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UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

IN RE: NATIONAL FOOTBALL LEAGUE PLAYERS' CONCUSSION INJURY LITIGATION

No. 2:12-md-02323-AB

MDL No. 2323

Hon. Anita B. Brody

Kevin Turner and Shawn Wooden, *on behalf of themselves and others similarly situated*,

Plaintiffs,

v.

National Football League and NFL Properties LLC, successor-in-interest to NFL Properties, Inc.,

Defendants.

Civ. Action No. 14-00029-AB

THIS DOCUMENT RELATES TO:
ALL ACTIONS

CO-LEAD CLASS COUNSELS' PETITION FOR AN AWARD OF ATTORNEYS' FEES, REIMBURSEMENT OF COSTS AND EXPENSES, ADOPTION OF A SET-ASIDE OF FIVE PERCENT OF EACH MONETARY AWARD AND DERIVATIVE CLAIMANT AWARD, AND CASE CONTRIBUTION AWARDS TO CLASS REPRESENTATIVES

Co-Lead Class Counsel respectfully move, pursuant to Rule 23(h) of the Federal Rules of Civil Procedure and Section 21.1 of the Class Action Settlement Agreement, as amended (ECF No. 6481-1) ("Settlement") for the entry of an Order (i) awarding attorneys' fees and reimbursement of costs and litigation expenses for their work to date in this litigation; (ii) conferring upon Co-Lead Counsel Christopher A. Seeger the responsibility and discretion to make the allocation of the attorneys' fees and costs and expenses award among those Plaintiffs' Counsel seeking compensation for common benefit work and common benefit costs and expenses incurred; (iii)

adopting a set-aside of five percent of each Monetary Award and Derivative Claimant Award under the Settlement, for the purpose of reimbursing counsel for future common benefit work and expenses in connection with implementation of the Settlement; and (iv) making case contribution (or incentive or service) awards to the three representatives of the settlement Class (or, where appropriate, to their estates) for their invaluable contributions in connection with the achievement of the Settlement.

The reasons supporting these requests are fully set forth in the accompanying memorandum of law and the Declaration of Christopher A. Seeger, dated February 13, 2017, and exhibits thereto. A proposed Order is submitted herewith.

Dated: February 13, 2017

Respectfully submitted,

s/ Christopher A. Seeger
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CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing was served on all counsel of record via the Court's ECF system on February 13, 2017.

s/ Christopher A. Seeger
Christopher A. Seeger

UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

IN RE: NATIONAL FOOTBALL LEAGUE PLAYERS' CONCUSSION INJURY LITIGATION

No. 2:12-md-02323-AB

MDL No. 2323

Hon. Anita B. Brody

Kevin Turner and Shawn Wooden, *on behalf of themselves and others similarly situated*,

Plaintiffs,

v.

National Football League and NFL Properties LLC, successor-in-interest to NFL Properties, Inc.,

Defendants.

Civ. Action No. 14-00029-AB

THIS DOCUMENT RELATES TO:
ALL ACTIONS

MEMORANDUM OF LAW IN SUPPORT OF CO-LEAD CLASS COUNSELS' PETITION FOR AN AWARD OF ATTORNEYS' FEES, REIMBURSEMENT OF COSTS AND EXPENSES, ADOPTION OF A SET-ASIDE OF EACH MONETARY AWARD AND DERIVATIVE CLAIMANT AWARD, AND CASE CONTRIBUTION AWARDS FOR CLASS REPRESENTATIVES

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I. INTRODUCTION

On December 12, 2016, following years of hard-fought litigation, negotiation, and ultimately, numerous challenges on appeal, the United States Supreme Court denied further review of the historic and groundbreaking settlement negotiated by Plaintiffs' Counsel and approved by this Court.[1] With the High Court's denial, the Settlement has become effective, and the program established thereunder is now poised to begin providing settlement benefits to the more than 20,000 Retired National Football League Players that comprise the Class.

With the Settlement now effective (and in anticipation thereof), Plaintiffs' Counsel has engaged in months of regular meetings with the Court-appointed Claims, Baseline Assessment Program ("BAP"), and Lien Resolution Administrators, and the NFL Parties to negotiate the documents and processes that will be used for registration, the BAP, and the claims process, and to further establish the independent Provider and Physician Networks that will provide diagnostic services for the Retired NFL Football Players.[2] As a result, the BAP and claims process, the two cornerstones of the Settlement Agreement ("Settlement"), will be delivering benefits to Class Members shortly, now that registration has begun (as of February 6, 2017), and the program is expected to begin delivering benefits to Class Members in the next several months.

What is now recognized as a landmark settlement began over five years ago as a high-risk, long-odds litigation undertaken by Plaintiffs' Counsel on a wholly contingent basis. From the outset, Plaintiffs' Counsel committed substantial time, resources, and expertise in pursuit of recovery for retired NFL players and their families. *See* Decl. of Christopher A. Seeger in

[1] In accordance with Sup. Ct. R. 44(2) & 45(2)-(3), the Supreme Court's disposition became final on January 6, 2016, upon the expiration of the time for filing a rehearing petition.

[2] This term is employed as defined in the Settlement. *See* Settlement § 2.1(ffff) [ECF No. 6481-1, at 18].

Support of Co-Lead Class Counsel's Petition for an Award of Attorneys' Fees and Expenses, dated February 13, 2017 ("Seeger Decl.") ¶ 4. Indeed, over the course of those years, Plaintiffs' Counsel expended many thousands of hours of attorney and professional time, and incurred and advanced millions of dollars in expenses, for the benefit of the Class, to achieve and facilitate the Settlement that is now effective.

In that respect, the parties' Settlement, approved by the Court in April 2015, provides that "the NFL Parties shall pay class attorneys' fees and reasonable costs," and that "Class Counsel shall be entitled . . . to petition the Court on behalf of all entitled attorneys for an award of class attorneys' fees and reasonable costs." Settlement § 21.1 [ECF No. 6481-1, at 81-82].[3] The NFL Parties have agreed not to oppose or object to a petition seeking an award of class attorneys' fees and reasonable costs of up to $112.5 million. *Id*.

With the Settlement now effective, through the instant application, Co-Lead Class Counsel Christopher A. Seeger of Seeger Weiss LLP, and Sol Weiss of Anapol Weiss ("Petitioners"), on behalf of Plaintiff's Counsel,[4] respectfully petition the Court for an award of attorneys' fees and reimbursement of costs and litigation expenses for their work to date in this litigation.

[3] All page number references in this memorandum to documents filed on the Court's ECF system are to the ECF pagination rather than the pagination at the bottom of the original document.

[4] "Plaintiffs' Counsel" refers collectively to the lawyers and law firms that comprise the Plaintiffs' Executive Committee and the Plaintiffs' Steering Committee. The Court's Case Management Orders ("CMO") Nos. 2 and 3 [ECF Nos. 64, 72] appointed those firms to their respective positions. "Plaintiffs' Counsel" also includes the law firms that have done important common benefit work for the litigation, approved by Co-Lead Class Counsel, and are submitting declarations in support of this Petition.

