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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
December 1, 2015
9:30 a.m.

BEFORE THE HONORABLE:

SUSAN RICHARD NELSON, U.S. DISTRICT COURT JUDGE

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

STATUS CONFERENCE

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

A P P E A R A N C E S**For the Plaintiffs:****ZIMMERMAN REED, PLLP**

Charles S. Zimmerman, Esq.
Brian C. Gudmundson, Esq.
Dane DeKrey, Esq.
1100 IDS Center
80 S. 8th St.
Minneapolis, MN 55402

CHESTNUT CAMBRONNE, P.A.

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

ZELLE HOFFMAN VOELBEL & MASON, LLP

Michael R. Cashman, Esq.
500 Washington Ave. S., Ste. 4000
Minneapolis, MN 55415

BASSFORD REMELE, P.A.

Jeffrey D. Klobucar, Esq.
33 S. 6th St., Ste. 3800
Minneapolis, MN 55402-3707

ROBBINS GELLER RUDMAN & DOWD, LLP

Stuart A. Davidson, Esq.
120 E. Palmetto Park Rd., Ste. 500
Boca Raton, FL 33432

SILVERMAN, THOMPSON, SLUTKIN & WHITE

Stephen G. Grygiel, Esq.
201 N. Charles St., Ste. 2600
Baltimore, MD 21201

GOLDMAN SCARLATO & KARON, P.C.

Brian D. Penny, Esq.
101 E. Lancaster Ave., Ste. 204
Wayne, PA 19428

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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

SKADDEN, ARPS, SLATE, MEAGHER & FLOM, LLP

Matthew M. Martino, Esq.
Four Times Square
New York, NY 10036

FAEGRE BAKER DANIELS

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

For U.S. NHL Clubs:

BRYAN CAVE LLP

Christopher J. Schmidt, Esq.
Timothy Hasken, Esq.
211 N. Broadway, Ste. 3600
St. Louis, MO 63102-2750

For Non-Party Interveners CTV and Dennis Lang:

AFINSON LAW OFFICE

Mark R. Afinson, Esq.
3109 Hennepin Ave.
Minneapolis, MN 55408

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I N D E X

Page:

Appearances Noted..... 5

CTV/Dennis Lang Motion to Intervene..... 7, 16

Status of Defendant's Document Production..... 8
 Board of Governors/Alternate Governors..... 9

Status of Plaintiff Discovery and Fact Sheets..... 14

Status of Defendant Fact Sheets..... 15

Status of U.S. Clubs' Document Production and PMI
 Privilege Log..... 16

Third-Party Discovery Update..... 17, 20

Letters Rogatory Process..... 18, 23

Status of Deposition Scheduling..... 24

Database Information Production..... 25

Proposed Amendment to Master Class Action Complaint.... 26

Filing of New "Muni" Complaint and Stay of NHL Response
 Thereto..... 35

Named Plaintiff Medical Examinations..... 37

Privilege Log Challenge Protocol/Status..... 37

Confidentiality Designation Challenges Status..... 39

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

2 IN OPEN COURT

3 (Commencing at 9:35 a.m.)

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

7 Let's begin with Plaintiffs' counsel and noting of
8 appearances. Mr. Zimmerman.

9 MR. CHARLES ZIMMERMAN: Good morning, Your Honors.
10 Bucky Zimmerman for the Plaintiffs.

11 MR. BRIAN PENNY: Morning. Brian Penny for the
12 Plaintiffs.

13 MR. STEPHEN GRYGIEL: Morning, Your Honor. Steve
14 Grygiel for the Plaintiffs.

15 MR. BRIAN GUDMUNDSON: Morning, Your Honors. Brian
16 Gudmundson for the Plaintiffs.

17 MR. MICHAEL CASHMAN: Morning, Your Honors. Michael
18 Cashman for the Plaintiffs.

19 MR. CHRISTOPHER RENZ: Morning, Your Honor. Chris
20 Renz for the Plaintiffs.

21 MR. STUART DAVIDSON: Morning, Your Honor. Stuart
22 Davidson on behalf of the Plaintiffs.

23 MR. DANE DeKREY: Good morning, Your Honor. Dane
24 DeKrey on behalf of the Plaintiffs.

25 MR. JEFFREY KLOBUCAR: Good morning, Your Honor.

1 Jeff Klobucar on behalf of the Plaintiffs.

2 I understand we're having some technical
3 difficulties with the phone system, but I know that there are
4 five counsel on the Plaintiffs' side that are attempting to
5 appear. Those counsel are David Goodwin from the Gustafson
6 firm; James Anderson from Heins Mills & Olson; Tom Byrne with
7 the Namanny Byrne & Owens firm; Bill Gibbs with Corboy
8 Demetrio; and Bryan Bleichner from Chestnut Cambronne.

9 JUDGE NELSON: Very good.

10 And the Defense?

11 MR. JOHN BEISNER: Morning, Your Honor. John
12 Beisner for Defendant, NHL.

13 MR. DANIEL CONNOLLY: Morning, Your Honor. Dan
14 Connolly also for Defendant, NHL.

15 MR. MATTHEW MARTINO: Good morning. Matt Martino
16 for the NHL.

17 MR. JOSEPH PRICE: Morning, Your Honors. Joe Price
18 for the NHL.

19 MR. CHRISTOPHER SCHMIDT: Good morning, Your Honors.
20 Chris Schmidt for the non-party U.S. Clubs.

21 JUDGE NELSON: Very good.

22 My understanding is that Mr. Akinson is here.

23 MR. MARK AFINSON: I am, Your Honor. Good morning.

24 JUDGE NELSON: Very good. Good morning. And we're
25 going to address the motion. First on the agenda, it

1 appears --

2 MR. DANIEL CONNOLLY: I was just going to add, Your
3 Honor, in addition we have some parties who are attempting to
4 join by telephone --

5 JUDGE NELSON: That's right. Sorry.

6 MR. DANIEL CONNOLLY: Mr. Zimmerman and Ms. Grand
7 from the NHL; and Mr. Goldfein, Mr. Keyte, and Ms. Miller from
8 Skadden Arps firm.

9 JUDGE NELSON: Very good. Sorry.

10 All right. My understanding is that the motion to
11 intervene has been stipulated to. Is there anything to
12 discuss in connection with it?

