IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

CHARLES RAY EASTERLING and his wife, MARY ANN EASTERLING, et al., Plaintiffs, v. NATIONAL FOOTBALL LEAGUE, INC., Defendant.	CIVIL ACTION Case No. 11-CV-05209-AB

MEMORANDUM OF LAW IN SUPPORT
OF THE NATIONAL FOOTBALL LEAGUE'S
MOTION FOR A STAY OF PROCEEDINGS

PRELIMINARY STATEMENT

The NFL respectfully submits this Memorandum of Law in support of its motion to stay all proceedings in the above-captioned action pending a decision by the Judicial Panel on Multidistrict Litigation (the "MDL Panel") on its motion to transfer certain other cases pending in the United States District Court for the Central District of California to this Court for pretrial coordination or consolidation with this action pursuant to 28 U.S.C. § 1407. The NFL asks that this Court stay all further proceedings until 30 days after the MDL Panel decision, to enable the parties and the transferee court, as determined by the MDL Panel, to organize the action and structure the schedule of the litigation moving forward.

Stays pending a decision by the MDL Panel are routinely granted. Such stays serve the policies behind the federal multidistrict litigation process, which include avoiding the squandering of judicial resources through the litigation of the same or similar issues in multiple federal forums. No prejudice will befall plaintiffs due to a short stay; by contrast, denial of the stay would burden the NFL, which otherwise would be required to duplicate its near-identical efforts in district court proceedings on opposite ends of the country and be potentially subject to conflicting rulings.

BACKGROUND

On October 6, 2011, seven former NFL players, and the spouses of some of them, served the NFL with the amended complaint filed in this Court. (*See* Am. Compl., Doc. 4.) Plaintiffs, in their individual capacities, allege claims for negligence, concealment, civil conspiracy, and loss of consortium against the NFL based on the assertion that the NFL had a "duty of care it owed the NFL players," which it allegedly breached by purportedly failing "to

establish a proper and adequate methodology to monitor and detect when players suffer concussive or sub-concussive injury in practice or game play" and failing "to take reasonable steps to develop appropriate and necessary guidelines for return to play following a concussion." (*Id*. ¶¶ 5, 17, 19, 36-63.) The amended complaint also alleges that the NFL "continued to deny any connection or correlation between players suffering concussions and long-term chronic brain injury or illness" despite purported knowledge otherwise. (*Id*. ¶¶ 8-10.) On behalf of a putative class, plaintiffs also allege a claim for medical monitoring. (*Id*. ¶¶ 54-63.) On November 9, 2011, the NFL moved to dismiss the amended complaint on the basis that plaintiffs' claims are preempted under section 301 of the Labor Management Relations Act ("LMRA") or otherwise fatally defective. (Doc. 19.)

In addition, three groups of individual former NFL players, and the spouses of some of them, filed actions in the Superior Court of California, Los Angeles County, against the NFL, NFL Properties LLC ("NFLP"), and Riddell, Inc., All American Sports Corp., Riddell Sports Group, Inc., Easton-Bell Sports, Inc., Easton-Bell Sports, LLC, EB Sports Corp., and RBG Holdings Corp. (collectively, the "Riddell Defendants"). (*See Maxwell, et al.,* v. *NFL, et al.,* BC465842 (Super. Ct. Cal. filed July 19, 2011 (Exhibit A)); *Pear, et al.* v. *NFL, et al.*, LC094453 (Super. Ct. Cal. filed Aug. 3, 2011 (Exhibit B)); *Barnes, et al.* v. *NFL, et al.*, BC468483 (Super Ct. Cal. filed Aug. 26, 2011 (Exhibit C))).[1] These complaints are substantially similar in substance and have been designated by plaintiffs as related cases pursuant to California Rules of Court, rule 3.300. The complaints allege causes of action for fraud, negligence,

[1] The 73 plaintiffs in the *Maxwell* action and the 47 plaintiffs in the *Pear* action served complaints on the NFL on September 12, 2011; the 16 plaintiffs in the *Barnes* action served an amended complaint on the NFL on October 4, 2011.

"negligence-monopolist," and loss of consortium (*see*, *e.g.*, *Maxwell* Compl. ¶¶ 524-61, 587-89); the *Barnes* action contains an additional claim for wrongful death (*Barnes* Am. Compl. ¶¶ 235-240). The NFL and NFLP, with the consent of the Riddell Defendants, removed these actions to the United States District Court for the Central District of California on October 11, 2011 on the basis of federal question jurisdiction under section 301 of the LMRA. On November 7, 2011, plaintiffs in these actions moved to remand. Defendants filed their oppositions on November 14, 2011. The Court is currently scheduled to hear these motions on December 5, 2011. In addition, the NFL and NFLP will file motions to dismiss on November 17, 2011 in each of the actions.

