

## B O I E S , S C H I L L E R &amp; F L E X N E R L L P

5301 WISCONSIN AVENUE, N.W. • WASHINGTON, D.C. 20015-2015 • PH. 202.237.2727 • FAX 202.237.6131

April 7, 2011

The Honorable Susan Richard Nelson  
United States District Court  
774 Federal Building  
316 N. Robert Street  
St. Paul, MN 55106

Re: *Brady et. al. v. NFL, et al.*  
Court File No. 11-CV-00639 SRN-JJG  
*Eller, et al. v. NFL, et al.*  
Court File No. 11-CV-00748 SRN-JJG

Dear Judge Nelson:

This letter is being sent in anticipation of tomorrow's conference call with the Court to discuss mediation.

I think it is fair to say that the difference between the parties' positions is that we believe the mediation should proceed under the auspices of the Federal Mediation & Conciliation Service, and opposing counsel believe that the Court should appoint a different mediator. In either case, the purpose of the mediation would be to negotiate a settlement not only of the issues raised in the complaints, but also the many other issues that must be resolved to permit the upcoming season to be played and for the league to operate effectively.

In its letter to Mr. Quinn of this morning, the NFL made clear that it would provide "reasonable and appropriate assurances" that the players' participation in negotiations with the FMCS would be without prejudice to their legal position and will not be used against them in any way. We therefore believe that the League has already offered the kind of assurances that were sought by plaintiffs' counsel in their letters to Your Honor.

There are substantial reasons to have these issues addressed in the context of a mediation conducted by the FMCS. As Your Honor probably knows, the NFL and NFLPA spent 17 days in FMCS-supervised mediation, during which time the Director of the FMCS (himself a Presidential appointee) and his principal deputy gained a thorough and detailed understanding of the many issues that must be resolved. Put simply, the FMCS has a 17-day head start over any other potential mediator. And given that time is of the essence, that is of great importance.

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The FMCS also brings to the table expertise, neutrality, and valuable experience with the parties and the issues that must be addressed as part of any overall resolution, including scores of issues not raised in the lawsuits themselves. We cannot see any reason to start back at square one with a different mediator. Instead, we respectfully suggest that the proper course is to proceed promptly with mediation before the FMCS because it offers the best prospect for a prompt and successful resolution of these and the many other issues that must be addressed.

I would emphasize that we are not asking the players in any way to abandon their chosen litigation forum or to compromise any of their legal claims. In that light, we would respectfully request that the Court consider using its good offices to encourage the players to resume (or in the case of the Eller plaintiffs, to join) mediated negotiations using the established neutral expertise and procedures of the Federal Mediation & Conciliation Service.

Respectfully Submitted,

*David Boies/srv*

David Boies