

Chicago Daily Law Bulletin®

VOLUME 168, NO. 109

LAW BULLETIN MEDIA.

NHL suit moves to state court

Estate of former Hawks player accuses league of promoting violence

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A lawsuit accusing the National Hockey League of encouraging violence on the ice while misrepresenting the danger posed by repeated head trauma belongs in state court, a federal judge held.

In a written opinion, U.S. District Judge Thomas M. Durkin of the Northern District of Illinois remanded to Cook County Circuit Court a suit filed on behalf of Steven R. Montador's estate against the National Hockey League and its board of governors.

Durkin rejected the NHL's argument that Section 301 of the federal Labor Management Relations Act preempts the claims Paul Montador brought under the Illinois Survival Act and the Illinois Wrongful Death Act for his son's estate.

Quoting *Caterpillar Inc. v. Williams*, 482 U.S. 386 (1987), Durkin acknowledged that Section 301 completely preempts state-law claims "founded directly on rights created by collective-bargaining agreements, and also claims substantially dependent on analysis of a collective-bargaining agreement."

But resolution of the state-law claims must be "inextrica-

bly intertwined" with a collective bargaining agreement for the claims to be preempted by Section 301, Durkin wrote, quoting *Allis-Chalmers Corp. v. Lueck*, 471 U.S. 202 (1985).

And quoting *Crosby v. Cooper B-Line Inc.*, 725 F.3d 795 (7th Cir. 2013), he wrote "[f]actual overlap between a state-law claim and a claim one could assert under a CBA is not necessarily sufficient" to completely preempt the state-law claim.

The claims in Paul Montador's current suit are not preempted by federal law, Durkin held.

Steve Montador played in the NHL for several teams — including the Chicago Blackhawks — from 2001 until a concussion in 2012 took him out of the game for nearly a year. He played for the Rockford IceHogs, an American Hockey League affiliate, late in the 2012-13 season and then played 11 games with a Croatian team.

Montador died in February 2015 in his home in Mississauga, a city in the Canadian province of Ontario. He was 35.

A postmortem examination showed Montador had suffered from chronic traumatic encephalopathy, a degenerate brain disease found in people who have had repeated brain trauma.

Paul Montador sued the NHL in federal court in December 2015 under diversity jurisdiction. He alleged

various symptoms his son suffered and his son's death were at least partially caused by his many concussions.

In November 2020, then-U.S. District Judge John Z. Lee dismissed most of Montador's claims.

He held the dismissed claims were completely preempted by Section 301 because they were "inextricably intertwined" with provisions of collective bargaining agreements entered between the NHL and the National Hockey League Players' Association. *Montador v. National Hockey League*, No. 15 C 10989, 2020 WL 11647730 (N.D. Ill. Nov. 24, 2020) ("*Montador I*").

But Lee declined to dismiss claims that the NHL unreasonably promoted a "culture of violence" and that it misled Montador about the long-term effects of repeated head trauma.

Those two claims were not completely preempted because they were based on common-law duties, Lee held in the November 2020 opinion, not on duties established by the collective bargaining agreements.

He declined to exercise supplemental jurisdiction over the state-law claims and dismissed them without prejudice.

Paul Montador brought the two claims in a new suit he filed in Cook County Circuit Court. The NHL removed the case to federal court in December 2021 and Manta-



Thomas M. Durkin

dor filed a motion to remand the next month.

The case was assigned to Lee. The 7th Circuit Executive Committee reassigned the case to Durkin this month after Lee was confirmed to a seat on the appeals court.

In his opinion Saturday, Durkin rejected the argument that the claims in the current suit are preempted because they purportedly are "really just disguised versions of the claims" held in *Montador I* to be preempted.

"Turning first to the culture-of-violence claims, Plaintiff's complaint alleges that the NHL not only permitted, but actively promoted and glorified, fighting between players because fighting is popular with hockey fans and therefore profitable for the league," Durkin wrote.

He wrote the claims are not based on any provision in the collective bargaining agreements. Instead, he wrote, "the NHL's duty not to unreasonably expose players

to gratuitous violence arises out of the common law.”

Durkin also held allegations that the NHL misrepresented the risks of repeated brain trauma are not disguised versions of claims that the league breached a duty to inform Montador of the risks.

“While it is true that Plaintiff’s misrepresentation claims contain allegations of non-disclosure, the lion’s share of

the facts Plaintiff offers in support suggests that the NHL affirmatively misled players by communicating through its conduct that head injuries were not serious,” Durkin wrote.

He wrote Montador alleges the NHL’s conduct included contending for decades that it was studying the long-term effects of concussions.

“The NHL’s commitment to study the issue, Plaintiff

claims, created in players a false sense of security,” Durkin wrote. “And Plaintiff alleges that, when the NHL released its study, the results downplayed the health consequences of head trauma and continued to mislead players.”

The case is *Paul Montador v. National Hockey League, et al.*, No. 21 C 06820.

Montador is represented by William T. Gibbs of Corboy

& Demetrio.

“We appreciate the District Court’s ruling,” Gibbs said in a statement. “The Montador family is pleased that their case will now be decided by a jury in Cook County.”

The NHL is represented by John H. Beisner of the Washington, D.C., office of Skadden, Arps, Slate, Meagher & Flom LLP.

He could not be reached for comment.