On November 15, 2011, the NFL filed a motion with the MDL Panel seeking to transfer and coordinate or consolidate the four actions for pretrial proceedings (Exhibit D, excluding motion exhibits).[2] For the reasons set forth below, as stated in detail in the NFL's Section 1407 Motion, the four actions—seeking to hold the NFL liable, through claims sounding in negligence and fraud, for purported damages sustained by former players who suffered concussions while playing football—are founded on similar allegations and raise common questions of fact. Each complaint alleges that the NFL failed to warn and protect NFL players against the long-term brain injury risks associated with football-related concussions (s*ee*, *e.g.*, Am. Compl. ¶¶ 2, 6-10; *Maxwell* Compl. ¶¶ 114-15) and that the NFL misrepresented or concealed the connection between concussions and long-term chronic brain injury (s*ee*, *e.g.*, Am. Compl. ¶¶ 8-9; *Maxwell* Compl. ¶¶ 124-26).

[2] The NFL and NFLP will also file motions to stay all proceedings in the *Maxwell*, *Pear* and *Barnes* actions pending a decision by the MDL Panel.

ARGUMENT

This Court has broad discretion to issue a stay as part of its inherent power "to control . . . its docket" in the interest of "economy of time and effort for itself, for counsel, and for litigants." *Landis* v. *N. Am. Co.*, 299 U.S. 248, 254, 57 S.Ct. 163, 166 (1936). As the *Manual for Complex Litigation (Fourth)* notes, "[t]he objective of transfer [through the MDL process] is to eliminate duplication in discovery, avoid conflicting rulings and schedules, reduce litigation cost, and save the time and effort of the parties, the attorneys, the witnesses, and the courts." *Id.* § 20.131 (2004); s*ee also In re Wells Fargo Wage & Hour Emp't Practices Litig. (No. III)*, MDL No. 2266, 2011 WL 3648270, at *1 (J.P.M.L. Aug. 19, 2011) ("Centralization under Section 1407 is warranted in order to eliminate duplicative discovery, prevent inconsistent pre-trial rulings, and conserve the resources of the parties, their counsel and the judiciary"). Denial of a stay here would frustrate these purposes by promoting duplicative and potentially unnecessary proceedings, creating the risk of inconsistent pretrial rulings, and unnecessarily consuming the parties' and the Court's resources.

I.

THE BALANCE OF FACTORS FAVORS ISSUANCE OF A STAY

In deciding whether to stay proceedings pending a resolution of another action in federal court, including a decision by the MDL Panel, courts consider "(1) the promotion of judicial economy; (2) the balance of harm to the parties; and (3) the duration of the requested stay." *Cirulli* v. *Bausch & Lomb, Inc.*, No. 08-4579, 2009 WL 545572, at *2 (E.D. Pa. Mar. 4, 2009) (internal quotation omitted) (staying action pending decision by MDL Panel). In addition to these factors, some courts in the Third Circuit also consider "whether the actions involve the same or similar parties" and "the similarity of issues." *See*, *e.g.*, *Packer* v. *Power Balance, LLC*,

No. 11-802, 2011 WL 1099001, at *1 (D.N.J. Mar. 22, 2011). "Stays of civil actions are common when the issue of transfer is before the JPML." *Id*. (citations omitted).

Here, the factors overwhelmingly favor issuance of a stay.

A. Denial of the Stay Will Result in Wasted Judicial Resources and Duplicative Litigation

Without a stay, this matter will almost certainly result in wasted judicial resources because this Court and the Central District of California would be required to hear and decide similar motions or otherwise manage similar discovery, that may well be transferred to a single transferee court by the MDL Panel. Courts frequently grant stays to avoid such duplicative litigation. *Cirulli*, 2009 WL 545572 at *3 (granting a stay pending transfer to MDL Panel because, in part, "[a]ny schedule or rulings I make now may turn out to have no effect, if and when this transfer is finalized . . . . Because this litigation would benefit from the orderly, consolidated discovery and motions schedule to be provided in the multidistrict litigation, I find that judicial economy is best promoted by allowing [the potential transferee judge] to resolve these issues for all parties at one time."); *Hertz Corp.* v. *The Gator Corp.*, 250 F. Supp. 2d 421, 428 (D.N.J. 2003) ("Given the short time until the MDL Panel will consider the motion, this Court's immediate and substantial investment of time is a waste of judicial resources").

B. Relative Harms Weigh in Favor of Stay

A stay will not prejudice plaintiffs. These cases are at their earliest stages. Plaintiffs' right to seek discovery or file motions will not be lost; they can obtain the same discovery or file the same motions in the transferee court. Instead, transfer for coordination or consolidation may work in favor of plaintiffs by providing them with "large-scale coordination" and the efficiency gains associated with it. *Cirulli*, 2009 WL 545572 at *3 ("The loss of some

time and effort is an initial inevitability when multidistrict litigation is commenced. Once the actions are centralized, however, the plaintiffs will be able to benefit from the large-scale coordination on their end as well as the defendant's").

In the absence of a stay, the NFL will suffer hardship due to the potential for conflicting rulings and duplicative discovery and motion practice. First, without a stay, the NFL would run the risk of conflicting pretrial rulings, including on motions to dismiss. Courts routinely recognize that stays are appropriate in such circumstances. *See Packer*, 2011 WL 1099001 at *2 ("Absent a stay, Defendant could be compelled to unnecessarily litigate claims in different fora, become subject to competing court orders, and undercut the primary purpose of the MDL").