In addition, as provided by section 21.1 of the Settlement, Plaintiffs' Counsel further requests the holdback of five percent of each Monetary Award and Derivative Claimant Award. The funds provided by such holdbacks are designed to support the substantial common benefit work that will be necessary over the 65-year life of the Settlement program, so as to ensure that Class Members receive the Monetary Awards or other benefits to which they are entitled.[5] Plaintiffs' Counsel must accomplish numerous tasks in overseeing the implementation of the Settlement – including the administration of the Monetary Award Fund ("MAF") and BAP, as well as the appeals process – to ensure that the Settlement program is properly administered and provides appropriate benefits to all eligible Retired NFL Football Players and their family members. Given the 65-year duration of the MAF, Plaintiffs' Counsels' obligations with respect to the administration of the Settlement will continue for many years.

Lastly, Plaintiffs' Counsel requests Case Contribution Awards of $100,000 for the Class Representatives. Subclass 1 representatives Corey Swinson[6] and Shawn Wooden and Subclass 2 representative Kevin Turner[7] all made invaluable contributions to the achievement of the Settlement, and are fully deserving of this incentive award.

Petitioners seek a total award of $112.5 million. The request covers both attorneys' fees and reimbursement of costs and out-of-pocket expenses. The attorneys' fee request is $106,817,220.62, which, as discussed in further detail below, represents about nine percent of

[5] Should the Court approve the request for the set-aside, Plaintiffs' Counsel will submit a detailed plan for administering and allocating these funds. Seeger Decl. ¶ 119.

[6] Corey Swinson passed away suddenly in September 2013. Therefore, Petitioners seek an incentive award to be paid to Plaintiff Swinson's estate. Seeger Decl. ¶ 122.

[7] Kevin Turner passed away on March 24, 2016 due to Amyotrophic Lateral Sclerosis ("ALS"). Seeger Decl. ¶ 129. Accordingly, Petitioners seek an incentive award to be paid to Plaintiff Turner's estate.

the value of the benefits conferred on the Class and is well within the ranges accepted by courts within this Circuit. Petitioners' reimbursable out-of-pocket expenses are $5,682,779.38. For lodestar cross-check purposes, the lodestar amassed by Plaintiffs' Counsel since the inception of this multidistrict litigation ("MDL") in connection with common benefit work is $40,559,978.60. This Petition, together with the accompanying supporting declarations, sets forth the extensive work that was undertaken by all Plaintiffs' Counsel to obtain the extraordinary relief recovered for the Class. The requested fee is reasonable and appropriate, particularly given the complex subject matter of the case, the exceptional results achieved against daunting odds, the substantial litigation risks incurred by Plaintiffs' Counsel, and the overwhelmingly strong support for the Settlement from the Class following nearly unprecedented media attention and public scrutiny.

The requested award will be used to compensate the attorneys listed in this Petition only for common benefit work performed in this MDL to date. A number of law firms involved in this litigation were retained by individual Class Member clients. This petition does not include attorney time or expenses specific to their individual clients' cases.[8]

When compared with numerous fee awards granted in this District, the totality of the global fee request represents a relatively modest percentage of the recovery achieved under the Settlement. As demonstrated below, the fee award requested herein falls easily within acceptable limits established by the Third Circuit's attorneys' fees jurisprudence.

[8] Co-Lead Class Counsel's firm, Seeger Weiss LLP, had been individually retained by a number of Class Members. Seeger Weiss has waived attorneys' fees and expenses from Class Members whom the firm represents on an individual basis, and will seek compensation solely from common benefit funds given that its work and expenditures have overwhelmingly focused on common benefit efforts. Seeger Decl. ¶ 98. Other firms, however, are asserting their rights to be compensated pursuant to their retainers for work done on behalf of their individual clients. *See* ECF Nos. 7071, 7073, 7075, 7085.

Finally, Plaintiffs' Counsel request that, as is frequently done in the case of class action common benefit fee awards, the discretion and responsibility to allocate the fees be entrusted to Co-Lead Class Counsel Christopher A. Seeger, who has exercised overall oversight and leadership of this litigation and thus has familiarity with the roles and contributions of participating Plaintiffs' Counsel. Seeger Decl. ¶ 99.

II. THE SETTLEMENT BENEFITS

The groundbreaking global resolution in this MDL was the result of many months of intense, hard-fought, arm's-length negotiations among the parties, encompassing collectively thousands of hours of professional time with substantial input from medical, actuarial, and other experts. Plaintiffs' Counsel fully brought to bear their abundant experience in complex litigation to conceive, structure, and gain approval of an agreement that will protect many thousands of Retired NFL Football Players and their families for decades. The Settlement resolves the claims of the more than 5,000 cases filed directly in or transferred to this MDL, as well as the claims of thousands of additional Retired Players against the NFL Parties for injunctive relief, medical monitoring, and compensation for the long-term neurocognitive and neuromuscular injuries and other losses suffered by them allegedly as a result of the Defendants' tortious conduct. Seeger Decl. ¶ 11.

The reach and relief offered by the Settlement is substantial and without easy comparison. Retired NFL Football Players who last played in the league long ago, and who have yet to develop a Qualifying Diagnosis, will receive full value for any ultimate qualifying claim – regardless of whether they commenced an underlying action. The novel resolution provided by the Settlement provides broad reach and protection to Retired NFL Football Players and their families.

Plaintiffs' Counsel negotiated to ensure that the Settlement created an uncapped MAF to provide much-needed relief to (i) seriously injured retired players with a "Qualifying Diagnosis" of Level 1.5 Neurocognitive Impairment (early dementia), Level 2 Neurocognitive Impairment (moderate dementia), Alzheimer's Disease, Parkinson's Disease, and/or ALS; (ii) the representatives of deceased players who received a Qualifying Diagnosis while living; and (iii) the representatives of certain players who died before Final Approval (April 22, 2015) and were diagnosed post-mortem with Chronic Traumatic Encephalopathy ("CTE"), and their families. In the event a players' condition worsens, he and his family will be able to seek additional payments. The MAF will be available for 65 years to ensure that even the youngest retired players will have an opportunity to receive these benefits should they become eligible. Importantly, in order to receive a Monetary Award, Class Members will *not* be required to prove that their injuries were caused by the NFL Parties, let alone concussions suffered during professional football play.

Significantly, the Settlement preserves Retired NFL Football Players' rights to pursue claims for worker's compensation and any and all medical and disability benefits under any applicable collective bargaining agreement, including the NFL's Neuro-Cognitive Disability Benefit. In addition, the Settlement ensures that the provision included in Article 65 of the current collective bargaining agreement ("CBA"), Section 2 – requiring that players execute a release of claims and covenant not to sue in order to be eligible for the NFL's Neuro-Cognitive Disability Benefit – will not be enforced or used against players in connection with the Settlement.

The Settlement also establishes a $75 million BAP designed to determine the existence and extent of cognitive impairment in living Retired NFL Football Players. In the event that they

are found to suffer from moderate cognitive impairment ("Level 1 Neurocognitive Impairment"), they will be entitled to supplemental benefits in the form of medical treatment and/or evaluation, including counseling and pharmaceutical coverage. Another component of the Settlement is a $10 million Education Fund to promote safety and injury prevention in football players, including youth football players, and to educate Retired NFL Players regarding the NFL's medical and disability benefits programs and initiatives.