13 MR. DANIEL CONNOLLY: There isn't, unless Your Honor
14 would like us to prepare a proposed order.

15 JUDGE NELSON: Come on up to the podium.

16 I think it would be easy enough to rule in the
17 Minutes from today's hearing, if that's acceptable to
18 everybody. Unless you'd like a separate order, Mr. Afinson --

19 MR. MARK AFINSON: Well, I am being paid by the
20 hour, Your Honor (laughter). It's attempting to belabor this,
21 but I suspect you have better things to do, so that would be
22 fine.

23 JUDGE NELSON: I'm not being paid by the hour.
24 Okay. Very good. That motion will be granted, and welcome.

25 MR. MARK AFINSON: Thank you very much. I

1 appreciate the Court's consideration.

2 JUDGE NELSON: Okay.

3 MR. MARK AFINSON: Thanks.

4 JUDGE NELSON: All right.

5 Shall we go back up to the start of the agenda?

6 Mr. Zimmerman.

7 MR. CHARLES ZIMMERMAN: Yes. Good morning, Your
8 Honors, and happy holidays, and thanks. I hope everybody had
9 a wonderful Thanksgiving.

10 We've got different people speaking, as we normally
11 do, on different topics. I don't think there's anything
12 really very contentious today. It's really going to be mostly
13 in the nature of reporting to Your Honors, and so I -- we'll
14 just, without further ado, we'll begin with the status of
15 Defendants' production, and Brian Gudmundson of my office will
16 report on that.

17 JUDGE NELSON: Perhaps we should have the
18 case-in-chief first, and then we'll have the -- is that okay?

19 MR. CHARLES ZIMMERMAN: Oh, sure.

20 JUDGE NELSON: Okay.

21 Mr. Martino.

22 MR. MATTHEW MARTINO: Morning. Matt Martino for the
23 NHL.

24 So, for the NHL documents, as we mentioned at the
25 last conference, we're pretty much complete except for

1 clean-up that comes out of the privilege challenge process, as
2 well as there was a new request you might have seen on the
3 agenda for some calendar items. And we are collecting those
4 items, and those should be produced very shortly.

5 On the Board of Governors, the first primary item is
6 text messaging. We've begun producing text messages for the
7 Governors. I think the first production was last week. We
8 are shooting to complete that production, the production for
9 all the Governors, by the end of the month, with an exception
10 or two. One of the exceptions is the Sharks, which we
11 mentioned at the last conference. And there may be another or
12 two. I don't anticipate that, but there may be, but we can
13 work that out with the Plaintiffs if there will be.

14 JUDGE NELSON: Okay.

15 MR. MATTHEW MARTINO: The second item is the
16 Plaintiffs' request for additional documents from the
17 Alternate Governors from eight Clubs. We are moving along
18 collecting those. There are a few that are still outstanding,
19 but we're working the Clubs on that. We'll begin producing
20 documents for some of those alternates this week, and again
21 shooting to complete production by the end of the month.

22 JUDGE NELSON: Very good.

23 MR. MATTHEW MARTINO: Thank you.

24 JUDGE NELSON: Thank you.

25 MR. BRIAN GUDMUNDSON: Morning, Your Honor.

1 JUDGE NELSON: Good morning.

2 MR. BRIAN GUDMUNDSON: Just a couple of things to
3 raise on the -- on this area. They relate to the Alternate
4 Governors. As I reported last time, Mr. Martino and I
5 continue to communicate regularly and openly and honestly
6 about this subject, but there are some things that the
7 Plaintiffs have grown a bit concerned about. There are still
8 four teams -- Toronto, Ottawa, Edmonton, and Anaheim -- that
9 appear not to have responded to request to produce Alternate
10 Governors. And of course we've requested these Alternate
11 Governors because the Board of Governors' production was
12 not -- is either zero or an amount that was very, very small.

13 Again, I'll reiterate like I did last time that the
14 communication between Mr. Martino and I has been open and
15 honest from my point of view, and so I certainly can't fault
16 his efforts in any way. But I'm not sure where this leaves us
17 this far in the process with these particular Clubs.

18 Another -- another Club of concern to us is the
19 Calgary Flames and their Governor, Murray Edwards, who is a
20 rather high profile member of the Board of Governors. It's
21 been reported that he has zero documents. Again, I'm not
22 quite sure exactly what to take from that. He -- I believe he
23 has an attorney and understands his duties to retain
24 documents, but just wanted to note that. We may come to a
25 point where we want to explore that further, request some sort

1 of Affidavit that, in fact, all of his documents were
2 preserved and produced in due course.

3 Finally, there's a -- something of an issue perhaps
4 with the Winnipeg Jets and their Alternate Governors getting
5 produced. It's Kevin Cheveldayoff; I'm sure I'm
6 mispronouncing that. We've been told that his documents will
7 be produced but through the letters rogatory process, as he's
8 a General Manager. I don't want to tilt at windmills about
9 that. We do think that he should be produced by the League,
10 as he's been the -- they've produced I think 30-some documents
11 for Mr. Chipman who I believe is the Governor for that team.
12 But we believe that if it's coming, it's fine, but that
13 letters rogatory process is nearly year later. And as you've
14 experienced through overseeing these matters, it's taken some
15 time to get rolling, so we just want a placeholder on that and
16 keep our eye on that.

17 Everything else is as Mr. Martino stated.

18 JUDGE NELSON: Very good.

19 Mr. Martino, could you address some of those
20 concerns?

21 MR. MATTHEW MARTINO: Yes. Sure. First, I think
22 Brian said Ottawa --

23 MR. BRIAN GUDMUNDSON: Did I state Ottawa?

24 MR. MATTHEW MARTINO: Yeah. We are collecting for
25 Ottawa --

1 JUDGE NELSON: No, I think Edmonton, Montreal,
2 Toronto, and Anaheim was --

3 MR. MATTHEW MARTINO: Oh, Anaheim. I missed that
4 one. Yeah. Montreal, we have -- okay. It was Montreal, that
5 was the one. So, we have reviewed documents for the current
6 CFO, and those should be produced this week.

