositions
8 are proceeding on this schedule.

9 THE COURT: Great.

10 MR. WILLIAM N. SINCLAIR: Your Honor, I would just
11 add, my partner, Steve Grygiel, sent Mr. Beisner an e-mail
12 last night -- and obviously he has not had a chance to
13 respond -- teeing up an issue that may have to occur for
14 depositions post class certification. So, I don't think
15 there's anything that needs to be addressed right now, but in
16 the vein of no surprises, I'm just raising it with you.

17 THE COURT: Okay.

18 All right. Plaintiffs' proposed classes and class
19 representatives. The Court did receive a motion this morning.

20 MR. WILLIAM SINCLAIR: I drew the short stick on
21 this one, Your Honor.

22 THE COURT: Okay.

23 MR. WILLIAM SINCLAIR: We did file a motion this
24 morning, so I think the motion speaks for itself. You know, I
25 understand that at the informal conference, we were tasked

1 with providing the release and the Fact Sheet as quickly as we
2 could. We have done so. The motion speaks to that.

3 One issue that Mr. Beisner did raise with me this
4 morning, which I appreciate, which I recognize when we
5 prepared the motion, we have not actually filed as an exhibit
6 an Amended Complaint. That seems form over function, but
7 we're happy to do so if we think it's necessary.

8 At this point, it seems the issue to be worked
9 through is whether or not the estate would actually be added
10 as a class representative. The allegations are going to be
11 very simple to that regard, but we're happy to do so if
12 that's --

13 THE COURT: Why don't you go ahead and do so.

14 MR. WILLIAM SINCLAIR: I'm sorry, what?

15 THE COURT: You should go ahead and do so.

16 MR. WILLIAM SINCLAIR: Very good. Thank you.

17 THE COURT: Very good.

18 Mr. Connolly?

19 MR. DANIEL CONNOLLY: Mr. Sinclair anticipated the
20 comments that I had. We were looking for the Amended
21 Complaint, and we were going to ask that this be filed on a
22 motion. And I guess the only question is what the hearing
23 date would be that the Court would prefer on that.

24 THE COURT: Can we get this done at the next
25 informal?

1 MR. DANIEL CONNOLLY: The next informal is
2 September 7th, Your Honor.

3 THE COURT: It is?

4 MR. DANIEL CONNOLLY: Yes, Your Honor.

5 THE COURT: Do we not have anything in August?

6 MR. DANIEL CONNOLLY: No, Your Honor.

7 THE COURT: No.

8 MR. DANIEL CONNOLLY: At least not currently
9 (laughter).

10 THE COURT: Well, perhaps we don't because I have a
11 three-week trial starting Monday. But I'd like to get to this
12 before then.

13 So, Mr. Zimmerman, do you want to be --

14 MR. CHARLES ZIMMERMAN: Might I suggest that the
15 Court just have the hearing whenever you have the time in the
16 three week -- four weeks between now and the next. And we can
17 do it telephonically, we can come in. I can't imagine it's
18 hotly-contested, but perhaps it will be. But I think the
19 issue is pretty clean and clear, and we can do this in a
20 relatively short period of time; you just tell us when.

21 The papers are filed from the Plaintiffs' side. If
22 they have a defense argument they want to make, they can make
23 it.

24 Before the Court -- before I sit down, I do want to
25 apologize. Yesterday I did send a letter to the Court --

1 THE COURT: Yes.

2 MR. CHARLES ZIMMERMAN: -- and I was immediately
3 told that we had agreed it would be a motion, not a letter
4 brief, which is why it then came as a letter brief. It was my
5 mistake. As you know from that status, I kind of came and
6 went in a short period of time and my notes did not reflect
7 properly that it was supposed to be the subject of a formal
8 motion. And so I instructed the team to do a letter brief,
9 and I was wrong. And I apologized, and I hope it didn't cause
10 too much fuss.

11 THE COURT: I don't think it's a problem.

12 MR. DANIEL CONNOLLY: We're okay with the conversion
13 to the motion, but we do think that this is an issue that's of
14 substantial -- of enough merit and discussion that we should
15 have a formal hearing on it and would like to have a
16 conference with the Court, at the Court's convenience.
17 Obviously it's a non-dispositive motion. We don't have the --
18 the Amended -- the proposed Amended Complaint yet, but at the
19 Court's convenience, we'd like to schedule that sometime maybe
20 the third week of August or something like that.