This concern is particularly significant here because the NFL has moved to dismiss the claims in this action, and will move to dismiss the claims in the other actions, as being preempted under section 301 of the LMRA or otherwise fatally defective. *See In re Practice of Naturopathy Litig.*, 434 F. Supp. 1240, 1243 (J.P.M.L. 1977) (when defendants plan to challenge the sufficiency of the complaints, the "presentation of these matters to a single judge will further the purposes of Section 1407"). It is well settled that section 301 of the LMRA preempts all tort claims seeking to vindicate "state-law rights and obligations that do not exist independently of [a collective bargaining] agreement" or those "substantially dependent upon analysis of [a collective bargaining] agreement." *Allis-Chalmers Corp.* v. *Lueck*, 471 U.S. 202, 213, 220 (1985). The relationship between the NFL and the vast majority of its former players is defined by the Collective Bargaining Agreements ("CBAs") that were operative between 1968 through 2010.

The NFL's motions to dismiss the actions will be founded in large part on the same CBA provisions. Given the desire of Congress for uniform federal labor law and interpretation of CBAs, transfer and coordination or consolidation of the actions to a single judge to consider and rule on the NFL's motions is appropriate.

Second, saddling the NFL with the burden of engaging in motion practice, attending conferences and argument, and producing discovery in substantially similar cases in multiple jurisdictions will impose undue hardship. *Cirulli*, 2009 WL 545572 at *3 ("Proceeding on an individual basis may inexplicably subject [defendant] to different discovery schedules and court orders when the bases of each litigation are not remarkably distinguishable . . . ."); *see also Am. Seafood, Inc.* v. *Magnolia Processing, Inc.*, No. 92-1030, 1992 WL 102762, at *2 (E.D. Pa. May 7, 1992) (staying proceedings except as to certain preliminary issues such as class certification when "[d]uplicative motion practice and discovery heavily outweigh the possible prejudice the short period of time that the proceedings are stayed will cause the plaintiffs").

C. The Duration of the Stay Will Be Brief

Any stay of these proceedings would be brief. The NFL does not seek an indefinite stay, but instead merely a temporary reprieve until the MDL Panel issues its decision on the motion to transfer. Such a short delay will not prejudice plaintiffs. *Smith* v. *Life Investors Ins. Co. of Am.*, No. 2:07-cv-681, 2008 WL 2222325, at *1 (W.D. Pa. May 29, 2008) (granting stay of two to three months pending the MDL Panel's decision because the stay would be "relatively short").

D. Additional Factors Strongly Suggest a Stay is Warranted

As stated above, some courts in the Third Circuit also consider "whether the actions involve the same or similar parties" and "the similarity of issues." *Packer*, 2011 WL 1099001 at *1. Both considerations support a stay here. First, the NFL is a defendant in all four actions, and while the named plaintiffs in each action differ, they all are former players (and the spouses of some of them). (*See*, *e.g.*, Am. Compl. ¶¶ 23-30; *Maxwell* Compl. ¶¶ 76, 149-523.) Second, as outlined above, the issues are nearly identical across the actions: Plaintiffs in each action allege that the NFL breached its duty to protect the health and safety of NFL players from the risks associated with football-related concussions. (*See*, *e.g.*, Am. Compl. ¶¶ 2, 6-10, 47(d); *Maxwell* Compl. ¶¶ 114-15, 533(a)-(h).) The NFL allegedly failed to, among other things, develop and implement proper return-to-play rules, "establish a proper and adequate methodology to monitor and detect when players suffer concussive or sub-concussive injury in practice or game play," and allegedly misrepresented or concealed the connection between concussions and long-term chronic brain injury. (*See*, *e.g.*, Am. Compl. ¶¶ 8-9, 47; *Maxwell* Compl. ¶¶ 124-26, 533(a)-(h).) Further, each of the actions is subject to dismissal on the grounds that the claims are preempted under section 301 of the LMRA or otherwise fatally defective.

* * *

In sum, the balance of factors heavily favors a stay of all proceedings until 30 days after the MDL Panel's final adjudication of the motion to transfer. In fact, even if this Court were to find that plaintiffs would be prejudiced by granting the stay (which they would not be), any such prejudice would not be reason to deny this motion. *See Am. Seafood, Inc.*, 1992 WL 102762 at *2 (noting that "any prejudice to the plaintiffs is clearly outweighed by the

considerations of judicial economy and possible prejudice to the defendants" when multiple actions were pending in different courts and there was a risk of duplicative motion practice and conflicting decisions). The same is true if this Court were to determine that the length of stay were too great—which it is not. *See Cirulli*, 2009 WL 545572 at *3 (finding that the "duration of stay" factor "lies in favor of denying the stay" but granting the stay nonetheless because "my determination on the duration factor does not compel me to dismiss the motion. It is but one factor I have considered").

CONCLUSION

For the foregoing reasons, the NFL respectfully requests a stay of all proceedings in this case until 30 days after the MDL Panel's final adjudication of the motion to transfer.

Dated: November 17, 2011

Respectfully submitted,

By: /s/ Brad S. Karp

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