7 The -- Toronto, we're still working with the Club to
8 identify any alternates who may have responsive documents.

9 Edmonton, the same thing.

10 And what was the last one?

11 JUDGE NELSON: Anaheim.

12 MR. MATTHEW MARTINO: Anaheim. Yeah, so we're still
13 awaiting response Anaheim, but we are -- I can assure you we
14 are contacting them regularly and we'll --

15 JUDGE NELSON: Would it help to tell them there's a
16 cranky judge who would like this by the end of the year?

17 MR. MATTHEW MARTINO: I've been -- done --

18 JUDGE NELSON: You've already done that (laughter).

19 MR. MATTHEW MARTINO: -- been down that road before.
20 Sure (laughter). A cranky judge. Yes, indeed.

21 For Winnipeg, it's my understanding that the
22 Canadian Club counsel is meeting and conferring currently with
23 the Plaintiffs. I guess I'll let them address that when we
24 get to that point in the agenda --

25 JUDGE NELSON: The question I have there is it

1 sounds like the regular Governor already produced, but the
2 Alternate Governor is --

3 MR. MATTHEW MARTINO: The Alternate Governor is
4 the gen- -- that would have responsive -- may have responsive
5 documents is the General Manager. And to date, the Clubs have
6 been producing for General Managers and trainers. So, that --
7 that's one of the custodians that would be under the Club
8 production. So, I think they're meeting and conferring. And
9 from what I understand, you know, we would be a similar track
10 to what we would take to collect those documents, so I don't
11 think there will be much delay on that process. But again, I
12 can let the Plaintiffs speak to that. I don't know that for
13 sure.

14 JUDGE NELSON: Why don't you talk about that. It
15 sounds like they're requiring them to go through letters
16 rogatory for that.

17 MR. MATTHEW MARTINO: I'll let them speak to that.
18 I'm not totally sure. From what I understood from -- I
19 actually reached out to the Canadian counsel, and he said they
20 are meeting and conferring, and he thought that they were
21 close to an agreement and would be on a similar track that we
22 would be on if we were to collect the documents.

23 JUDGE NELSON: Would you reach out one more time?

24 MR. MATTHEW MARTINO: Sure.

25 JUDGE NELSON: Okay. And how about the Calgary

1 Flames?

2 MR. MATTHEW MARTINO: Yeah. Calgary, so we did a
3 search for the Governors, for Murray Edwards' documents, and
4 there were no responsive documents identified. We are
5 collecting for the Alternate Governor, and those documents
6 have been collected and they just need to be reviewed, and
7 then again we would produce those this month.

8 JUDGE NELSON: Okay.

9 MR. MATTHEW MARTINO: Thank you.

10 JUDGE NELSON: All right. You know, obviously
11 either side feels that production in some respect is not
12 adequate. You know what is available to you to pursue to
13 satisfy yourself that production is adequate.

14 Okay. Let's move on to Plaintiff discovery and Fact
15 Sheets.

16 MR. CHARLES ZIMMERMAN: That will be for the
17 Plaintiffs, Mike Cashman for the Plaintiffs on that.

18 JUDGE NELSON: Okay.

19 MR. DANIEL CONNOLLY: On the Plaintiff Fact Sheets,
20 Your Honor --

21 COURT REPORTER: Can you please move the microphone?

22 MR. DANIEL CONNOLLY: I'm sorry. On the Plaintiff
23 Fact Sheets, Your Honor, we have engaged in a meet and confer
24 process. We're discussing these with Plaintiffs. No dispute
25 is ready. We're working on trying to resolve the issues that

1 we do presently have. There's been exchange of correspondence
2 on that.

3 JUDGE NELSON: Okay.

4 Anything else to be said on that subject?

5 MR. MICHAEL CASHMAN: Yes. On the Plaintiff Fact
6 Sheets, we continue to -- I think we have a dispute, a
7 fundamental dispute about the purpose of these Plaintiff Fact
8 Sheets. I've advised the Court before, we feel that the
9 Defendant is treating --

10 COURT REPORTER: Mr. Cashman, can you please move
11 the microphone?

12 MR. MICHAEL CASHMAN: -- are treating the Fact
13 Sheets as if they're individual litigations, and we have a
14 putative class here. Nonetheless, we're attempting to work
15 out some of the issues that have been raised by the NHL with
16 respect to Plaintiff Fact Sheets. I think some of those are
17 going to be related in some respects to the amendment to the
18 Master Amended Complaint, which may change the responses and
19 our discussion a little bit.

20 And then as it relates to the Defendant Fact Sheets,
21 again, that is related in some respects to how we resolve the
22 Plaintiff Fact Sheets and the Master Amended Complaint. But
23 we feel there are deficiencies there if we're going to go down
24 this road of treating these as virtual independent litigations
25 the way the NHL has done. So, I expect that we'll be talking

1 with the Court further about that at the next conference.

2 JUDGE NELSON: Okay. Sounds good.

3 MR. DANIEL CONNOLLY: On the Defendant Fact Sheets,
4 Your Honor, our understanding --

5 JUDGE NELSON: Yes.

6 MR. DANIEL CONNOLLY: We have heard that there are
7 issues. We have not articulated them between ourselves, so
8 we're waiting for Mr. Cashman on that.

9 And then just backing up one moment, I wanted to
10 make clear, and maybe -- I assumed when the Court said as to
11 the intervention, the order would be granted pursuant to the
12 stipulation. I should have addressed that at the time.

13 JUDGE NELSON: That's correct.

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

15 JUDGE NELSON: Okay.

16 The Clubs.

17 MR. CHRISTOPHER SCHMIDT: Good morning, Your Honors.
18 So, with respect to the Clubs, we are primarily focused on
19 gathering the medical records for the 60, am processing those,
20 and producing those. We are aiming to complete that prior to
21 the informal conference on December 15th, and we're using our
22 best efforts on that.

23 We're conferring with Plaintiffs on matters relating
24 to our PMI privilege log and confidentiality designations, and
25 those meet and confers are ongoing. Thank you.

1 JUDGE NELSON: Okay. Very good.

2 Any update on third-party -- yes.

3 MR. CHRISTOPHER RENZ: Your Honor, Chris Renz of
4 Chestnut Cambronne on behalf of the Plaintiffs on the same
5 topic.

6 It's our understanding that the U.S. Clubs'
7 production is substantially complete, with the exception of
8 the documents noted by Mr. Schmidt. On the PMI logs, there
9 are -- there continue to be a number of issues that we will be
10 presenting to the Court. We have met and conferred. It's our
11 understanding that the U.S. Clubs are going to be producing
12 revised logs with greater information. We have not received a
13 date by which those will be produced but we understand
14 sometime in the near future, and any remaining issues will be
15 brought before Your Honors.