21 THE COURT: Okay.

22 MR. DANIEL CONNOLLY: I -- that was just grabbing a
23 date out of the air.

24 THE COURT: Yeah. It'll probably have to be some
25 day at 4:00, if that's okay with everybody.

1 MR. DANIEL CONNOLLY: That will work, Your Honor.

2 THE COURT: All right. I will pick a day. In the
3 meantime, I'll ask you to respond to this, I guess, under the
4 Rules. But do the Rules march back from the hearing date?
5 That's what I can't remember on a --

6 MR. DANIEL CONNOLLY: It's sort of been both ways,
7 but I think that the current process is, yes, we have to file
8 our response within 7 days before the hearing.

9 THE COURT: Yeah, okay. Well, I will get out an
10 e-mail to you today with the hearing date, and that'll define
11 when the briefing's due.

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

13 THE COURT: Okay? All right.

14 All right. Let me ask this, though, while I have
15 you here if we don't have a conference in August. What
16 additional -- if I were to grant this, what additional work do
17 you believe the NHL would need to do, and how do you think
18 that would impact the current class certification briefing?

19 MR. DANIEL CONNOLLY: I'd like to have Mr. Beisner
20 talk to that. We talked a little bit about this at the
21 last --

22 THE COURT: We did.

23 MR. DANIEL CONNOLLY: -- informal conference --

24 THE COURT: Which is why I ordered the Fact Sheet
25 and the --

1 MR. DANIEL CONNOLLY: Absolutely, absolutely. One
2 thing that I guess I'd just like to have a date on,
3 Mr. Sinclair, I'd like to just know when we're going to get
4 the proposed Amended Complaints because that obviously will
5 impact how we address that in the briefing. Is there a
6 timeline when you expect you can have the Amended Complaint?

7 MR. WILLIAM SINCLAIR: We can do it today.

8 MR. DANIEL CONNOLLY: That's --

9 MR. STUART DAVIDSON: I'd rather have them do it
10 early next week --

11 MR. WILLIAM SINCLAIR: Mr. Davidson would rather do
12 it next week --

13 THE COURT: How about by the end of business next
14 Monday, August 1. Okay?

15 MR. WILLIAM SINCLAIR: Perfect.

16 MR. STUART DAVIDSON: Is this something that we
17 should file as an exhibit to the motion that Mr. Sinclair
18 filed?

19 THE COURT: Yes, yes, yes.

20 MR. DANIEL CONNOLLY: Very good. And as to the
21 additional discovery, I'll let Mr. Beisner speak to that, Your
22 Honor.

23 THE COURT: Thank you.

24 MR. JOHN BEISNER: I think, Your Honor, we need an
25 opportunity to respond to the motion on this. But it would

1 completely upset the schedule, I think is our position --

2 THE COURT: Tell me why.

3 MR. JOHN BEISNER: Well, because Plaintiffs said
4 they have given the Plaintiff Fact Sheet to the Court. Well,
5 I'd be happy to hand it up, but it has the name of one doctor
6 on it. It took us -- we've still not even completed the other
7 named Plaintiffs. It's taken us nine months to a year to
8 collect the medical records for the other people. We're
9 talking here about a Plaintiff, the only name we got was the
10 name of a team doctor, but we're going to have a lot of other
11 information to gather.

12 This is a gentleman who played hockey for a number
13 of years, but the vast majority of his career was not in the
14 National Hockey League. He played 158 games, from what we can
15 tell, in the National Hockey League; but he played 863 games
16 in the American Hockey League and the World Hockey League.
17 His last season playing was 1969. So, finding information
18 when we can't talk to him about that is -- is going to be a
19 real problem.

