

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF CONNECTICUT

RUSS MCCULLOUGH, RYAN
SAKODA, and MATTHEW ROBERT
WIESE,
individually and on behalf of all
others similarly situated,

Plaintiffs,

v.

WORLD WRESTLING
ENTERTAINMENT, INC.,

Defendant.

CIVIL ACTION NO.
3:15-cv-001074 (VLB)
Lead Case

JOSEPH M. LAURINAITIS, *et al.*,

Plaintiffs,

v.

WORLD WRESTLING
ENTERTAINMENT, INC. *et al.*,

Defendants.

CIVIL ACTION NO.
3:16-CV-01209 (VLB)
Consolidated Case

REPLY TO DEFENDANTS' OPPOSITION TO PLAINTIFFS' REQUEST
TO TAKE JUDICIAL NOTICE OF A WWE FUNDED STUDY

The Defendants' claim that Plaintiffs' Request to take Judicial Notice of a WWE-Funded Study is full of half-truths. Yet, the legitimate study that found 99% of the studied NFL players suffered from CTE is not a half-truth. WWE jointly funding the study with the NFL is not a half-truth. WWE's knowledge of the risks of repetitive head trauma in professional sports is not a half-truth and WWE's stubborn denial to accept its responsibility to its former performers is now brutally apparent.

On August 12, 2017, Plaintiffs requested the Court take Judicial Notice of a study published by the Journal of the American Medical Association that conclusively established the long-term risks of neurological injuries in professional football. The study was funded by 13 organizations, among which were the NFL and the WWE. WWE opposed Plaintiffs' simple request for judicial notice on August 15, 2017 (Dkt. No. 360, "Opp."). WWE's confusing assertion that because they were not part of the study's scientific process, they are somehow not aware of the ultimate findings of the study bear little merit other than to further Plaintiffs' contention that WWE refuses to admit it was wrong, even in the face of conclusive medical science partly funded by its own organization.¹

As a scientific study published in a peer reviewed and recognized medical journal that has received wide-spread media attention, this Court may take judicial notice as it "can be accurately and readily determined from sources whose accuracy cannot be reasonably questioned". Fed. R. Evid. 201(b). WWE has a current responsibility to inform its former performers of a likely ongoing disease process causally related to WWE performances and provide support to them. Complaint ¶¶ 43, 234-238. WWE emphatically denies its responsibility to these Plaintiffs. MTD, pp. 55-56, FN 32 (noting that "Kyros can thank himself for the release language recently added to the document to be signed by those seeking WWE's assistance for their drug and alcohol issues" as Plaintiffs have pointed out, and the Court has noted, that the ongoing communications that WWE has with its

¹ Were they to have taken direct part in the scientific process, the validity of the study would be in question and the parallels to the tobacco litigation would be even more apparent. Tellingly, WWE's noting of its financial involvement while disclaiming participation in the process bears credence to the study's validity as a benchmark in concussion science.

former performers could indicate an ongoing duty to these performers despite WWE's resolute position to the contrary). Such facts undeniably implicate not only the findings, but WWE's financing of this benchmark study. *See* Opp., p. 4, *citing Fair v. Esserman*, No. 3:15-CV-681, 2015 U.S. Dist. LEXIS 157689, at *3 (D. Conn., Nov. 23, 2015).

It is telling that WWE seeks to abandon its own funded study. *See* Opp., at 4-5, *quoting Int'l Star Class Yacht Racing Ass'n v. Tommy Hilfiger U.S.A., Inc.*, 146 F.3d 66, 70 (2d Cir. 1998) ("Because the effect of judicial notice is to deprive a party of the opportunity to use rebuttal evidence,... caution must be used ... in determining that a fact is beyond controversy under Rule 201(b)."). But then goes on to accept the existence of CTE in professional wrestlers: "Mr. Kyros simply appears unable to understand that WWE's denial of fraudulently concealing such information from its talent is not the same as denying the existence of CTE".² Opp., FN.3 at 8.