16 JUDGE NELSON: Mr. Schmidt, when do you expect those
17 revised logs to be produced?

18 MR. CHRISTOPHER SCHMIDT: Also by mid-December, as
19 well, is what we're shooting for, Your Honor.

20 JUDGE NELSON: All right. Very good.

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

22 JUDGE NELSON: You bet.

23 Any update on third-party discovery?

24 MR. STUART DAVIDSON: Good morning, Your Honors.

25 Stuart Davidson on behalf of the Plaintiffs.

1 There's not much to discuss regarding third-party
2 discovery. The subpoenas that the Plaintiffs have issued
3 are -- have been responded to or we've granted extensions,
4 we're working through objections. But there's nothing to --
5 nothing in dispute to raise with the Court. We've served a
6 subpoena on the NHL Alumni Association. I believe that their
7 response and documents are due today.

8 The only issue that Mr. Penny may want to raise on
9 the next -- on the letters rogatory issue is the NHL had
10 issued subpoenas on certain medical personnel that were
11 consultants with the NHL Players Association. We had also
12 issued similar subpoenas through lesser rogatory process.

13 I believe that's correct. Right, Brian?

14 MR. BRIAN PENNY: There's one person who is a --

15 MR. STUART DAVIDSON: Okay. So there's one overlap.
16 I think that's Dr. Rizos. So, we have competing subpoenas out
17 there that we should probably discuss.

18 JUDGE NELSON: Yes, you should probably discuss it.

19 MR. STUART DAVIDSON: Mr. Beisner can probably
20 discuss that.

21 JUDGE NELSON: Thank you.

22 MR. JOHN BEISNER: Let me address the letter
23 rogatory issue first. Just to make clear for the record,
24 we're talking about Defendant's motion for the issuance of
25 letters rogatory. These are to five consultants who worked

1 with the NHL Players Association who had materials we are
2 seeking. And Mr. Davidson is correct: We do have an overlap
3 with respect to one, and that is John Rizos. I think we've
4 spoken briefly with Mr. Penny about this, and there is some
5 overlap between the two. I don't think there's any
6 inconsistency between the two. We're happy to merge them into
7 one if that helps the issuance process, although I guess
8 you've already issued one, the Court has already issued the
9 one for Rizos, so I think maybe the better course is just to
10 go ahead and --

11 JUDGE NELSON: But perhaps to talk to him and make
12 him realize that there's a lot of overlap here.

13 MR. JOHN BEISNER: Right. Right. And we will
14 obviously speak with Rizos, John Rizos' counsel in Canada
15 through our Canadian counsel to make clear that there is
16 overlap and -- but a joint response to the two would be the --

17 JUDGE NELSON: Right, because the last thing you
18 want is for him to go to a Canadian court and say that somehow
19 this is not streamlined and it's abusive and all that.

20 MR. JOHN BEISNER: I don't expect that to happen.
21 They have asked us to go through the -- his counsel has asked
22 us to go through the letter rogatory process but is aware that
23 we have the two requests out there.

24 JUDGE NELSON: Okay.

25 MR. JOHN BEISNER: So I think with that, Your Honor,

1 and in all -- I'll let Plaintiffs speak for themselves. I
2 don't think there's any objection to the issuance of the
3 letters by the Court, so I think that that's ready if it meets
4 with your -- with the Court's approval.

5 JUDGE NELSON: Okay. And it's my understanding
6 that, Mr. Connolly, you provided my assistant with the Counsel
7 that I should be forwarding them to?

8 MR. DANIEL CONNOLLY: Yes, Your Honor. We've
9 identified that the response ought to go to me, so --

10 JUDGE NELSON: Okay.

11 MR. DANIEL CONNOLLY: And I spoke with Ms. Del Monte
12 about that and we discussed it with her, so it will be
13 consistent with the order that was issued relative to the
14 Plaintiffs.

15 JUDGE NELSON: Perfect. Okay. All right. Thank
16 you.

17 MR. JOHN BEISNER: Did you want to address the
18 letters --

19 MR. BRIAN PENNY: Were you about to move on to
20 another agenda?

21 MR. JOHN BEISNER: Actually I was about to back up a
22 step to the third-party subpoenas. So, if it's okay,
23 Mr. Penny, I'll do that and then let you move onto the letters
24 rogatory status.

25 I did want to note, Your Honor, that with respect to

1 third-party subpoenas that have been sent out by the NHL, the
2 NHL Players Association is continuing with its production.
3 We've received a second group of materials that have been
4 shared with opposing counsel, and that process is continuing.
5 They're not near completion yet, but that process is ongoing
6 with them.

7 I think the one other subpoena on which I have an
8 update is the subpoena to Chris Nowinski. There was an
9 extension granted on that one, and we're expecting production
10 on that one later this week.

11 JUDGE NELSON: Okay. Very good.

12 Mr. Penny.

13 MR. BRIAN PENNY: And before we leave the
14 third-party discovery agenda item, I wanted to give you an
15 update on the Chubb subpoena.

16 JUDGE NELSON: Yes, please.

17 MR. BRIAN PENNY: Mr. Loney and I have continued our
18 meet and confer process. He has --

19 JUDGE NELSON: And apparently he is probably coming
20 to our next conference?

21 MR. BRIAN PENNY: I asked him the last time we
22 spoke, which was just before Thanksgiving, if he had received
23 an invitation from Your Honor, and he said he had not. So, I
24 don't know the status of --

25 JUDGE NELSON: He did receive an invitation, and he

1 sent a letter back that I think Mr. Zimmerman and Mr. Beisner
2 were copied on.