20 I'm concerned that the letter that was submitted to
21 the Court -- and I haven't had time to look at the motion all
22 that much -- sort of suggests that he's somehow been in this
23 case previously. He's not. The first part of it --

24 THE COURT: Well, it looks like the estate retained
25 counsel --

1 MR. JOHN BEISNER: He retained counsel, but we've
2 never had the name --

3 THE COURT: That's right.

4 MR. JOHN BEISNER: -- in the case. He's not a named
5 Plaintiff. So, even though he had been -- had retained
6 counsel who were involved in this litigation and could have
7 been named at that point, for whatever reason, he wasn't. So
8 we never, while he was alive, went through the Plaintiff Fact
9 Sheet process or anything like that.

10 And then, Your Honor, I mean, we have -- Your Honor
11 has required with respect to anybody in Class Two, we went
12 through this whole process of the medical examinations. We
13 have here a representation of a CTE post-mortem diagnosis, but
14 we have no paper on that. We have no idea what that is. And
15 I think that in this area where there isn't a consistent
16 experience of diagnoses, it's going to take a long time
17 gathering information from -- from BU about what their process
18 is and how -- you know, what are all the other diagnoses that
19 they have given so we can be taking a look at how this
20 particular diagnosis compares to the other ones that they've
21 made.

22 From what I can tell, I mean, it's -- I'm not sure
23 we've even heard of any tissue that they've looked at there
24 where they've come up with a negative diagnosis. So, because
25 this is so cutting edge, we're going to have to have a full

1 understanding of how that diagnosis was made and how that
2 brain tissue differs from other diagnoses that have been made
3 in that particular unit. So I think this opens up a huge
4 issue, and -- well, we will lay this out in the motion, but I
5 think there are huge issues here.

6 I mean, he's been -- you know, he retained counsel
7 in this case back in 2014, yet he was never surfaced. Why?
8 I -- I don't know. So, we missed any opportunity to do any
9 investigation with respect to him. And so I think a lot of
10 the arguments about, well, we just found out about this, seems
11 hollow to us. But I think we ought to have an opportunity to
12 respond to it, but I think our view on this is it's -- it's
13 not just an, oh, well, this isn't going to cause any work.

14 This is an entirely new claim. That's why we want
15 the Complaint. I don't even know what claims they're bringing
16 here. There are a number of different claims theoretically
17 that could be brought, but they're not a matter of record.
18 His allegations are not a matter of record, and particularly
19 when you have somebody who fundamentally was not an NHL player
20 for most of his career, you have to be looking a lot of
21 different places about those events that he may be alleging
22 because they didn't occur on NHL ice.

23 THE COURT: Okay.

24 MR. WILLIAM SINCLAIR: If there's anything you would
25 like us to address in response, we'd be happy to --

1 COURT REPORTER: Can you please come to the mic?

2 MR. WILLIAM SINCLAIR: Oh, yes, of course. I'm
3 sorry. All for posterity, right?

4 I can tell you there's going to be no new claims,
5 Your Honor. It's just going to be allegations about him.
6 It's going to go to the -- why he should be a class
7 representative, most of which is already laid out, I think, in
8 the motion. So, there's nothing new there; they're already
9 aware of that.

10 I'm happy to respond to anything further that you
11 would like at this time --

12 THE COURT: Well, the Court has enormous concerns
13 about interrupting the class certification briefing schedule.

14 MR. WILLIAM SINCLAIR: Of course.

15 THE COURT: So I think if it's true that there's one
16 doctor, a team doctor named there, that is a completely
17 insufficient Plaintiff Fact Sheet. I want you guys to dig
18 down, I want to get the medical records to the NHL, I want the
19 CTE diagnosis records, I want really a lot of work so that
20 there isn't a delay here if I should grant this motion.

21 MR. WILLIAM SINCLAIR: Understood. Just to clarify
22 for the record, it's not a team doctor, Your Honor. The
23 doctor is a gentleman of University of Pennsylvania Medical
24 Center who saw Mr. Zeidel, I understand, the last five or so
25 years of his life. So, it's not a team doctor; it's the most

1 recent doctor who saw him while he was alive.

2 THE COURT: All right. Well, if you could get that
3 records, that's going to refer to prior records --

4 MR. WILLIAM SINCLAIR: Exactly.

5 THE COURT: Is he the one that made the diagnosis of
6 CTE?

7 MR. WILLIAM SINCLAIR: No, Your Honor. It's my
8 understanding that -- no. It was at the Boston University CTE
9 Center --

10 THE COURT: Then we need to get those records.

11 MR. WILLIAM SINCLAIR: That's fine, Your Honor. We
12 can do so.

13 THE COURT: You really need to go much further than
14 you've gone in terms of complying with my request for the
15 authorization of the Plaintiff Fact Sheet or there's going to
16 be a delay that's not tolerable.

