

# **App. Tab 37**

**(On behalf of Jerry McDevitt) - Chris Benoit**

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**From:**

"Wargo, Eileen M." <eileen.wargo@klgates.com>

**To:**

jbailes@hsc.wvu.edu

**Cc:**

"McDevitt, Jerry" <jerry.mcdevitt@klgates.com>

**Date:**

Tue, 19 Jan 2010 14:31:38 -0500

**Attachments:**

PI-#2301038-v1-1\_19\_10\_Letter\_to\_Dr\_J\_Bailes.PDF (436.63 kB)

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Attached please find Mr. McDevitt's letter of January 19, 2010.

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January 19, 2010

**VIA FAX AND ELECTRONIC MAIL**

Julian E. Bailes, M.D.  
Professor and Chairman  
Department of Neurosurgery/WVUHSC  
P. O Box 9183  
Morgantown, WV 26506

Dear Dr. Bailes:

By way of introduction, you may know that I have represented World Wrestling Entertainment (“WWE”) for many years, including throughout the tragedy involving the Benoit murder/suicide case, and more recently represented Dr. Cyril Wecht, the noted forensic pathologist from Pittsburgh in connection with now dismissed charges against him. I have also worked extensively with Dr. Joseph Maroon, who I believe you know and who WWE retained several years ago to be the Medical Director of WWE and to assist us in connection with the WWE’s Wellness programs for its talent.

I also understand that you were recently contacted by a fellow who holds himself out as a journalist, Mr. Irving Muchnick. As you may know, Mr. Muchnick wrote a book about the Benoit case that was a dismal flop, and he now tries to gain attention for that endeavor by various public and ill-informed attacks on WWE. Recently, Mr. Muchnick has been making various wild allegations that the WWE lied to the media when it indicated in prior public statements on the subject of Chris Benoit that it had requested certain scientific information regarding his case and had received no response. In some of the articles I have seen, Mr. Muchnick then juxtaposed that false charge with statements by you indicating we had never made any requests of you to see Benoit’s scientific materials and that you would provide such information to us if we did so.

By way of explanation, and for your information, I enclose a letter dated September 25, 2007 that we sent to Mr. Chris Nowinski, the head of Sports Legacy Institute (“SLI”). As you know, Dr. Bennett Omalu was at that time affiliated with Sports Legacy Institute. It is my understanding that Dr. Omalu was the person who was directly involved in the science leading up to the preparation of histological slides advanced as being of Mr. Benoit’s brain. It is my understanding that Mr. Nowinski and Dr. Omalu subsequently had a parting of the ways, and that Dr. Omalu thereafter became affiliated with your group, which

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Julian E. Bailes, M.D.

January 19, 2010

Page 2

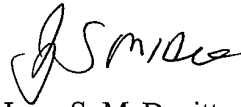
is also working on the CTE issues. I am quite sure you must not have known of this inquiry to SLI made by me on behalf of WWE in 2007 when you made the statement that we had never asked for such information.

As you will see, we posed numerous questions to SLI years ago regarding certain scientific questions surrounding the histological slides being examined by you and others which are said to be of Chris Benoit's brain. You will see seven specific questions posed to SLI in September 2007 which, to this date, remain unanswered by anybody associated with the scientific analysis of Chris Benoit's brain. To the extent your office would be good enough to provide the information requested, as you indicated would be done if requested, it would be greatly appreciated

As you will see, specific information we requested does not focus on the interpretation of the histological slides that are presented to various persons, including yourself, for interpretation. Instead, we have sought more basic information on the chain of custody from the autopsy of Chris Benoit to the preparation of the histological slides now being interpreted by experts such as yourself. Thus, to supplement our prior request, would you be kind enough to provide us with complete information on the scientific chain of custody of the tissue samples of Chris Benoit's brain from the point in time his brain was removed on autopsy through the preparation of the histological slides in question.

In closing, I understand that you may be one of the speakers at a seminar being sponsored by the Wecht Institute in Pittsburgh in March of this year regarding the issues surrounding CTE. I sincerely hope to meet you there and make your acquaintance.