3 MR. BRIAN PENNY: Okay.

4 JUDGE NELSON: And I think it says that he's
5 planning to come to the next conference, yes.

6 MR. BRIAN PENNY: Okay. I think his timing is very
7 good on that, then. As I mentioned, we continue to meet and
8 confer. He has shared with me a letter similar to
9 Mr. Bernardo's letters describing what information that Chubb
10 has that might be responsive to our subpoena, so I have a much
11 better understanding now of what documents they may have that
12 might be responsive. And I have, with the NHL's permission,
13 shared with Chubb's counsel Mr. Bernardo's letters to me so
14 that Chubb's counsel has an understanding of what information
15 was already produced from the NHL. And we have then had a --
16 actually a very frank discussion in which I tried to explain
17 to him exactly, in a very pointed way, what information I was
18 seeking from Chubb.

19 He was somewhat optimistic that that information may
20 exist in a database format that might be able to be produced.
21 So, he is in the process of going back to his client and
22 seeing if that information can be produced. If it cannot,
23 either because it doesn't exist in the format that he thinks
24 it might or because he's not willing to, I can foresee some
25 motion practice, a motion to compel on that subpoena, in the

1 near future. But we're not quite there yet.

2 JUDGE NELSON: Well, I think he plans to come to the
3 next conference, and we'll have a fulsome discussion about it
4 at that time.

5 MR. BRIAN PENNY: He and I have another call
6 scheduled for Friday afternoon, so --

7 JUDGE NELSON: Why don't you ask him or confirm that
8 he's coming.

9 MR. BRIAN PENNY: I will. And then if nobody else
10 has a third-party discovery update, I can move on to an update
11 on our letters rogatory or our letters of request.

12 JUDGE NELSON: Okay. And I presume the Plaintiffs
13 have no objection to Defendants' request?

14 MR. BRIAN PENNY: We do not, Your Honor.

15 JUDGE NELSON: Okay. Very good.

16 MR. BRIAN PENNY: Prior to filing or actually
17 presenting our letters rogatory in Ontario, we had one more
18 meet and confer with Mr. Shamie and with Mr. William Sasso,
19 our Canadian counsel, and it was a very productive
20 conversation. And the gist of it is that Mr. Shamie is going
21 to talk to each of his Canadian Club clients and suggest to
22 them that they engage in the same production process that the
23 U.S. Clubs have done. And he is optimistic that in, I think
24 he said short order, he will have a proposed agreement to me
25 that looks very similar to the agreement that Mr. Schmidt and

1 I entered into on the protocol for producing from the Canadian
2 Clubs. So, I'm optimistic that that process is now underway
3 without having to formally present the letters in Canada.

4 And just one note, though, Mr. Shamie only
5 represents the Canadian Clubs, not the individuals like
6 Mr. Rizos, so that's a different counsel that we'll be talking
7 through.

8 JUDGE NELSON: Okay. All right.

9 MR. BRIAN PENNY: Thank you, Your Honor.

10 JUDGE NELSON: Thank you. That's good news.

11 All right. We can talk about depositions and
12 deposition scheduling.

13 MR. STEPHEN GRYGIEL: We won't take very long on
14 this this morning. You've already heard there are a number of
15 discovery issues that are underway and close to completion.
16 The Plaintiffs have stepped back a little bit to make sure
17 that we do have this production in hand before we do schedule
18 the next round of depositions. I think at 7:30 this morning,
19 Mr. Beisner and I talked about the request for the Plaintiffs'
20 depositions. We were talking about January for those; I
21 believe Mr. Beisner would like to do those in February so that
22 he can make sure that he's got all the medical records and
23 other indicia that he would like to have before those
24 depositions. And I, of course, told him that made sense for
25 both sides.

1 So, at the moment, everything as it appears in the
2 report to Your Honor is exactly accurate. We are talking
3 about rescheduling a couple of the depositions that have
4 previously been postponed, and we're on track to get all those
5 done.

6 JUDGE NELSON: Very good.

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

8 JUDGE NELSON: Mr. Beisner?

9 MR. JOHN BEISNER: Your Honor, I don't have really
10 much to add on that. I did want to note and elaborate briefly
11 on our 7:30 a.m. conversation this morning that the issue
12 we're dealing with with respect to the named Plaintiff
13 depositions is we're continuing to find medical records.
14 These are third-party sources that our contractor is finding.
15 And I think it makes sense to try to get a little bit further
16 to try to having a complete collection of those before those
17 depositions occur, so that's why we're talking about doing
18 them in February. And I did want to express appreciation to
19 Mr. Grygiel for his patience in finding dates for these, but I
20 think it's probably best for all if we push those to February
21 at this point. Thank you.

22 JUDGE NELSON: Okay. Database information
23 production? Any further update on that?

24 MR. DANIEL CONNOLLY: Your Honor -- that's why I
25 push the -- Your Honor, I -- we've talked about this. There's

1 some e-mail clarification discussions going back and forth,
2 but essentially this is proceeding on pace.

3 MR. BRIAN PENNY: I have nothing to add, Your Honor.

4 JUDGE NELSON: All right. Well, that's good news.
5 Okay.

6 All right. Proposed amendment to the Master Class
7 Action Complaint.

8 Mr. Zimmerman.

9 MR. CHARLES ZIMMERMAN: Well, we've been -- had very
10 productive meet and confers on this topic, and perhaps no
11 example of sort of the wisdom of the meet and confer is better
12 than the one that's occurred around the Master Complaint. The
13 purpose of amending the Complaint was Mr. Beisner's concern
14 that the classes weren't properly defined and who the class
15 reps were and what classes were being defined, and we tried to
16 do that in the proposed Complaint. And then we got into a
17 discussion about extraneous things with regard to the Master
18 Amended Complaint with regard to preemption issues and things
19 like that, and we sort of discussed it at -- many times
20 between the Plaintiffs and Defendants.

21 And we've come back to a position where I think
22 we're very close to having all of that resolved. We have
23 another Amended Complaint that has been provided to the -- to
24 the Defendants. They are going to be -- they're in the final
25 stages of looking at that. They don't think -- we don't think

1 it's going to raise new grounds or new arguments with regard
2 to preemption, which is something we just didn't want to go
3 backwards again if we didn't have to. But certainly they have
4 the right to have their motion attached to the new Complaint
5 and I think we're going to set up briefing with regard to
6 that -- how that will apply, but at the moment we're not quite
7 finished with that process.

8 But we've -- through the meet and confer process, I
9 think we've really come to ground on a slightly different
10 Complaint but better defining the classes and better defining
11 the claims for relief so it will be much clearer and then we
12 don't go three steps backwards to go two steps forward.