The MAF and the BAP are highly innovative means to implement major objectives of the Settlement. These objectives are to provide the opportunity for Retired NFL Football Players to obtain diagnoses and compensation. The level of planning, research, and coordination required to establish two nationwide networks of board-certified, highly-qualified medical professionals is extremely high, and required a substantial amount of behind-the-scenes work by Plaintiffs' Counsel. Moreover, information gained through the BAP, combined with the Education Fund, has the potential to greatly improve the understanding, and treatment of head injuries generally, including football and other sports.

This Settlement received unprecedented publicity (and scrutiny) from the moment of its announcement. Considering the ubiquity of the news reports and associated public attention concerning the Settlement and the state-of-the-art class notice program, the reaction of the Class has been extremely favorable. Fewer than one percent of Class Members filed requests for exclusion,[9] and over 12,000 potential Settlement beneficiaries and their counsel have signed up to receive further notices regarding the Settlement and claims process. Declaration of Orran L. Brown, Sr., in Support of Co-Lead Class Counsels' Petition for an Award of Attorneys' Fees and

[9] The number of opt-outs continues to decrease. Nineteen Class Members who had opted out have, with the Settling Parties' agreement and the Court's approval, rescinded their decision and rejoined the Class. *See* ECF Nos. 7117-1 (¶¶ 5-6), 7119.

Expenses, dated Feb. 8, 2017 ("Brown Decl."), at 3-4. Since the registration period opened on February 6, 2017, the Settlement Claims Administrator has received over 6,100 registrants. Seeger Decl. ¶ 11. This high level of favorable response is remarkable.

Plaintiffs' Counsel expended a great deal of time, energy, and resources to defend this historic Settlement against challenges filed in this Court, the Third Circuit, and the Supreme Court by objectors who doggedly pursued their objections and appeals. Those relentless challenges threatened not only to undo the Settlement itself but also to irreversibly wreck any prospect of a class-wide resolution of the Plaintiffs' claims in this MDL. Until the Supreme Court declined consideration of the last of those misguided challenges, long-awaited relief could not begin flowing to Class Members. As the Court is aware from recent filings, including applications for approval of pre-registration and supplemental notice to Class Members, Plaintiffs' Counsel is currently taking the final steps antecedent to the launch of the Settlement program. *E.g.*, ECF Nos. 7104, 7115 (Orders approving amended pre-registration notice and Supplemental Class Notice); Seeger Decl. ¶¶ 107-18 (discussing initial and long-term implementation steps).

III. PROCEDURAL HISTORY

A. Initiation of NFL Players' Concussion Injury Litigation and Formation of the MDL

This MDL was established on January 31, 2012 when the Judicial Panel on Multidistrict Litigation ("JPML") centralized the actions filed against the NFL Parties and the Riddell Defendants by dozens of former NFL players and certain of their wives in this District for coordinated pretrial proceedings, pursuant to 28 U.S.C. § 1407. *See In re Nat'l Football League Players' Concussion Injury Litig.*, 842 F. Supp. 2d 1378 (J.P.M.L. 2012). The JPML found that these cases "share[d] factual issues arising from allegations against the NFL stemming from

injuries sustained while playing professional football, including damages resulting from the permanent long-term effects of concussions while playing professional football in the NFL" and that "centralization under Section 1407 in the Eastern District of Pennsylvania w[ould] serve the convenience of the parties and witnesses and promote the just and efficient conduct of the litigation." *Id.* at 1379. By the time of argument on the Section 1407 centralization motion in January 2012, sixteen potentially related actions pending against the NFL Parties were before the JPML. *Id.* at 1378. Soon thereafter, 123 cases were directly filed in the MDL or removed from Pennsylvania state court to this Court, and the JPML transferred an additional 163 cases to the MDL. Seeger Decl. ¶ 13.

B. Early Proceedings in This Court

At the first MDL status conference on April 25, 2012, the Court selected Christopher A. Seeger of Seeger Weiss LLP as Plaintiffs' Co-Lead Counsel for the MDL proceedings, and requested that another co-lead counsel from a Philadelphia-based firm also be selected. CMO No. 2 [ECF No. 64]. Plaintiffs selected and the Court confirmed the appointment of Sol Weiss of Anapol Schwartz (now Anapol Weiss) as Co-Lead Counsel. CMO No. 3 [ECF No. 72]. Plaintiffs also created and the Court appointed a Plaintiffs' Executive Committee ("PEC") and a Plaintiffs' Steering Committee ("PSC") composed of several of the counsel for Plaintiffs in the cases pending before the Court. ECF Nos. 64, 72. The PEC included counsel who were ultimately also appointed as Class Counsel, Gene Locks and Steven C. Marks, and the PSC included those ultimately also appointed as Subclass Counsel, Arnold Levin and Dianne M. Nast.[10] Seeger Decl. ¶¶ 14-15.

[10] The Court later appointed Class Counsel and Subclass Counsel, resulting in Messrs. Seeger's and Weiss' positions ultimately changing from Co-Lead Counsel to Co-Lead Class Counsel, in accordance with the Preliminary Approval Order, dated July 7, 2014 [ECF No.

(Footnote continued . . .)

As part of its initial case management orders, the Court identified the NFL Parties' preemption defense under Section 301 of the Labor Management Relations Act ("LMRA"), 29 U.S.C. § 185, as a threshold legal issue to be addressed before proceeding to the broader merits of Plaintiffs' claims. CMO No. 2 at 2-3; CMO No. 4 [ECF No. 98] ¶ 3. Accordingly, the Court stayed formal discovery, ECF No. 3384, and set a schedule for the filing of Plaintiffs' Master Administrative Complaints and for the NFL Parties to brief the threshold legal issue of whether Plaintiffs' claims were preempted by federal labor law. ECF No. 64.

Thereafter, Plaintiffs' Counsel conducted significant investigation and research in connection with the preparation of and filing of these complaints, preparing 50-state surveys on medical monitoring, preemption, tolling, and fraudulent concealment. Plaintiffs' Counsel also examined the worker's compensation laws of the fifty states during this time. Seeger Decl. ¶ 18. On June 7, 2012, Plaintiffs' Counsel filed a Master Administrative Long-Form Complaint, ECF No. 83, and a Master Administrative Class Action Complaint for Medical Monitoring, ECF No. 84. On July 17, 2012, Plaintiffs then filed an Amended Master Administrative Long-Form Complaint, ECF No. 2642. Seeger Decl. ¶¶ 16-17.

On August 30, 2012, the NFL Parties filed motions to dismiss the operative complaints on federal preemption grounds. ECF Nos. 3589, 3590. Plaintiffs' Counsel prepared and filed opposition papers to the motions, ECF Nos. 4130-34. The NFL Parties filed reply papers, ECF Nos. 4254-55, and Plaintiffs' sur-replies closed the briefing, ECF Nos. 4589, 4591. Mindful that the fate of the litigation hinged on the preemption motions, Plaintiffs' Counsel spent significant time analyzing, researching, drafting, and discussing their opposition to the NFL Parties'

6084]. These appointments were confirmed upon Final Approval on April 22, 2015 [ECF No. 6510].

motions.[11] Plaintiffs' Counsel also conducted several mooting sessions, which included leading academics and practitioners in the field, to prepare for oral argument. The Court heard oral argument on the motions on April 9, 2013. ECF Nos. 4737-38; Seeger Decl. ¶ 20.