This study describes CTE broadly as "a progressive neurodegeneration associated with repetitive head trauma". Dkt. No. 359-1, at 2. Plaintiffs' repetitive head trauma was suffered during in-ring performances and training which WWE covers 100% by its own admissions. Its duty is clear, as is the importance of this study to this litigation. WWE's perplexing and contradictory statements go to the heart of this litigation: namely, WWE's public acceptance of its responsibility to its

² As well as continuing the false narrative that this is a lawyer-driven litigation by one man despite the overwhelming evidence of dozens of Plaintiffs needing (and often begging for) support from the industry that has injured each of them with devastating and life-altering results.

performers' health and well-being and its underhanded tactics to renege on these obligations.

Instead of recognizing its duty to its performers, it chooses to dispute the extent of its financial involvement in this landmark study.³ Although it should be lauding its own participation, it downplays it in an effort to reduce the study's litigation impact and refute the study's clear connection to professional wrestlers' in-ring performances, and all professional sports' contact impacts. Nonetheless, this study describes its findings in such a way as to be relevant to this litigation:

These findings suggest that CTE may be related to prior participation in football and that a high level of play may be related to substantial disease burden. Several other football-related factors may influence CTE risk and disease severity, including duration of play, player position, cumulative hits, and linear and rotational acceleration of hits. Recent work in living former football players has shown that age at first exposure may be related to impaired cognitive performance and alleged corpus callosum white matter and that cumulative hits may be related to impairment on self-report and objective measures of cognition, mood, and behavior, although it is unclear if any of these outcomes are related to CTE pathology. Furthermore, it is unclear if symptomatic hits (concussions) are more important than asymptomatic hits resulting in subconcussive injury. As with other neurodegenerative diseases, age may be related to risk and pathological severity in CTE. It will be important for future studies to resolve how different measures of exposure to football and age influence the outcome.

Dkt. No. 359-1, at 7.

³ WWE relies on a deposition segment from the *Singleton Lograsso* case that, taken as a whole, furthers Plaintiffs' claims of fraudulent nondisclosure. Purported to be the 30(b)(6) deponent, Mr. Levesque often refused to answer even the most basic elements of corporate administration. *See* Paul Levesque's 30(b)(6) Deposition, p. 96-101, segment attached as Exhibit A (Noting an inability to answer whether OSHA was informed about wrestlers' injuries or even whether Workers' Compensation claims had been filed against WWE). The credibility of such testimony broadens the depth of WWE's fraud, as does its filing of a thirteen page motion objection to a simple request to notice a study that WWE itself funded.

It is important to parse out how these findings do apply to WWE and this litigation. First, there is no study about professional wrestlers because WWE has directly prevented one through its actions as alleged in this lawsuit. WWE cannot rely on the absence of a study as a defense because it would be rewarding their unconscionable and deadly tactics. Second, the absence of a specific study about neurological injuries in professional wrestlers does not save WWE given what this study actually states. A “high level of play”, “duration of play, player position, cumulative hits, and linear and rotational acceleration of hits” affected the severity of injury. *Id.* For WWE, this translates to the number of matches, type of moves, number of hits, and position of impacts, including being thrown into the ground on a wrestler’s head and spine. The study noted that age of play could be an important factor in risk and pathological severity, as well as the relevance of subconcussive blows not resulting in concussions. *Id.* The Plaintiffs have alleged these allegations in its pleadings, and this study is directly relevant to both the Plaintiffs’ apparent and latent injuries and WWE’s knowledge and denial of conclusive medical science.⁴

WWE’s prior and continuing failure to warn its former performers of their in-ring injuries and the associated long-term risks is not remedied by WWE’s activities towards upholding its duty to its current performers through limited educational programs on CTE in professional wrestling. Prior pleadings have described the inadequate nature of those programs. There has been no attempt by

⁴ Plaintiffs’ renew its statement that the laws of physics apply to professional wrestlers the same as to professional football players. Plaintiffs’ Counsel propound that it does not take a Ph.D. in physics to make such assertion, and WWE’s issue with such statement goes to their ongoing need to litigate every statement whether reasonable or not.