17 MR. WILLIAM SINCLAIR: Understood. Thank you, Your
18 Honor.

19 THE COURT: All right. All right.

20 Anything else on that topic?

21 **(None indicated.)**

22 THE COURT: So I will get back to you with the date
23 of the hearing, but it will be no sooner than 7 days after
24 Monday. Obviously, it'll actually have to be a little longer
25 because I need time to absorb the briefing, as well. Okay.

1 All right. IMEs. Anything, Mr. Beisner?

2 MR. STUART DAVIDSON: So, it's my understanding --
3 and Mr. Beisner can correct me if I'm wrong -- that the IMEs
4 of Mr. LaCouture, Mr. Nicholls, and Mr. Leeman have been
5 completed. The -- Mr. Nicholls and Mr. Leeman, I believe,
6 flew to Washington, D.C. for two days in a row and had their
7 IMEs completed. Mr. LaCouture went to New York City for his
8 IMEs, and those were completed.

9 I don't know, is there an IME scheduled for
10 Mr. Larson?

11 MR. JOHN BEISNER: Yes, as set out in the letter I
12 hope you have. Yes. That's scheduled for here in
13 Minneapolis, as a matter of fact, on August 23rd and 24th.

14 THE COURT: Very good. All right.

15 I am told by Judge Mayeron that you should expect a
16 ruling no later than August 15th on the privilege log
17 challenge issues.

18 And that leads us to the last point, which is the
19 recent correspondence between Senator Blumenthal and
20 Commissioner Bettman.

21 Mr. Zimmerman.

22 MR. CHARLES ZIMMERMAN: That was a recent addition
23 to the agenda, Your Honor, yesterday -- or the 26th. The --
24 what we'll call the "Bettman letter" was sent publicly and
25 filed and sent to the Court. What -- Senator Blumenthal in

1 his capacity as chairman of the committee overseeing sports
2 sent a letter to Commissioner Bettman asking him some
3 questions. He gave him a date to respond, and the
4 Commissioner responded. Why the Commissioner and the NHL
5 chose to file this with the Court and publicly file it, I
6 cannot state.

7 But I can tell you this: What is important to us,
8 representing the players, is that we have the opportunity to
9 do a couple of things. One, respond to Commissioner
10 Bettman's, what I will call, Bill of Particulars, which is an
11 old term that states essentially they want -- they have tried
12 to lay out for the Court and for the public their case, why
13 they win. We want to tell you, the Court, we want to tell
14 publicly and tell the press, because they've picked it up in
15 spades, our view of the relationship between head hits and
16 cognitive injury and damage and harm.

17 We want to tell the Court our view of why and how
18 the NFL -- NHL has not responded properly to the warnings and
19 to the betterment and health and safety of the players. We
20 want to be able to re-depose Commissioner Bettman now that he
21 has told us everything he feels about the issue, which we did
22 not have the opportunity to know when we did depose him. And
23 we want to find out why he feels so strongly there is no link
24 between hits to the head and cognitive health issues of the
25 players that played in his League.

1 We want to find out why he feels it would be
2 dangerous to warn players of these risks, at least the risk of
3 CTE, which he says is -- would be an inappropriate warning
4 because we believe there is significant mounting evidence
5 linking hockey head trauma to CTE.

6 And we certainly think, although it is not the
7 cornerstone of our case, but we certainly believe that there
8 is a connection that is justifiable in the law because it
9 doesn't have to be scientifically certain, it only has to be
10 reasonably connected. And we want to discuss with Mr. Bettman
11 the distinction, under oath. Bettman has accused us of trying
12 the case in the public domain. Why is he putting his position
13 out into the public domain, and why is he trying to convince
14 the public, the Court, and the players of his view of the law,
15 which I think is wrong, wrong, wrong.

16 We need to be able to respond in kind, and we need
17 to do it in a way that has the consent of the Court because I
18 do not want to get into a -- a motion practice and a -- and
19 a -- and a fighting match right now with the NHL over this.