Early in this high-profile litigation, Plaintiffs' Counsel conceived, organized, and directed a communications strategy, so as to ensure that the broader player community (and the public at large) was fully apprised of the factual, medical, and legal issues encompassed by Plaintiffs' claims and the litigation, and to counteract any misinformation from whatever source. *Id.* ¶ 33. Plaintiffs' Counsel worked closely with one another to implement the Plaintiffs' communications strategy, which involved consistent and committed efforts both before and after the Settlement was announced. *Id*.

At the outset of this litigation, the Court advised the Parties to explore the possibility of settlement. Consistent with that instruction, and with Plaintiffs' Counsels' fiduciary duties to zealously represent the interests of all Retired NFL Football Players and their families, Plaintiffs' Counsel carefully evaluated the potential to settle Plaintiffs' claims. *Id*. ¶ 21. Counsel took into consideration the significance and severity of the alleged injuries, the scientific and medical issues relative to causation and concussions, and the ability to achieve through settlement "full value" compensation for serious concussion-related injuries without trials and appeals. *Id*. Counsel also weighed the inherent delays and costs involved in protracted litigation where so

[11] As discussed in further detail below, the NFL Parties had successfully employed the preemption defense in several member cases of this MDL, a fact the Court acknowledged in its opinion approving the Settlement. *See In re Nat'l Football League Players' Concussion Injury Litig.* ["*In re NFL*"], 307 F.R.D. 351, 391 (E.D. Pa. 2015) ("Other courts have accepted the NFL Parties' preemption arguments."). The Third Circuit also acknowledged this, stating that it "concur[ed] with the District Court that this factor weighed in favor of settlement because class members "face[d] stiff challenges surmounting the issues of preemption and causation." *In re NFL*, 821 F.3d 410, 439 (3d Cir. 2016).

many former players are extremely ill and dying, as well as the risks of litigation, including the array of potential defenses of the NFL Parties – particularly preemption, but also lack of causation, statutes of limitations, the statutory employer defense, and assumption of risk, among others. This evaluation involved the substantial abilities and committed efforts of Plaintiffs' legal and science teams. *Id.* ¶ 22.

Armed with a thorough assessment of the legal, factual, and scientific issues associated with Plaintiffs' claims, Plaintiffs' Counsel engaged the NFL Parties about the possibility of settlement. The parties thereafter commenced discussions regarding settlement structures and injury categories.[12] *Id.* ¶ 23.

C. Mediation

In early July 2013, in anticipation of its decision on the preemption motions, the Court "held an informal exploratory telephone conference with lead counsel [and directed the] parties, through their lead counsel, to engage in mediation to determine if consensual resolution [wa]s possible." ECF No. 5128. The Court appointed retired United States District Judge Layn R. Phillips as the mediator, and directed that Judge Phillips report back to the Court on or before September 3, 2013 as to the results of the mediation. *Id.*

Co-Lead Counsel formed a negotiating committee, consisting of Messrs. Seeger, Weiss, Levin, Locks, and Marks, and Ms. Nast (Mr. Levin and Ms. Nast being the respective counsel for the two Subclasses). Seeger Decl. ¶ 25; ECF Nos. 6423-3 ¶ 27, 6423-10 ¶¶ 5, 9, and 6423-11 ¶¶

[12] The Court has commended the intense preparations undertaken by Plaintiffs' Counsel prior to mediation. "A genuine dialogue between zealous and well-prepared adversaries transpired." *In re NFL*, 307 F.R.D. at 363. As the Court stated, "[t]he Parties came prepared for these discussions. The Parties had already retained well-qualified medical experts to help determine the merits of the case. These experts advised the Parties on difficult questions such as the type of head trauma associated with NFL Football and the long term health effects of trauma on Retired Players." *Id.*

6, 9. Mindful of the teachings of *Amchem Products, Inc. v. Windsor*, 521 U.S. 591 (1997), and its progeny, Plaintiffs' Counsel ensured adequate and unconflicted representation for all Class Members and the creation of Subclasses and separate representation for those currently diagnosed with injuries associated with concussive and sub-concussive head trauma and those without such current ailments. Seeger Decl. ¶ 25; ECF Nos. 6073-4 ¶¶ 7, 11; 6423-3 ¶¶ 11-12, 29; 6423-6 ¶ 7.

Plaintiffs' Counsel further investigated and analyzed the claims brought in the Complaints (including the creation and maintenance of a comprehensive database of the Plaintiffs' claims and symptoms collected from over 2,000 Retired NFL Players); retained medical and economic experts; became well-versed in the relevant medical literature[13] and related issues; and, having completed extensive briefing on the NFL Parties' preemption motions to dismiss, achieved a thorough appreciation of the merits of the threshold preemption arguments. Seeger Decl. ¶ 26; ECF No. 6423-3 ¶¶ 19-22, 25, 30, 32.

As part of Plaintiffs' Counsels' due diligence and consistent with their fiduciary responsibilities to the Class and Subclasses, Plaintiffs' Counsel engaged multiple experts in the fields of medicine, namely neurology, neuropsychology, and neuropsychiatry; actuarial science; economics; claims administration; and lien identification and satisfaction, all to determine, develop, and test an appropriate settlement framework to evaluate and meet the needs of Retired NFL Football Players suffering from or at increased risk for the claimed injuries related to

[13] Plaintiffs' Counsel and their experts conducted a comprehensive review of peer-reviewed medical literature to support settlement discussion and negotiations. With expert guidance, Plaintiffs' Counsel canvassed the peer-reviewed medical and scientific literature on, *inter alia*, brain injury, concussions, the effect of sub-concussive hits to the head on the brain, the epidemiology of the Qualifying Diagnoses, and the methods of diagnosis and treatment for the Qualifying Diagnoses. Seeger Decl. ¶ 29.

concussions and mild traumatic brain injury. Seeger Decl. ¶ 27; ECF Nos. 6423-3 ¶¶ 32, 43; 6423-17 ¶¶ 6-9; 6423-18 ¶ 21; 6423-19 ¶¶ 19, 25, 27. The economists and actuaries assisted Plaintiffs' Counsel in modeling the possible disease incidence and adequacy of funding for the monetary award levels contained in the Settlement. Seeger Decl. ¶ 27; ECF No. 6423-3 ¶ 30.

Plaintiffs' Counsel expended significant time, effort, and funding in preparation for, and during, the settlement discussions, which began in earnest in January 2013, and continued through the mediation process. For almost two months during the mediation process, the Plaintiffs' negotiating team worked at an intense and grueling pace, collectively expending thousands of professional hours and often working around the clock to negotiate a fair and reasonable class settlement on behalf of all retired NFL players, their representative claimants, and derivative claimants. Seeger Decl. ¶¶ 28-30.

Plaintiffs' Counsel, as well as Plaintiffs' experts, were greatly aided in their understanding of Retired NFL Players' head injuries, and the incidence of neurocognitive ailments, through the creation of the Retired NFL Player database. *Id.* ¶¶ 31-32. Analyzing the records of over 2,000 players, Plaintiffs' Counsel created, in essence, an epidemiological study of their clients. *Id.* This database required extensive professional work. The database was vitally important to the entire negotiation process, because it enabled Plaintiffs' Counsel to evaluate disease incidence and occurrence across the retired NFL player population, and appropriately model and negotiate settlement benefits. *Id.* It also served as a cross-check of the epidemiology of neurocognitive disease suffered by retired NFL players. *Id.*

Judge Phillips actively supervised numerous mediation sessions, presiding over dozens of in-person and telephonic meetings with counsel for both sides, either jointly or in separate groups. *Id.* ¶ 34. He also met with the parties' respective experts, without counsel present, to

obtain answers to questions he had regarding the scientific, actuarial, and financial aspects of the settlement. *Id.*; ECF No. 6073-4 (Phillips Decl.) ¶¶ 2 & 5-7; ECF No. 6423-6 ¶ 4. The mediation process culminated in the execution of a Term Sheet on August 29, 2013.