WWE to hold educational programs, provide medical monitoring, or provide any level of care and treatment for its former performers' neurological and orthopedic injuries despite its proclaimed duty to cover 100% of their in-ring injuries.

WWE is not the victim. The hundreds of injured and dead performers are the victims. WWE cannot escape the legal consequences of its actions through bullying tactics and obfuscating language. The Plaintiffs' renew their Request for the Court to take Judicial Notice of the WWE-funded study that found such dire consequences in professional athletes because WWE's continued refusal to accept its responsibility to its former performers necessitates this Court's action. The laws of physics in the end apply everywhere and grant no exception to the WWE.

Dated: September 20, 2017.

Respectfully submitted,

/s/ Konstantine W. Kyros
Konstantine W. Kyros, Esq.
Bar No. ct30132
KYROS LAW OFFICES
17 Miles Road
Hingham, MA 02043
Telephone: (800) 934-2921
Facsimile: 617-583-1905
kon@kyroslaw.com

Anthony M. Norris, Esq.
KYROS LAW OFFICES
17 Miles Road
Hingham, Massachusetts 02043
Telephone: (617) 396-4159
Facsimile: (617) 583-1905
anorris@kyroslaw.com

S. James Boumil, Esq.
BOUMIL LAW OFFICES
120 Fairmount Street
Lowell, Massachusetts 01852
Telephone: (978) 458-0507

SJBoumil@Boumil-Law.com

**Brenden P. Leydon, Esq.
TOOHER WOCL & LEYDON LLC
80 4th Street
Stamford, Connecticut 06905
Telephone: (203) 517-0456
Facsimile: 203-324-1407
BLeydon@toohewocl.com**

**Erica C. Mirabella, Esq.
MIRABELLA LAW LLC
132 Boylston Street, 5th Floor
Boston, Massachusetts 02116
Telephone: (617) 580-8270
Facsimile: (617) 583-1905
erica@mirabellaLLC.com**

**R. Christopher Gilreath, Esq.
GILREATH & ASSOCIATES
200 Jefferson Avenue, Suite 711
Memphis, Tennessee 38103
Telephone: (901) 527-0511
Facsimile: (901) 527-0514
chrisgil@sidgilreath.com**

Counsel for Plaintiffs.

CERTIFICATE OF SERVICE

I hereby certify that on this 20th day of September, 2017, a copy of the foregoing Motion was served via this Court's electronic case filing system.

/s/ Konstantine W. Kyros

Konstantine W. Kyros

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1 BY MR. KYROS:

2 Q Okay. Does the WWE share any injury data
3 with any government agency?

4 A Not to my knowledge.

5 Q Is there a person that you would speak to
6 that could refresh your recollection?

7 MR. KRASIK: Objection. It assumes
8 there's someone who would know that if it
9 were to happen, so --

10 BY MR. KYROS:

11 Q Are -- are injuries in the ring in WWE
12 performances reported publicly?

13 A Are they -- do we make a practice of
14 reporting them publicly? No.

15 Q Okay. Is there a disabled list of
16 professional wrestlers?

17 A Define that.

18 MR. KRASIK: Objection to form.

19 BY MR. KYROS:

20 Q Okay. How -- how is information about
21 injuries shared with wrestling fans?

22 MR. KRASIK: Objection to form.

23 Lack of foundation.

24 BY MR. KYROS:

25 Q Is wrestling -- is -- is injury

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1 information shared with fans?

2 A There's a thing called HIPAA laws that
3 require us not to share unless they approve us --
4 talent approve us to share their medical
5 information.