13 I think that's where we are. John will correct me
14 in many ways if I've misstated anything. Between John and my
15 wife, I can't get away with anything (laughter).

16 MR. JOHN BEISNER: I have no knowledge of whether
17 that's accurate or not, but (laughter) --

18 MR. CHARLES ZIMMERMAN: That's all right --

19 MR. JOHN BEISNER: I will assure you that
20 (laughter).

21 Your Honor, I think that's an accurate report of our
22 discussions. I did want to note, because I think there was --
23 I don't think we did a very good job of explaining to you the
24 differences in the new Complaint at the last status
25 conference. I was somewhat worried, looking at the

1 transcript, and when we were here talking about the preemption
2 issue. What had happened, as Mr. Zimmerman was explaining, is
3 that we had been raising concerns about those last couple of
4 pages in the Complaint dealing with class definitions and
5 requests for relief. And I think Your Honor at one of the
6 informal conferences said maybe you ought to amend to deal
7 with some of these issues because there does seem to be some
8 confusion.

9 The Complaint we received, though, had a lot of
10 amendments up front. Some of the documents that were cited
11 that were relied upon in the preemption motion were gone,
12 there were new things in there, and that's the reason you
13 heard the consternation from Mr. Baumgarten at the last
14 conference about we're going to have to file new briefing on
15 this. So, as Mr. Zimmerman suggested, I said, look, if -- it
16 doesn't seem to me anybody is looking to do new briefing on
17 this, and Your Honor made your views clear on this: Why do
18 you need to make all those changes up front if that's the
19 case? We were worried about the ending.

20 So, as Mr. Zimmerman reported, counsel went back,
21 after our animated conversation on the subject, and have
22 amended the Complaint so that the changes are really confined
23 to that last section. We're going to have to work out -- we
24 still have some discussion to do on this. We got the new
25 draft on Thanksgiving eve in the afternoon, so I'm not sure

1 we've fully digested that --

2 JUDGE NELSON: So to speak (laughter).

3 MR. JOHN BEISNER: So to speak, yes. I was saying,
4 I'm sorry for -- I didn't mean to go there, Your Honor.

5 So I think what we'll need to work out is some sort
6 of stipulation about how the existing motion will apply to the
7 new Complaint because, as Your Honor is well aware, that all
8 is -- technically disappears when the new Complaint is
9 accepted by the Court. So, we'll have to figure out a way to
10 do that. I've also noted to Counsel there are new counts in
11 the new Complaint that we'll have to figure out some way to
12 have the preemption motion apply to them without need for a
13 lot of additional briefing. But we'll have to figure out a
14 way to deal with that, so we have that technical meeting of
15 the new Complaint to deal with.

16 I don't know at this point -- as I noted, there are
17 new counts and a different structure of the class. It may be
18 that we'll have new motions to present on those new parts of
19 the Complaint. And I'm not prepared at this point to say we
20 will, but we'll work that out with Plaintiffs. But I think
21 the thought is that we'll have a package ready to present to
22 you, we hope, at the informal conference on the 15th, and we
23 can move that along.

24 JUDGE NELSON: Okay. Now, you know that I'm in
25 trial that day, so I think the conference is scheduled for

1 3:00, unfortunately. The trial is going, so I hope you can
2 stay a little late that evening if we have to.

3 MR. JOHN BEISNER: We'll be prepared for that.

4 Your Honor, I did want to note -- and we'll have
5 further discussion on this -- but at the last conference I
6 noted four questions that we were looking for answers to. And
7 I just wanted to note where I think that has turned out,
8 although we will have -- continue to have some questions on
9 that and Plaintiffs may want to correct my recitations on
10 this.

11 But the first question we had was whether the
12 medical monitoring claim, Count 1 -- Count 2, I'm sorry, was
13 the only claim asserted by members of the proposed Class One,
14 that is those living former players who have not been
15 diagnosed with a longterm brain disease. And on the call we
16 had, we were told that, yes, that is correct. I think there
17 are some things in the latest Complaint we received that we
18 need to talk about because it now seems to be somewhat
19 inconsistent with that, but that seems to be the thrust of the
20 response.

21 Then we had the question of: Do the members of the
22 proposed Class One seek relief for any current injuries, such
23 as post-concussion syndrome? I believe the answer that
24 Plaintiffs gave on that was: No, but their current injuries
25 are important to their claims. We haven't discussed that last

1 comment, but I think that was the response we received.

2 Question three was: Is class membership exclusive?
3 If you are a member of Class One, are you by definition not a
4 member of Class Two? And if you are a member of Class Two,
5 are you by definition not a member of Class One? I realize
6 that's a compound series of questions, but I think the answer
7 to that was, yes, that you're in one or the other class.

8 And then I believe the last question we asked is:
9 On whose behalf is the loss of consortium claim asserted,
10 spouses of members of Class Two only? And is the claim
11 asserted on behalf of the spouses of any Class One class
12 members? And I believe the response we received is that those
13 claims are associated only with Class Two.

14 And I just wanted to note those for the record.
15 Obviously, Plaintiffs may have some clarification to give to
16 that, but that was the clarification we received during our
17 calls. And since I had put those on the record last time,
18 wanted to note the answers I believe we received to those
19 questions.

20 JUDGE NELSON: Very good. Thank you, Mr. Beisner.

21 Mr. Zimmerman, are those correct answers to the
22 questions?

23 MR. CHARLES ZIMMERMAN: Maybe.

24 JUDGE NELSON: Maybe.

25 MR. CHARLES ZIMMERMAN: Does that work?

1 JUDGE NELSON: No (laughter).

2 MR. CHARLES ZIMMERMAN: You know, these are kind of
3 complex things, and we're trying to speak in the aggregate and
4 make sure we don't over-include or under-include. But they're
5 the best answers we can give. I think it's a correct
6 recitation of what we've been providing to Mr. Beisner with
7 regard to trying to draw -- trying to draw these lines. Is
8 that to say there may be some exceptions that we haven't
9 considered or there's some things that we haven't addressed
10 specifically? You know, I just don't want to be boxed in or
11 out. But in good faith, we've given him the best answers we
12 can, and those are the answers we've provided.