As the Court noted, during their initial negotiations, the Parties did not discuss fees until after the key terms of the settlement – including the total size of the original capped fund – were publicly announced on the docket. *In re NFL*, 307 F.R.D. at 374 ("According to [Judge] Phillips, the Parties were careful not to discuss fees until after the Court had announced, on the record, an agreement regarding the total compensation for Class Members."); *see* Phillips Supp. Decl. ¶¶ 18-19 [ECF No. 6423-6, at 9]; ECF No. 5235.[14]

D. Public Announcement of the Proposed Settlement and Further Negotiations

On August 29, 2013, the Court announced that "in accordance with the reporting requirements in [its] order of July 8, 2013, the Honorable Layn Phillips, the court-appointed mediator, [had] informed [the Court] that the plaintiffs and the NFL defendants had signed a Term Sheet incorporating the principal terms of a settlement." ECF No. 5235. In its Order, the Court reserved judgment on the fairness and adequacy of the settlement pending the Settling Parties' presentation to the Court of a settlement agreement, along with motions for preliminary and, eventually, final approval. *Id.*

Following the announcement of the August 29, 2013 term sheet, the parties proceeded to negotiate the detailed terms of the settlement agreement itself. Plaintiffs' Counsel conducted numerous meetings with the NFL, continued to work with their consultants, and spent significant

[14] As the Court further stated, "[b]ecause Class benefits were fixed by the time the Parties discussed fees, the amount given to the Class was not compromised." *In re NFL*, 307 F.R.D. at 374 (citing cases).

time researching an appropriate settlement claims process, to include appeal rights. *See* ECF Nos. 6423-3 ¶ 34, 6423-6 ¶¶ 2, 4.

On January 6, 2014 – after over four months of additional, extensive, and often grueling negotiations – Co-Lead Class Counsel completed negotiation of the settlement agreement and submitted a motion for preliminary approval of a class action settlement incorporating the terms of the settlement agreement. Seeger Decl. ¶ 39; ECF No. 5634-5. This settlement agreement limited the funding of the MAF to $675 million, which the parties and their actuarial and economic experts believed would be sufficient to pay all benefits throughout the 65-year term of the proposed settlement. Class Action Settlement Agreement [ECF No. 5634-2] § 23.1 (Jan. 6, 2014); Report of Analysis Research Planning Corp. to Special Master Perry Golkin [ECF No. 6167] at 33-36; Report of the Segal Group to Special Master Perry Golkin [ECF No. 6168] ¶¶ 19-20. Also on January 6, 2014, Co-Lead Class Counsel, Class Counsel, and Subclass Counsel filed the class action complaint in *Turner v. NFL*, No. 14-cv-00029-AB (E.D. Pa.), naming Plaintiffs Kevin Turner and Shawn Wooden as proposed Class Representatives. Seeger Decl. ¶ 40; ECF No. 5634.

E. Court Appointment of Special Master Perry Golkin

On December 16, 2013, pursuant to Fed. R. Civ. P. 53, the Court appointed Perry Golkin to serve as Special Master to assist the Court in evaluating the financial aspects of the proposed settlement in view of its financial complexities. Seeger Decl. ¶ 38.

F. Initial Preliminary Class Certification Motion and Decision

Plaintiffs' Counsel researched, briefed, and filed their initial motion for preliminary approval of the settlement and certification of a settlement class on January 6, 2014. ECF No. 5634. This motion consisted of the negotiated settlement agreement; multiple supporting declarations from Class Counsel, Subclass Counsel, and player representatives; and extensive

briefing. On January 14, 2014, the Court denied the motion without prejudice. ECF No. 5657. The Court praised the "commendable effort" of the parties to reach the negotiated class action settlement, but expressed concern as to the adequacy of the proposed $675 million MAF, in light of the 65-year lifespan of the MAF, the settlement class size of more than 20,000 members, and the potential magnitude of the awards. Seeger Decl. ¶ 41. The Court directed the parties to share the documentation described in their submissions with the Special Master. *Id*.; ECF No. 5658.

G. Renegotiations and Preliminary Approval

Guided by the Court's Memorandum Opinion and the Special Master, the parties worked nearly around the clock from January to June 2014 to provide the Court with the assurance that "all Retired NFL Football Players who ultimately receive a Qualifying Diagnosis or their related claimants will be paid." Seeger Decl. ¶ 42; ECF No. 5657 at 10. The parties and their actuarial and economic experts met separately with Special Master Golkin and with one another to further analyze the data and to determine whether, and if so, in what manner, the settlement could be amended that would be acceptable to the parties while at the same time satisfying the Court's concerns. Seeger Decl. ¶ 42. Notably, Plaintiffs' Counsel refined and tightened definitions of key terms in the Settlement, and improved claim procedures in order to protect against fraud.[15]

[15] The concerns about fraud and abuse were not idle. Aside from these concerns being overriding to the NFL Parties were the MAF to be uncapped, Plaintiffs' Counsel was fully aware of the need to ensure the integrity of the Settlement's claims process. In *In re Diet Drugs*, a settlement in this District that contained a testing component, the Court was faced with a motion "to disqualify all 60,000 echocardiograms conducted by a company known as EchoMotion from supporting claims for matrix benefits on the grounds that these echocardiograms were not 'conducted under the supervision' of a Board-Certified Cardiologist as required by § VI.C.1.b(4) of the Settlement Agreement." Whether "the individuals performing these echocardiograms were properly supervised by cardiologists and whether these echocardiograms therefore should be disregarded in determining benefits [became] a major controversy before the court." Questions regarding the echocardiograms "generated many hotly contested issues and substantial motion practice" which "unduly delayed the payment of valid claims." *In re Diet Drugs Prods. Liab. Litig*., 226 F.R.D. 498, 507-08 (E.D. Pa. 2005).

These changes were the result of significant analysis, coordination, and research, and required many hundreds of attorney hours to accomplish. *Id*. ¶ 43. These further analyses led to an uncapping of the deal and a revised settlement agreement. *Id*.

Under the revised agreement, the NFL Parties were to pay all valid claims for the next 65 years, and the MAF was no longer fixed at $675 million. *Id*. ¶ 44. The NFL Parties became responsible for providing all of the funding for the MAF, BAP, and Education Fund, as well as paying, either directly or through their funding of the MAF or the BAP, for Class Notice costs, class attorneys' fees, and the fees and expenses of the Special Master, Claims Administrator, and BAP Administrator, as well as certain fees of the Lien Resolution Administrator. *Id*. During this additional five-month negotiation, Plaintiffs' Counsel was assisted by Special Master Golkin, numerous medical experts, and actuaries and economists. *Id*. ¶ 45. Plaintiffs' Counsel modified the settlement documents to reflect these new features and prepared new briefing to support approval of the revised agreement. *Id.*

On June 25, 2014, Plaintiffs' Counsel filed a motion for preliminary approval of the revised proposed settlement agreement and for preliminary class certification. ECF No. 6073. On July 7, 2014, the Court granted preliminary certification and approval of the settlement, ECF Nos. 6083-84, and on July 9, 2014, approved the notice to be disseminated to putative Class Members, ECF No. 6093. Seeger Decl. ¶ 46. Plaintiffs' Counsel established and supervised the set-up of the informational website "www.NFLconcussionsettlement.com," which has provided invaluable information to Class Members and has allowed the Claims Administrator to refine the data in its Class Member database, improving its ability to provide information to the Class. *Id*. ¶ 47.