6 And you're probably confusing story line
7 with fact, reality. A lot of people do.

8 Q Do you collect information about head
9 injuries?

10 MR. KRASIK: Objection to form. I'm
11 not sure you mean you, but --

12 BY MR. KYROS:

13 Q WWE.

14 A As part of our injury report, we have
15 information about all injuries.

16 Q Okay. Are head injuries separately
17 reported?

18 A They're part of the injury report. All
19 encompassed.

20 Q Right. Are the --

21 A All --

22 Q Are -- are the injuries on these injury
23 reports reported to OSHA?

24 MR. KRASIK: Objection to form.

25 If you have an answered.

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1 A I -- OSHA? I'm not sure --

2 BY MR. KYROS:

3 Q The Occupational Safety and Health
4 Administration?

5 A Not to my knowledge.

6 Q And why not?

7 MR. KRASIK: Counsel, do you have a
8 basis for asking --

9 THE WITNESS: Yeah.

10 MR. KRASIK: -- this fact witness a
11 question about the -- about whether
12 injuries to independent contractors
13 should be reported to a government
14 agency?

15 Is there a basis for asking this
16 fact witness that question?

17 MR. KYROS: I'm asking the
18 questions.

19 MR. KRASIK: Okay. Since it
20 involves a legal determination, this fact
21 witness is not in a position to answer
22 that.

23 And I'd instruct him not to, because
24 he already said he has no knowledge.

25

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1 BY MR. KYROS:

2 Q Have wrestlers filed Workers'
3 Compensation claims, to your knowledge, against the
4 WWE?

5 MR. KRASIK: Objection.

6 To be clear, we objected to this
7 subject matter of the notice as being
8 outside the scope of the discovery
9 order.

10 But if you have any personal
11 knowledge on that question, you're free
12 to answer.

13 A Not to my knowledge.

14 BY MR. KYROS:

15 Q Were you aware that Evan Singleton had
16 filed a Workers' Compensation claim in advance of
17 this lawsuit?

18 A I was. I believe -- I believe he did.

19 Q How would I find out how many Workers'
20 Compensation claims are filed against the WWE?

21 MR. KRASIK: Objection to form.

22 Are you trying to mislead this
23 witness that that Workers' Compensation
24 claim was voluntarily dismissed for lack
25 of jurisdiction because he was not

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1 allowed to file a Workers' Compensation
2 claim? Is that really the question
3 you're asking?

4 MR. KYROS: Are you objecting?

5 MR. KRASIK: Yes.

6 MR. KYROS: Okay. That's noted.

7 BY MR. KYROS:

8 Q Are you aware that the WWE fights the
9 filed Workers' Comp-- Compensation claims
10 under the booking contracts that the wrestlers
11 sign?

12 MR. KRASIK: Objection to form.

13 I don't know what "fights" means.

14 I'd ask you to clarify that.

15 BY MR. KYROS:

16 Q If a -- if a wrestler filed a Worker
17 Compensation claim against the WWE, what would the
18 WWE do?

19 MR. KRASIK: Same objection as
20 being outside the scope of the 30(b)(6)
21 notice.

22 But if you have personal knowledge.

23 A I'm not sure. Again, I'm not a lawyer.

24 BY MR. KYROS:

25 Q So the WWE is not aware of any Workers'

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1 Compensation claims?

2 MR. KRASIK: That's not what the
3 witness said, Counsel. You're
4 mischaracterizing prior testimony. I
5 object to that.

6 He has no personal knowledge, is
7 what he said.

8 BY MR. KYROS:

9 Q Does the WWE have any knowledge?

10 MR. KRASIK: He's not answering that
11 question on behalf of WWE, as I've
12 objected two or three times now.

13 I'll instruct him not to answer that
14 question because embedded in it is a
15 mischaracterization of his prior
16 testimony.

17 MR. KYROS: Okay.

18 BY MR. KYROS:

19 Q During a match, who within the WWE would
20 be in the best position to know if a wrestler was
21 exhibiting signs of a concussion?

22 MR. KRASIK: Objection to form.

23 You can answer.

24 A Who would be in the best position?

25