

Deal or no deal in high profile hockey case?

Kluwer Mediation Blog

August 23, 2014

Rick Weiler (Weiler ADR Inc.)

Please refer to this post as: Rick Weiler, 'Deal or no deal in high profile hockey case?', Kluwer Mediation Blog, August 23 2014, <http://mediationblog.kluwerarbitration.com/2014/08/23/deal-or-no-deal-in-high-profile-hockey-case/>

Hockey is a deeply ingrained part of the Canadian identity so it's not surprising that the Country has been abuzz this week around the question: "Has a high profile 10-year old case been settled through mediation or not?"

The case, **Moore v. Bertuzzi et al**, arose from events that occurred during a National Hockey League (NHL) match in March of 2004. The incident has its own Wikipedia page which can be viewed [here](#). The ending of Steve Moore's career spawned a decade long law suit which was coming to trial next month. The trial would have generated considerable interest as it would have involved a full expose of the so-called "fight culture" of the NHL (see [here](#) for example); not something the League was looking forward to as the 2014-15 season was about to open.

Then came the announcement from Bertuzzi's lawyer, [Geoff Adair](#), on Tuesday that all parties involved in the lawsuit had reached a "firm and binding" agreement that was "enforceable by a court." Although the terms of the settlement were confidential Adair had previously told the Court that his client was seeking damages of \$68 Million.

Then, this past Wednesday, the plaintiff's older brother told [TSN](#) that his brother told him through a text message "there is no deal yet" and that Steve Moore was not "sure what to do about all the media speculation" that a deal had been reached. This was followed on Wednesday by an announcement by the Vancouver Canucks hockey team that said, "Canucks Sports & Entertainment confirms that a

mutually agreeable and confidential settlement of the action commenced by Steve Moore against Todd Bertuzzi and the Vancouver Canucks has been reached,” the hockey club said in its statement. “The settlement is a result of mediation sessions with former Ontario Chief Justice [Warren Winkler](#). No further details will be disclosed and the Canucks respectfully decline requests for comment.”

And there the matter sits. Although by this morning (Saturday) the press seems to have come around to the conclusion there is a deal, neither Moore’s lawyer [Tim Danson](#) nor [Alan D’Silva](#) — a lawyer who represents Canucks Sports and Entertainment — returned several messages from reporters seeking comment. With all the interests at play in this case and the intense pressure on all parties, some have speculated that the announcement of a settlement is some sort of negotiating tactic although it’s hard to see how that could possibly be. Until we hear from the plaintiff and his lawyer the speculation will continue.

By the way, this litigation has generated a case book of reported decisions on a variety of procedural matters a summary of which can be seen [here](#). From a mediator’s perspective the most important reported decision is [this one](#) dealing with the issue of whether a plaintiff is entitled to disclosure of a settlement agreement reached between defendants and a third party. Answer: yes. (Upheld on appeal, [here](#)).

I’ll keep you posted.

Update (Sept. 4/14): Turns out there is a deal. Media report confirming the settlement can be seen [here](#).