Very truly yours,



Jerry S. McDevitt

JSM/emw

Enclosure

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September 25, 2007

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**VIA CERTIFIED MAIL/RETURN RECEIPT**

Chris Nowinski  
Sports Legacy Institute  
230 Third Avenue  
Waltham, MA 02451-7528

**VIA CERTIFIED MAIL/RETURN  
RECEIPT and ELECTRONIC MAIL**

Chris Nowinski  
32 Garrison Street  
Apartment 50304  
Boston, MA 02116

Re: **Chris Benoit**

Dear Mr. Nowinski:

We are writing on behalf of World Wrestling Entertainment, Inc. (“WWE”) in connection with the widely publicized statements of Sports Legacy Institute (“SLI”) and those affiliated with it regarding the post-mortem examination of Chris Benoit’s brain.

We have reviewed SLI’s press release and observed certain of the many media appearances of SLI spokespersons and Mr. Michael Benoit regarding the findings of SLI. Interestingly, although litigation motives were expressly disavowed by Mr. Benoit and his counsel during the orchestrated media blitz surrounding the announcement of SLI’s finding, we received a formal letter from counsel for Mr. Michael Benoit and the estate of Chris Benoit the ensuing week demanding that WWE preserve a wide group of records for possible litigation—the factual and legal basis of which were not articulated. Additionally, despite the refusal of SLI medical spokespersons to opine that there is any causal connection between its post-mortem findings and the murders committed in the Benoit house, SLI’s findings are being advanced in the media as supporting the notion that Chris Benoit bound and gagged his wife, garroted her, gave Xanax to his son and then killed him, and thereafter committed suicide due to the brain injuries described by SLI. Thus, in light of the threat of litigation which was made against WWE as an adjunct to SLI’s findings, we must ask that SLI maintain any and all records, in hard copy and electronic form, related to work done in the Benoit case, including the examination of Chris Benoit’s brain, the scientific work done

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Chris Nowinski  
September 25, 2007  
Page 2

by SLI and its representatives, the planning and execution of the media strategy regarding SLI's findings, and anything related in any way to the Benoit case. This includes emails, discs, CDs, drafts and any form of stored information, as well as all antecedent scientific work such as tissue slides, photographs, staining materials, chain of custody records, and the like. SLI should also maintain and safeguard all such records for the other studies it has done.

Although we regret that SLI's findings have been injected into the Benoit case in a fashion designed to shift factual and legal responsibility away from the actual murderer, WWE nevertheless requests complete access to SLI's work in order that it may have it independently analyzed and evaluated in order to intelligently apply any verifiable and peer reviewed scientific findings to the prevention and management of concussions in its business. Thus, we would ask for complete access to all of SLI's information regarding its work on the Benoit case in order to do so. In order to begin that process, we request complete information as to the following:

1. On what date did SLI obtain the brain or tissue of Chris Benoit and from what source.
2. Were photographs taken depicting the physical condition of his brain upon receipt by SLI.
3. When, where and by whom were the tissue samples prepared supporting the SLI findings.
4. When, where and by whom were the tissue samples subjected to staining techniques and was that process recorded in any way.
5. Was compensation paid to any of the personnel who did SLI's work on the Benoit matter and, if so, in what amount and who paid for the work.
6. What is the confirmation of multiple concussions and the "clinical symptoms associated with CTE" which supports the statements in the SLI press release regarding these matters.
7. Has Sports Legacy Institute, or any of its representatives, been retained as an expert and/or consultant by the Estate of Chris Benoit, Mr. Michael Benoit, or their counsel?

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Chris Nowinski  
September 25, 2007  
Page 3

We would appreciate your prompt advice to these inquires. Please advise as to when your institute will make the underlying science available for our independent review and evaluation. We would also welcome a meeting with your researchers to discuss access to your findings and evaluation of those findings, and look forward to your response.

Very truly yours,



Jerry S. McDevitt

JSM/emw