20 I want the Court to tell us what you think the rules
21 of engagement are based upon the filing publicly of this Bill
22 of Particulars and what you think we should do in light of
23 that filing because I don't want to go off in a merry-go-round
24 chase of these issues if the Court feels differently than I
25 and differently than us that it's just a piece of paper that

1 was filed, it was appropriate to do so because we raised the
2 public health issue that Mr. Blumenthal -- Senator Blumenthal
3 was putting forward to the League when they were saying in the
4 CLS motion, well, this is just lawyer-driven malarkey, and we
5 said, no, this is a public health issue and here's Mr. --
6 Senator Blumenthal's inquiry to Bettman about this public
7 health issue.

8 For some reason, they felt that the record needed to
9 be supplemented with this 24-page Bill of Particulars. And
10 the question I ask the Court is: What should we do? Do we
11 have the right to do -- to depose? Do we have the right to
12 put in our own Bill of Particulars? What's appropriate under
13 the circumstances, because we disagree, we disagree, we
14 disagree.

15 We do not believe we have to prove to a scientific
16 certainty that there's a connection between CTE and hits to
17 hockey. We only have to show something more -- something
18 less, which is that it's a significant risk and that there is
19 evidence to show that it would be prudent and appropriate to
20 warn players of what they knew so that they and the League and
21 the players could do what they need to do to protect their
22 health.

23 Then there's this thing about fighting, and I need
24 to respond to that. Lastly they say, gee, we've done a really
25 good job; only in a quarter of the games is there fighting

1 today when it used to be in 41 percent of the games. But
2 never did they respond to the question of, why is there
3 fighting at all? They opened that can of worms. I need to
4 decide what -- what is the reason there was fighting in the
5 first place?

6 They asked that question. They put it in the public
7 domain. They are telling the Court they're making progress.
8 They are telling the press and the public they're making
9 progress. I want to know why it exists at all.

10 We haven't been able to do that until now. Thank
11 you.

12 THE COURT: Okay.

13 Mr. Beisner.

14 MR. JOHN BEISNER: Well, Your Honor, I think the
15 simple answer to Mr. Zimmerman's question is that on
16 September 9th, Plaintiffs will be filing their motion for
17 class certification, and I assume that will be an opportunity
18 to say whatever they wish on this subject. But I do want to
19 respond to a couple of points that Mr. Zimmerman made.

20 Plaintiffs made a big deal out of the letter from
21 Senator Blumenthal. It was mentioned several times during
22 hearings, during the argument of the Chubb motion. Mr. Penny
23 said to the Court, most recently last week, a very pointed
24 letter from Senator Blumenthal in Connecticut to Gary Bettman
25 asking him to answer nine questions about the link between CTE

1 and playing hockey and the NHL's concussion management
2 practices generally. This was offered in support of his
3 position argument in the Chubb motion that this was a matter
4 of public interest.

5 THE COURT: Was that Blumenthal letter filed under
6 seal?

7 MR. JOHN BEISNER: No. In fact, that's an
8 interesting thing, Your Honor --

9 THE COURT: Because most of the Chubb motion was,
10 yeah.

11 MR. JOHN BEISNER: No, he didn't -- it was filed --
12 this is very interesting, Your Honor, because this is the next
13 point that I was going to make. Where it was filed was in
14 connection with Plaintiffs' reply in support of the CLS
15 Strategies' motion to keep judicial records sealed. That was
16 filed under seal but, interestingly, the letter, the exhibit,
17 was not. It was put on the public record, and that was the
18 place where the media picked up about the existence of the
19 letter.

20 And so for Counsel to come in here and say, oh,
21 well, you shouldn't have put this on the record, that was a
22 very strange thing to do, to file a whole brief under seal and
23 to put that one letter out there on the record separately. I
24 don't think that was a mistake, Your Honor. And this whole
25 thing, Your Honor, I just -- I -- this -- to suggest that

1 there's anything inappropriate about putting the response on
2 the record, this is a can of worms that the Plaintiffs opened
3 in that way.