13 And something could occur that we haven't thought
14 about in a specific -- in a specific case, but that's how
15 we're trying to draw these lines and create this medical
16 monitoring class for people that don't really have a present
17 compensatable [sic] injury, and a consortium claim is clearly
18 the class -- the second class -- the injury class. And so
19 we're trying very hard to answer these as best -- as best we
20 can, and I think we've done so accurately. And I think John
21 has repeated our answers to the Court --

22 JUDGE NELSON: I think my question would be, if
23 someone develops a more serious neurological injury, at what
24 point do these classes become definitional? In other words,
25 can you move from class to class, and when can you do that and

1 that sort of thing?

2 MR. CHARLES ZIMMERMAN: Well, I think you can, and I
3 think it's upon the development of those diseases.

4 JUDGE NELSON: But does that matter -- does it
5 depend on whether that happens during the litigation, after
6 the litigation? I mean, what point do we --

7 MR. CHARLES ZIMMERMAN: Well, I think if we're
8 talking about the litigation, it's going to have to occur
9 within the litigation. If we're talking about a context of
10 something that's going to be ongoing, which I hope we are, in
11 the sense that people go for medical monitoring and then
12 they -- the medical monitoring results in actually the
13 monitoring showing a present disease --

14 JUDGE NELSON: But then do they just get their
15 medical monitoring damages, or do they become Class Two
16 members?

17 MR. CHARLES ZIMMERMAN: I believe they become Class
18 Two.

19 MR. STUART DAVIDSON: Judge, just to be clear, it's
20 our belief that medical monitoring covers not just one
21 particular neurological progressive degenerative disease, but
22 a whole host of them. So, for example -- this is just an
23 example -- is if somebody has no diagnosed progressive
24 neurodegenerative disease right now but -- and so they're in
25 the clear Class One medical monitoring class but they get

1 diagnosed with CTE or they get diagnosed with Parkinson's,
2 that doesn't mean that they are no longer entitled to medical
3 monitoring. They wouldn't, under the law as I understand it,
4 be entitled to medical monitoring for that diagnosed disease,
5 but there are a whole host of other diseases that they would
6 need medical monitoring for. So, they don't necessarily move
7 from one to another.

8 JUDGE NELSON: I think this needs to be pretty
9 clarified in the Complaint itself. So, there just needs to be
10 some language --

11 MR. STUART DAVIDSON: I think we've done that, but
12 we're happy to talk to Mr. Beisner. I thought we were very
13 clear in the Amended Complaints that medical monitoring was
14 for all diseases, not just for one particular disease.

15 JUDGE NELSON: Which means that somebody could be in
16 both classes.

17 MR. STUART DAVIDSON: They could.

18 MR. CHARLES ZIMMERMAN: They could.

19 JUDGE NELSON: That's a slightly different answer
20 than I got from Mr. Beisner, so I think you guys need to talk
21 more.

22 MR. JOHN BEISNER: Yeah, I think that's -- I think
23 that's right. And I'm not sure there was an answer there to
24 the question Your Honor was asking, but you got an answer to
25 the medical monitoring class. But there isn't anything in the

1 Complaint that talks from a time standpoint. You got a lock
2 in place --

3 JUDGE NELSON: You do, I think.

4 MR. JOHN BEISNER: -- the point at which we're
5 considering this. And I think that's a significant issue when
6 you're talking about personal injury claims. And, you know,
7 Mr. Zimmerman's reference, well, there may be exceptions and
8 so on, that's the problem that we're going to be focusing on,
9 obviously, in the class certification process because if you
10 have exceptions, that's the problem with doing this on a
11 class -- class basis.

12 JUDGE NELSON: Right. I'd ask you to have more meet
13 and confers on this and get some better language here. Okay?

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

15 MR. CHARLES ZIMMERMAN: Thank you, Your Honor, and
16 we will address that. And I think that is the point of the
17 meet and confer. As we get closer to everyone understanding
18 what we're trying to do, I think the question -- the answers
19 will become clear as the questions become clear. And we're
20 certainly working hard to resolve -- we're not trying to hide
21 anything or be mysterious.

22 JUDGE NELSON: Oh, no, I don't doubt that.

23 Okay. All right. We're going to discuss the filing
24 of the new Complaint.

25 MR. CHARLES ZIMMERMAN: Yes, Your Honor. That --

1 the reason that's on the agenda is, as the Court may be aware,
2 that 24 additional players have filed an additional Complaint.
3 And the only thing that we want to be clear about is the need
4 to answer and the stay of Answers in that Complaint so there's
5 no misunderstanding, and that would -- how it's going to
6 interface with the Master Amended Consolidated Complaint.

7 In my kind of large picture view, I see no reason
8 for an individual Answer in that -- with regard to those 24.
9 These are people that have just come on in recent weeks. I
10 think there will be more that will be filed down the road.
11 And so just as a matter of court clarity, we just don't think
12 we need Answers. We don't think there should necessarily be a
13 formal stay issued. It's just going to be covered under the
14 umbrella of the Master Amended Consolidated Complaint, and
15 then the Master Amended Consolidated Answer that stems from
16 that, and I think that would cover everything.

17 JUDGE NELSON: But for consistency's sake, haven't
18 we stayed the other cases?

19 MR. CHARLES ZIMMERMAN: Yeah, we have. And so the
20 question is how -- you know, do we want to issue a formal
21 stay, or do we just want to -- because the Answer date hasn't
22 even occurred yet. But if it's more efficient to issue a
23 formal stay, we can certainly do that. We're not opposed to
24 that.

25 MR. DANIEL CONNOLLY: We think it's covered by the

1 prior pretrial order so that nothing needs to occur.

2 JUDGE NELSON: Okay.

3 MR. DANIEL CONNOLLY: So I think we're in agreement
4 on the results, just the process is a little different. We
5 think the pretrial order covers it, so no formal stay has to
6 issue as to this case.

7 JUDGE NELSON: All right. Okay.

8 MR. CHARLES ZIMMERMAN: Very good.

9 JUDGE NELSON: Okay.

10 IMEs?

11 MR. JOHN BEISNER: Yes, Your Honor, I think our
12 status on that remains unchanged. Until we get the Complaint
13 in place, we'll hold off filing that motion. We do intend to
14 do that, but thought it was best for the Complaint to be in
15 place so we make sure that we've locked in what we're talking
16 about here on that subject.

