IN THE UNITED STATES DISTRICT COURT
DISTRICT OF MINNESOTA

TOM BRADY, *et al.*, Plaintiffs, v. NATIONAL FOOTBALL LEAGUE, *et al.*, Defendants.	No. 0:11-cv-00639-SRN-JJG

DEFENDANTS' RESPONSE TO PLAINTIFFS' BOND REQUEST

There is no basis for the *Brady* plaintiffs' demand, reflected in their opposition paper filed this morning (Dkt No. 110), for any bond—let alone a $1 billion bond—as a condition of a stay pending appeal.

To begin, plaintiffs' demand for a bond is inconsistent with the argument that they made in support of their request for an injunction that the harm they suffer from the lockout is not compensable in monetary damages.

Second, plaintiffs ask for a "supersedeas bond." (Opp. 21, 22.) A supersedeas bond provides a defendant against whom a monetary judgment has been awarded a stay of enforcement of that judgment. *See* Fed. R. Civ. P. 62(d). The purpose of such a bond is "to secure the judgment throughout the

appeal process against the possibility of the judgment debtor's insolvency." *Grubb v. FDIC*, 833 F.2d 222, 226 (10th Cir. 1988).[1]

Of course, there is no monetary judgment here that needs securing. Moreover, there has been and could be no credible showing of a risk of insolvency. Even if the plaintiffs' demands for a bond had merit, the NFL's "solvency and clear ability to satisfy [any such] judgment if affirmed on appeal militate in favor of waiving" any bond requirement. *Exxon Corp. v. Esso Workers' Union, Inc.*, 963 F. Supp. 58, 60 (D. Mass. 1997).

Here, the League's "ability to pay the judgment is so plain that the cost of the bond would be a waste of money." *Olympia Equip. Leasing Co. v. W. Union Tele. Co.*, 786 F.2d 794, 796 (7th Cir. 1986). Indeed, the plaintiffs do

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[1] The *Brady* plaintiffs cite two cases in support of their request for a bond. Neither is on point.

In *State Farm Mutual Automobile Insurance Co. v. American Rehab & Physical Therapy, Inc.*, the defendant was the subject of a default judgment entered four years earlier, and had taken extraordinary steps to evade the plaintiffs' attempts to enforce that judgment. *See* 2009 WL 2096274, at *1-5 (E.D. Pa. 2009). The District Court entered an injunction requiring the defendant to make installment payments on the *money judgment* he owed the plaintiff, and conditioned a stay of that injunction on the posting of a bond in an amount sufficient to cover those payments.

In *Garcia v. Direct Financial Services, LLC*, the *bankruptcy* court conditioned a *debtor*'s appeal of an order lifting the bankruptcy stay as to a particular creditor on the amount of debt and costs to which the creditor was entitled. *See* 436 B.R. 825, 830 (Bankr. W.D. Va. 2010). In doing so, the court applied Federal Rule of Bankruptcy Procedure 8005, not the Rules of Civil Procedure.

not suggest that they have the slightest doubt of the League's ability to pay the players, or that this Court should have any doubt.

The relevant rule here is not Rule 62(d) covering a supersedeas bond, but rather Rule 62(c), which provides that "the court may *suspend*, modify, restore or grant an injunction on terms for bond *or other terms that secure the opposing party's rights*." Fed. R. Civ. P. 62(c) (emphasis added).[2]

There is no need to require the NFL to post a bond to secure the plaintiffs' rights while this preliminary injunction is on appeal. The NFL submits that its commitment to pursue expedited appellate review in the Eighth Circuit more than adequately secures the rights of the *Brady* plaintiffs. There is no reason to think that the Court of Appeals will not adjudicate this appeal in an expedited manner. Indeed, Section 10 of the Norris-LaGuardia Act, 29 U.S.C. § 110, requires that the appeal to be determined "expeditiously." And if for some reason it did not, plaintiffs could seek relief from a stay either in this Court or in the Eighth Circuit.

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[2] The premiums paid for such a bond would be taxable as costs in the event of a successful appeal. *See* Fed. R. App. P. 39(e)(3); *see also* 29 U.S.C. § 107(e) (providing that a party enjoined in a case "involving or growing out of a labor dispute" found to have been wrongfully enjoined should be recompensed for "any loss, expense, or damage caused … including all reasonable costs (together with a reasonable attorney's fee)").

CONCLUSION

Accordingly, the NFL respectfully requests that the Court grant a stay, suspending the injunction pending appeal under Rule 62(c), without requiring a bond, conditioned on the NFL promptly pursuing expedited appellate review in the Eighth Circuit.

Respectfully submitted,

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