The Settlement website has been a tremendous source of information for Retired NFL Players and family members. As of February 6, 2017, it had already received over 180,000 unique visits; it provides access to the Settlement Agreement, the Court-approved notices, the Court's Orders and frequently asked questions, among other documents and information. Brown Decl. at 2. The Claims Administrator's other efforts to provide accurate information to Class Members, coordinated with Plaintiffs' Counsel, have been equally successful. The Claims Administrator has received over 1,000 written communications and responded to those that asked questions about the Settlement. *Id*. The Settlement Call Center has received over 14,000 calls with well over 7,000 of these callers speaking directly to live operators, for a combined total of nearly 500 hours. *Id.* at 3.

Starting after the Court granted preliminary approval to the Settlement, and continuing to the present, Co-Lead Counsel, as well as other Plaintiffs' Counsel, have devoted hundreds of hours to communicating with Retired NFL Players and family members concerning the Settlement. Seeger Decl. ¶ 51. Co-Lead Class Counsel has conducted multiple seminars and presentations with Retired NFL Player groups throughout the country, including presentations at the Super Bowl and the Pro Football Hall of Fame. *Id*. These well-attended sessions have educated Retired NFL Players about the Settlement's benefits and procedures, and have been a valuable and effective means of spreading information about the Settlement. *Id*. ¶ 52. Co-Lead Class Counsel also hosted a series of webinars, with the same goal of increasing awareness of the Settlement. Co-Lead Class Counsel also hosts frequent telephone conference calls with Retired NFL Players and family members to provide updates on the Settlement. *Id*.

H. First Appeal and Multiple Briefings

After preliminary approval, Plaintiffs' Counsel dealt with a wide array of motions and attempted interlocutory appeals by certain objectors. *Id*. ¶ 53. A group of objectors, represented

by Steven F. Molo of MoloLamken LLP, filed a petition for interlocutory review with the Third Circuit, arguing that immediate review of the Court's preliminary approval was appropriate under Federal Rule of Civil Procedure 23(f) because of the Court's provisional certification of a settlement class. *Id.* Those objectors protested the fairness of the proposed settlement and challenged the preliminary class certification. They maintained that Rule 23(f) allowed immediate appellate review even though there had been no final ruling on class certification. *Id.*

Plaintiffs' Counsel and the NFL Parties both filed opposition papers to the 23(f) petition and, after requesting a reply brief from the objectors represented by Mr. Molo, the Third Circuit heard oral argument on September 10, 2014. *Id.* ¶ 54. The Court of Appeals denied the petition the next day in a one-page order. ECF No. 6166. The Court subsequently issued a written opinion explaining its ruling, *see In re NFL*, 775 F.3d 570 (3d Cir. 2014). The majority held that the Third Circuit lacked appellate jurisdiction under Rule 23(f) because this Court had "yet to issue 'an order granting or denying class certification.'" *Id.* at 588-89.[16]

In addition to this unsuccessful 23(f) attack, six other Class Members, led by Roy Green and represented by three Missouri-based law firms, mounted their own challenge, filing an appeal to the Third Circuit by invoking appellate jurisdiction under 28 U.S.C. § 1292(a)(1), on the reasoning that this Court's Preliminary Approval Order had enjoined Class Members' prosecution of litigation against the NFL Parties and was therefore an interlocutory order granting an injunction. Seeger Decl. ¶ 55. Following the completion of briefing of that appeal, Class Plaintiffs successfully moved to dismiss it as moot because, in the meantime, the

[16] Judge Ambro dissented from that jurisdictional rationale but nonetheless concurred that the petition should be denied because the Molo-led objectors were creating "inefficient (indeed, chaotic) piecemeal litigation that would interfere with the formal fairness hearing on the settlement." *Id.* at 589.

appellants had opted out of the settlement class and were hence no longer Class Members subject to any injunction. *See In re NFL*, No. 14-3520 (3d Cir. June 4, 2015) (Order dismissing appeal).

In addition to fending off these interlocutory appellate attacks, Plaintiffs' Counsel handled a myriad of other motions during this time, all in an effort to expedite the process and begin implementation of the Settlement. Seeger Decl. ¶ 56. These included third-party intervention motions seeking access to documents[17]; Class Member bids to take discovery of Class Counsel as to how the Settlement was negotiated or requests to obtain additional information about the Settlement[18]; motions to intervene[19]; motions seeking to extend the opt-out deadline[20]; requests for *amicus curiae* participation in the Rule 23(e) fairness proceedings[21]; and a motion to prevent improper communication with Class Members.[22]

I. Fairness Hearing

The Court received all timely objections to the Settlement by October 14, 2014. On November 12, 2014, Plaintiffs' Counsel filed their brief and extensive exhibits in support of final approval. ECF No. 6423. Plaintiffs' thorough briefing addressed objections by approximately

[17] ECF No. 6101 (July 24, 2014) (Am. Mot. to Intervene to Seek Access to Docs. and Inform., filed by Bloomberg L.P., ESPN, Inc.).

[18] ECF No. 6155 (July 31, 2014) (Mot. to Permit Access to Med., Actuarial, and Econ. Info. Used to Support the Settlement Proposal); ECF No. 6169 (Morey Plaintiffs' motion for leave to take "limited discovery").

[19] ECF No. 6131 (Aug. 13, 2014) (Mot. to Intervene, filed by Richard Dent).

[20] ECF No. 6172 (Sept. 19, 2014) (Emergency Mot. to Modify or Amend the July 7, 2014 Order Requiring Opt-Outs on or before Oct. 14, 2014).

[21] ECF No. 6180 (Sept. 30, 2014) (Mot. for Leave to File *Amicus Curiae* Brief in opposition to final approval of the settlement, filed by Brain Injury Ass'n of Am.); ECF No. 6214 (Oct. 14, 2014 (Mot. for Leave to File *Amicus Curiae* Mem., filed by Pub. Citizen).

[22] ECF No. 6257 (Oct. 24, 2014) (Motion for Order Prohibiting Improper Communications with the Class by MoloLamken LLP, filed by Mr. Seeger).

