

App. Tab 41

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January 27, 2010

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VIA FAX AND ELECTRONIC MAIL

Robert P. Fitzsimmons
Fitzsimmons Law Offices
1609 Warwood Avenue
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Dear Mr. Fitzsimmons:

This will acknowledge and respond to your email of January 26, 2010 advising me that you represent Dr. Bailes and Dr. Omalu and to direct all inquiries to you. Naturally, I will of course do so.

Having said as much, I was somewhat surprised to receive questions from counsel, instead of answers to our long outstanding questions since Dr. Bailes was quoted as saying he would be glad to provide us with the information we requested if asked to do so. I would also note that I fail to comprehend how the answers to your questions have anything to do with whether your clients will, in fact, provide access to the science we have requested relating to the preparation of histological slides said to be of Mr. Benoit's brain. Nevertheless, I will respond to your questions.

First, you inquire whether any matter involving Chris Benoit's brain or the findings from Dr. Omalu's brain examination are or may be the subject of litigation at the present time. I can only answer for myself, but I am not involved in any litigation at the present time in any such matter. As I am sure you know, there were various threats of litigation made against my client, WWE, following the Benoit murder/suicide case, but no such case was filed against WWE. You would know better than I would if either of your clients is involved in litigation or other matters that do not directly involve Chris Benoit, as an expert or otherwise, in which findings of your clients regarding Chris Benoit are at issue in any way.

I would further note, as you have seen from the September 25, 2007 letter to SLI, we asked that all records related to the examination of Chris Benoit's brain be maintained, together with other records noted in that letter related to the Benoit case in light of the litigation threats then being made. I would naturally assume that all that evidence has been preserved, and out of an abundance of caution would reiterate to you the requests that your clients preserve the evidence that was originally made by me in the letter of September of 2007.

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You next asked whether Mr. Nowinski or SLI ever responded to my letter of September 25, 2007. The answer is we received no response of any kind from him, SLI or Dr. Omalu, who was then affiliated with SLI. For your information, we also have the receipt for the certified mail addressed to Mr. Nowinski at the Sports Legacy Institute.

As to Dr. Maroon reviewing tissue slides at WVU with Dr. Bailes and Dr. Omalu, I am aware that Dr. Maroon met with Dr. Bailes in some capacity related to his work for the NFL. I would point out that the questions we have asked do not focus on what one sees by looking at the slides said to be of Chris Benoit's brain, or the proper interpretation of those slides as to the physical findings or the larger issues associated with opinions regarding Chris Benoit's mental faculties based on those physical findings. Instead, the focus of our questions is on the scientific chain of custody from autopsy to the preparation of those slides and the custody of those slides after they were prepared.

Lastly, you asked whether Mr. Benoit's father has been asked to authorize us to obtain the information we have requested. We have not done so nor do we believe it is necessary to do so. Mr. Benoit consented to the forensic examination of his son's brain by SLI and Dr. Omalu. It is a matter of public record that the results of that forensic examination were not kept confidential by Mr. Benoit, but instead were disseminated widely to the press, various electronic media outlets, and within the scientific community. Mr. Benoit personally participated in those endeavors and appeared on television regarding the findings announced by SLI regarding his son. Since then, I am aware of several public comments within the scientific community reflecting the opinions formed by those involved in the preparation of the slides, including Dr. Omalu, and those who interpret the slides, such as Dr. Bailes. Clearly, these actions reflect Mr. Benoit's consent to the findings regarding his son being a matter of public record and scientific discourse and discussion.

In closing, I trust this responds to your inquiries, that your clients will now provide the information we have requested, and that you will feel free to call if you wish to discuss the request further.

Very truly yours,



Jerry S. McDevitt

JSM/emw