17 JUDGE NELSON: Okay. Very good. Thank you.

18 Mr. Cashman.

19 MR. MICHAEL CASHMAN: I guess there's nothing to
20 add, Your Honor. We're just waiting for the proposed
21 protocol.

22 JUDGE NELSON: Okay. Very good.

23 MR. MICHAEL CASHMAN: Thank you.

24 JUDGE NELSON: All right.

25 Okay. The status of privilege log challenges.

1 MR. CHRISTOPHER RENZ: Your Honor, Chris Renz on
2 behalf of Chestnut Cambronne and the Plaintiffs again.

3 Your Honor, we've exchanged a series of
4 correspondence with Mr. Beisner and had at least one, if
5 not -- well, we've had multiple meet and confers regarding our
6 challenges to nine privilege logs that they've produced --

7 JUDGE NELSON: I think it's now 10, am I --

8 MR. CHRISTOPHER RENZ: It's 10. You're right. I'm
9 sorry, Your Honor. I can't keep track. They keep coming.

10 We most recently on November 17th sent
11 correspondence outlining all the remaining categories of our
12 continued challenges to the privilege logs, and I haven't
13 heard anything in response. Obviously we've had the holiday.
14 It appears we may be at a point that we'll have the final meet
15 and confer and then present any remaining issues to the Court
16 for its consideration.

17 There's also been -- and I remarked on this at the
18 last status conference -- a clawback claim by the NHL in this
19 case. And we have addressed the clawback claim and those that
20 we dispute, and we haven't heard anything further from the
21 Plaintiffs -- or from the NHL on that matter.

22 JUDGE NELSON: And certainly before any motion is
23 brought, I'd like to know what the volume is that we're
24 talking about of privilege documents.

25 MR. CHRISTOPHER RENZ: Yes, Your Honor.

1 JUDGE NELSON: And we'll discuss a protocol for
2 approaching the Court at that time.

3 MR. CHRISTOPHER RENZ: Yes, Your Honor.

4 JUDGE NELSON: Mr. Connolly?

5 MR. DANIEL CONNOLLY: Yes, Your Honor. We're
6 largely in agreement with what Mr. Renz said. We're focused
7 on the first thousand that they addressed. And we were
8 assuming that at some point in the process, unless they agreed
9 with us entirely, that we would have occasion to meet with
10 Judge Mayeron to talk about the protocol that she envisioned
11 for that, and the volume.

12 JUDGE NELSON: Okay. Very good.

13 All right. Confidentiality designation challenges.
14 Mr. Cashman.

15 MR. MICHAEL CASHMAN: Good morning, Your Honor. Our
16 motion for de-designation, to compel de-designation on the
17 first batch of documents, of course, is pending and was argued
18 before Judge Mayeron. And we have provided the NHL with a
19 second tranche of documents for which we seek de-designation,
20 and the NHL has given us a list of some documents that they
21 voluntarily de-designate. I expect we'll have a meet and
22 confer on the others in the coming week or two, and we can
23 report on that before the -- or at the next conference. And
24 when the decision is issued on the first motion, it may
25 provide us with additional guidance to discuss.

1 Just from a logistical point of view, now that the
2 motion to intervene has been granted, there are documents that
3 the NHL has voluntarily de-designated, and I think there needs
4 to be a discussion with the NHL or with the Court about how
5 those documents should be made available to the public. So I
6 think that's an issue that, if we can't agree on it ourselves,
7 that we may need to bring up with the Court at the next
8 conference.

9 JUDGE NELSON: That's fine. Okay. Very good.

10 Mr. Connolly.

11 MR. DANIEL CONNOLLY: Your Honor, we agree
12 essentially with what Mr. Cashman said. We are -- we have
13 submitted the argument to Judge Mayeron for resolution. We
14 have gotten a second batch of documents that Mr. Cashman asked
15 for us to de-designate, and we de-designated about a quarter
16 of those. And we will then apply the Court's rulings to the
17 remainder.

18 JUDGE NELSON: Okay. I'm hoping that we'll get that
19 order out this month here.

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

21 JUDGE NELSON: You bet.

22 All right. That might be the quickest conference
23 we've ever had. Is there anything else to discuss?

24 Mr. Beisner.

25 MR. JOHN BEISNER: Your Honor, not to prolong this

1 at all, but I just wanted to note the issue that Mr. Zimmerman
2 raised earlier about responding to these new -- the new
3 Complaint in any case. I think it's in PTO 4 that your
4 court -- that the Court issued on November 7th last year has
5 in it a provision that says: The parties agree the
6 Defendant's response to the Master Administrative Complaint
7 will stay the need for Defendant to file pleadings or motion
8 in response to original Complaints.

9 I just wanted to -- I think the easiest thing to do
10 is just to get the Court's confirmation that that's
11 prospective with respect to all original Complaints that are
12 filed --

13 JUDGE NELSON: I think that's fine. I think
14 administratively, the other Complaints are stayed
15 administratively on our records, and I think we should do the
16 same for this Complaint. Okay.

17 MR. JOHN BEISNER: But I think as I just wanted to
18 note for the record, as Mr. Connolly suggested, I think Your
19 Honor covered that earlier in that order.

20 JUDGE NELSON: Right. Okay.

21 Anything further today?

22 **(No response.)**

23 JUDGE NELSON: Very good. We'll see you in a few
24 weeks.

25 Oh, Mr. Zimmerman?

1 MR. CHARLES ZIMMERMAN: Yeah. Thank you, Your
2 Honor.

3 JUDGE NELSON: Court is adjourned.

4 MR. CHARLES ZIMMERMAN: You said something about
5 your trial on the 15th.

6 JUDGE NELSON: Yes.

7 MR. CHARLES ZIMMERMAN: And so we'll just be
8 prepared to take -- to see you on the break or at the tail end
9 of that trial?

10 JUDGE NELSON: No, I think what I've done is I've
11 scheduled your conference at 3:00.

12 MR. CHARLES ZIMMERMAN: Right.

13 JUDGE NELSON: So I'm going to break and send the
14 jury home at 3 and come into the jury room and meet with you
15 at that time.

16 MR. CHARLES ZIMMERMAN: Okay. Thank you.

17 JUDGE NELSON: Court is adjourned.

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

19 (Concluded at 10:22 a.m.)

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CERTIFICATE

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

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