200 represented and pro se objectors, and fully described the Settlement. Seeger Decl. ¶ 57. Plaintiffs' Counsel prepared the Class's motion for final approval of the Settlement, as well as the supporting memorandum of law. They coordinated extensively with the Settlement's administrative support providers in securing the latter's declarations in support of the final approval motion. *Id*. These included Katherine Kinsella, for the notice plan; the Garretson Firm, for lien administration; and BrownGreer, for claims administration. Plaintiffs' Counsel also continued their work with several medical and other experts – including Drs. Kenneth C. Fischer (neurology), Christopher C. Giza (neurology and neurosurgery), David Hovda (neurosurgery and brain injury), Richard Hamilton (sports concussions), and John Keilp (neuropsychology) – and submitted declarations regarding the science on various points raised by objectors. *Id*. ¶¶ 59-60; *see also* ECF Nos. 6423-17 to 6423-20, 6423-23.[23]

The Court held an all-day Fairness Hearing, pursuant to Rule 23(e)(2), on November 19, 2014. *See* Fairness Hr'g Tr., Nov. 19, 2014 [ECF No. 6463]. At that hearing, the Court heard from fourteen counsel for the various objector groups and the Settling Parties, and from five

[23] Although he did not submit a declaration for Plaintiffs' final approval papers, Dr. Grant Iverson also worked extensively with Plaintiffs' Counsel. Seeger Decl. ¶ 61. Dr. Iverson is a professor at Harvard Medical School in the Department of Physical Medicine and Rehabilitation. He is a specialist in neuropsychology and a clinician scientist in the area of mild traumatic brain injury and mental health. He has an internationally-recognized research program concerning outcomes from mild traumatic brain injury suffered by athletes, civilians, military service members, and veterans. His work was instrumental in designing the BAP testing program. The work of Plaintiffs' expert Thomas Vasquez was also integral in modelling the economics of the proposed settlement during negotiations, based on financial and epidemiological principles. Dr. Vasquez is the Vice President of Analysis Research Planning Corporation and has over 35 years of experience in management consulting for private sector clients, and the development of economic models for the U.S. and foreign governments to analyze and develop tax, expenditure, and regulatory policy. His analysis assisted in developing a monetary award grid that could be used in negotiating claims and modeling the total cost of resolving all pending and future claims by former NFL players. Seeger Decl. ¶ 60; ECF No. 6423-21.

unrepresented objectors. ECF No. 6463 *passim*. Plaintiffs' Counsel prepared the comprehensive presentation for the Court for the Fairness Hearing, and Mr. Seeger and his partner, David Buchanan, presented on behalf of the Settling Plaintiffs. Seeger Decl. ¶ 58.

J. Post-Hearing Briefing and Court-Proposed Modifications to the Settlement

The Court permitted post-hearing briefing to address certain issues and to afford objectors additional time to file a response to Plaintiffs Counsels' final approval motion papers. *See* ECF Nos. 6444, 6453-56. In December 2014, Plaintiffs' Counsel filed their reply to the objectors' post-hearing submissions. ECF No. 6467.

On February 2, 2015, the Court "proposed several changes to the Settlement that would benefit Class Members." Seeger Decl. ¶ 63; ECF No. 6479. These were: (1) providing some "Eligible Season" credit for play in NFL Europe; (2) assuring that despite the $75 million cap on the BAP, all those timely registering will receive a baseline assessment examination; (3) moving the deadline for a "Death with CTE" award from the preliminary settlement approval date to the final approval date; (4) allowing for a waiver of the fee for appealing Monetary Award and Derivative Claimant Award determinations for those showing financial hardship; and (5) providing the opportunity to demonstrate a Qualifying Diagnosis without the required medical documentation in instances where such documentation was destroyed by a *force majeure* type event. Seeger Decl. ¶ 63.

After a new round of negotiations, Plaintiffs' Counsel secured agreement on every change that the Court suggested, and on February 13, 2015, the parties submitted a revised settlement agreement, which is the operative Settlement that the Court approved and is now effective in the wake of the Supreme Court's denial of *certiorari*. Seeger Decl. ¶ 64; ECF No. 6481-1. In connection with such approval, Plaintiffs' Counsel also prepared extensive proposed findings of fact and conclusions of law. ECF No. 6497.

K. Final Approval and Third Circuit Appeal

On April 22, 2015, the Court granted final approval to the Settlement (and final class certification). ECF Nos. 6509-10. The Court's published 132-page opinion exhaustively addressed class certification; the fairness, adequacy, and reasonableness of the Settlement; and, of course, the myriad arguments raised by the objectors. The Court issued an Amended Final Order and Judgment on May 8, 2015. ECF No. 6534.

On May 13, 2015, the first of several notices of appeal from the Court's grant of final approval was filed. ECF No. 6539. Ultimately, objectors filed eleven separate briefs in connection with the appeals from the Court's final approval decision. Seeger Decl. ¶ 67. The appeals were briefed in tandem and consolidated for argument and decision by the Third Circuit. *Id*. After receiving the objectors' briefs and those of the two *amici curiae* opposed to the Settlement (the Brain Injury Association of America ["BIAA"] and Public Citizen, who had also appeared in this Court as *amici curiae*), Plaintiffs' Counsel devoted extensive hours to analyzing the various briefs and researching and drafting their answering brief. *Id*. Also, Plaintiffs' Counsel prepared for and presented at the Third Circuit oral argument, which was held on November 19, 2015. *Id*.

On April 18, 2016, the Third Circuit issued a published opinion unanimously affirming this Court in all respects. *In re NFL*, 821 F.3d 410 (3d Cir. 2016). Certain objectors then filed petitions for *en banc* rehearing. The Third Circuit denied those petitions on June 1, 2016, and issued its mandate on June 9, 2016. ECF No. 6840.

L. Petitions for Writ of *Certiorari*

Following the Third Circuit's denial of *en banc* rehearing, two groups of objectors filed petitions for writ of *certiorari* with the United States Supreme Court. *See Gilchrist v. Nat'l Football League*, No. 16-283 (U.S. filed Aug. 30, 2016); *Armstrong v. Nat'l Football League*,

No. 16-413 (U.S. filed Sept. 26, 2016). The same two *amici curiae* who had opposed the Settlement in both this Court and the Third Circuit (BIAA and Public Citizen) filed briefs in support of the *certiorari* petitions. Plaintiffs' Counsel prepared and filed their brief in opposition to the petitions and *amici* briefs on November 4, 2016. Seeger Decl. ¶ 69. On December 12, 2016, the Supreme Court denied both petitions. *Gilchrist v. NFL*, 137 S. Ct. 591 (2016); *Armstrong v. NFL*, 137 S. Ct. 607 (2016). In accordance with Supreme Court Rules 44(2) & 45(2)-(3), the Supreme Court's disposition became final on January 6, 2016, upon the expiration of the time for filing a rehearing petition. Seeger Decl. ¶ 69; Sup. Ct. R. 44(2) & 45(2)-(3).

M. Initial Settlement Implementation Efforts

Meanwhile, even before the Supreme Court's rejection of the two *certiorari* petitions, Plaintiffs' Counsel began the groundwork for the implementation of the Settlement. Since April 2016, Plaintiffs' Counsel has had regular working calls with Claims Administrator BrownGreer PLC and Lien Administrator Garretson Resolution Group, Inc. to review work plans, draft materials, and settlement implementation issues. *Id*. ¶ 108. Plaintiffs' Counsel have finalized retention of administrators and special masters; the Settlement Trust Agreement; and prepared conflicts of interest plans. *Id*. ¶ 109.

Moreover, Plaintiffs' Counsel finalized and the Court has approved [ECF Nos. 7107, 7115] Preregistration and Supplemental Class Notices to be disseminated to Class Members to advise them concerning the registration and benefits timetable, and Plaintiffs' Counsel will oversee the effectuation of registration forms, the transition of call center operations to the Claims Administrator, and ongoing revisions of the Settlement website (including FAQs). Seeger Decl. ¶ 109.