4 I would note that just to, in a minor way, correct
5 Mr. Zimmerman, Senator Blumenthal is not the chairman of any
6 committee. He's in the minority party, so he can't be chair
7 of any committee. So this letter, he is a ranking member of a
8 Senate subcommittee that he indicates in the letter has
9 jurisdiction, but it was not sent as anything authorized by
10 the committee. So, this is a letter from one Senator.

11 And one is sort of left wondering, gee, how did that
12 letter come into being? If you look on the lobbying
13 registration website that the Senate maintains, it's
14 interesting. About the time that all of this got rolling, we
15 do see registration of a lobbyist retained by the Zimmerman
16 Reed firm and Lockridge Grindal firm which, according to those
17 lobbying registrations so far this year have been paid
18 \$100,000.

19 Doesn't say that they went to Senator Blumenthal and
20 asked him to write this letter, which curiously tracks
21 Plaintiffs' argument? But the suggestion that, oh, there's
22 this public interest outcry coming from the Senate on this,
23 Your Honor, I just respectfully suggest is suspect.

24 But in any event, Your Honor, there was no intent
25 here to burden the Court with this exercise. We felt, though,

1 that since this letter had been placed on the record, had been
2 referenced multiple times in support of various things that
3 Plaintiffs were trying to argue, that it was perfectly
4 sensible to put the response to the letter on the record. And
5 as I said, Plaintiffs have their motion coming up during which
6 I'm sure they will address many of these issues and will be
7 out there on the public record, and that's their opportunity
8 to respond if they wish.

9 THE COURT: Thank you.

10 Mr. Zimmerman.

11 MR. CHARLES ZIMMERMAN: I stand corrected on ranking
12 member versus chairman, my misstatement.

13 The question is not about their response being an
14 appropriate response. The question is, it's a matter that has
15 been filed publicly in this Court, and I don't know why they
16 needed to file it publicly in this Court. The question was
17 out there. Their response was filed publicly with this Court.
18 I'm not saying, pull it down. I never said that.

19 I'm saying, do we, should we, are we, appropriately
20 so, allowed to do two things: One, put in our Bill of
21 Particulars with regard to those claims if we choose to;
22 and/or, B, and I -- of their -- I think -- and re-depose
23 Commissioner Bettman with regard to the assertions made in
24 that letter, which are a much greater and more fulsome
25 explanation of his position than we had at the time of his

1 deposition.

2 I'm not saying somebody did something wrong. I only
3 came up and asked the question. You might ask why they did
4 it, and they did it because they want to educate you, they
5 wanted to educate the public, they wanted to educate the
6 press, they wanted to educate Blumenthal. But they did it
7 publicly, and we want to have the opportunity to respond.

8 That's all I'm saying. I'm not crying foul about
9 what they did.

10 THE COURT: Okay. The Court's position hasn't
11 changed on this issue, and that is that the Court implores the
12 parties not to try this case in the press, but at the same
13 time the Court can't preclude the parties from doing whatever
14 they're going to do, as long as we don't get close to jury
15 nullity here. You know, let's be very careful about this.

16 Ultimately there are 12 people, 12 good citizens of
17 the state of Minnesota who will decide this case, and I want
18 to make sure that we have a fair jury, and I want to make sure
19 that they're not unduly influenced by the press. It frankly
20 matters not what the Court thinks. Again, this is going to be
21 for a jury. So, the Plaintiffs -- the Court isn't going to
22 stand in the way of anybody responding to the NHL's letter to
23 Senator Blumenthal. That is something that I have no control
24 over, and I can't and won't preclude. And because the first
25 two letters were filed publicly in this case, I guess it's

1 acceptable to file any response publicly.

2 With respect to re-deposing Commissioner Bettman,
3 I'd ask you to meet and confer on that issue so I understand
4 what the proposal is and what the -- whether there can be a
5 resolution reached about that issue.

6 Anything else on those issues?

7 MR. CHARLES ZIMMERMAN: No, Your Honor.

8 THE COURT: All right. Very good.

9 MR. JOHN BEISNER: No, Your Honor.

10 THE COURT: Anything else today?

11 **(None indicated.)**

12 THE COURT: All right. Very good. Court is
13 adjourned.

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

15 (Concluded at 11:45 a.m.)

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17 * * * *

18
19 CERTIFICATE

20
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