Other implementation efforts are in connection with the upcoming June 6, 2017 launch of the BAP. These include reviewing the applications of BAP Providers and vetting candidates for

retention, receiving reports on contracting with providers in order to establish networks convenient to a majority of players by metropolitan region, and finalizing BAP procedures (including assessment scheduling and Supplemental Benefits). *Id*. ¶¶ 108, 110. Still other work has pertained or will pertain to the MAF (whose claims platform for pre-Effective Date Qualifying Diagnoses opens on March 23, 2017; Retired NFL Football Players will contact MAF physicians on their own from the MAF Network that will open on April 7th): the review of applications of MAF Physicians and vetting candidates for retention, finalizing claims forms and processes, and finalizing appeals forms and processes. *Id*.

Still other Settlement implementation steps include the retention of the Appeals Advisory Panel (composed of five neurologists/board certified neurospecialists) and Appeals Advisory Panel Consultants (3 neuropsychologists) by April 7, 2017. *Id*. ¶ 113. This body is charged with reviewing diagnoses made prior to January 7, 2017, and will be advising the Special Masters and the Court. *Id*.

N. The Settlement Agreement and Fees

As noted above and as the Court is already aware, the parties discussed the payment of attorneys' fees separate and apart from all other Settlement benefits. Section III.C, *supra*; Seeger Decl. ¶ 74. The NFL Parties have agreed to pay attorneys' fees and reasonable costs and expenses incurred by Plaintiffs' Counsel provided that the request does not exceed $112.5 million. Seeger Decl. ¶ 74 (citing Settlement § 21.1 [ECF No. 6481-1, at 82]). Thus, unlike traditional common fund cases, where attorneys' fees are paid as a percentage of the recovery, the NFL Parties will pay any fee award over and above the Settlement's benefits and thus the Class here is further benefitted by not incurring such payment for work done for its common benefit.

Due to the lengthy term of the Settlement (65 years) and the necessary involvement of Plaintiffs' Counsel in the coming years (indeed, decades) to ensure that its terms are met and that Class Members' rights and interests are protected, *see* Seeger Decl. ¶¶ 101-19, the Settlement includes a provision authorizing a petition to the Court to set aside up to five percent of each monetary award and Derivative Claimant award to facilitate the Settlement program and related efforts of Plaintiffs' Counsel. *See id.*; ECF No. 6423-3, ¶ 55. The provision was expressly mentioned in the Class Notice. ECF No. 6086-1, at 18.

If a Class Member is represented by individual counsel, the attorney's fees payable to that counsel would be reduced by the amount of this proposed set-aside, so that the holdback will in no way increase the attorney's fees paid by Class Members who hire their own counsel on a contingency fee basis. Seeger Decl. ¶ 103; Settlement § 21.1 [ECF No. 6481-1, at 82]. These monies will be held in a separate fund overseen by the Court, pending subsequent application to the Court for remuneration of those counsel performing settlement-related work. Seeger Decl. ¶ 101. The NFL Parties will take no position on this issue. Settlement § 21.1.

IV. ARGUMENT

A. Third Circuit Legal Standards for Fee Applications

Two methods are generally used for determining attorneys' fees in class action cases: the percentage-of-recovery method and the lodestar method. *In re Prudential Ins. Co. of Am. Sales Practice Litig. Agent Actions*, 148 F.3d 283, 333 (3d Cir. 1998). In the Third Circuit, "[t]he percentage-of-recovery method is generally favored in cases involving a common fund, and is designed to allow courts to award fees from the fund 'in a manner that rewards counsel for success and penalizes it for failure.'" *Welch & Forbes, Inc. v. Cendant Corp. (In re Cendant Corp. PRIDES Litig.)*, 243 F.3d 722, 732 (3d Cir. 2001) (quoting *In re Prudential*, 148 F.3d at 333).

The lodestar method is more commonly used in statutory fee-shifting cases. *In re Rite Aid Corp. Sec. Litig*, 396 F.3d 294, 300 (3d Cir. 2005). The Third Circuit recommends, but does not require, that district courts using the percentage of the fund method conduct a lodestar cross-check on the reasonableness of the fee award. *See In re Cendant Corp. Sec. Litig.*, 404 F.3d 173, 183 n.4 (3d Cir. 2005) (affirming district court's percentage of the fund fee award, even though district court did not conduct lodestar cross-check); *O'Keefe v. Mercedes-Benz USA, LLC*, 214 F.R.D. 266, 310 (E.D. Pa. 2003) (Third Circuit recommends but does not require lodestar cross-check). Thus, the lodestar cross-check is "suggested," but not mandatory. *Moore v. GMAC Mortgage*, No. 07-4296, 2014 WL 12538188, at *2 (E.D. Pa. Sept. 19, 2014) (citing *In re Cendant Corp. PRIDES Litig*., 243 F.3d at 735).

The instant case does not involve either an application for assessment of fees against the defendant pursuant to a fee-shifting statute, or a traditional common fund out of which payment of fees are sought. As this Court has noted, "[a] fee award in this case will not come from a common fund. The ultimate amount the NFL Parties must pay in attorneys' fees will have no impact on the Monetary Awards paid or baseline assessment examinations given because the NFL Parties have already guaranteed these benefits, in full, to eligible claimants." *In re NFL*, 307 F.R.D. at 374 (citing Settlement § 21.1).

Nevertheless, the principles employed in assessing a percentage-of-the common fund attorneys' fees claim are appropriate here because the sundry settlement benefits secured by Plaintiffs' Counsel, totaling over $1 billion in value, are a *constructive* common fund. In such circumstances, courts often rely on common fund principles and their inherent management powers to award fees to lead counsel in cases that do not actually generate a common fund. *See, e.g., Dewey v. Volkswagen Aktiengesellschaft*, 558 F. App'x 191, 197 (3d Cir. 2014); *Jackson v.*

Wells Fargo Bank, N.A., 136 F. Supp. 3d 687, 713 (W.D. Pa. 2015) ("[G]iven that each of these amounts will be paid by defendants, the economic effect essentially is that of a common fund."); *In re Heartland Payment Sys., Inc. Customer Data Sec. Breach Litig.*, 851 F. Supp. 2d 1040, 1072 (S.D. Tex. 2012) ("Having two funds—one for the claimants, one for the attorneys—is a well-recognized variant of a common-fund arrangement."). Furthermore, although it is uncapped, there is a clearly delineated fund recovered on behalf of the Class that lends itself well to valuation. In fact, the MAF has been valued by both Class Plaintiffs and the NFL Parties' experts.

By contrast, "[t]he lodestar method is generally applied in statutory fee shifting cases and 'is designed to reward counsel for undertaking socially beneficial litigation in cases where the expected relief has a small enough monetary value that a percentage-of-recovery method would provide inadequate compensation.'" *Hegab v. Family Dollar Stores, Inc.*, No. 11-1206, 2015 WL 1021130, at *11 (D.N.J. Mar. 9, 2015) (citing *In re Cendant Corp.*, 243 F.3d at 732). Also, the lodestar method is preferable where "the nature of the recovery does not allow the determination of the settlement's value required for application of the percentage-of-recovery method." *In re Rite Aid Corp. Sec. Litig.*, 396 F.3d 294, 300 (3d Cir. 2005). This concern is inapplicable here because, as noted above, the Settlement's components lend themselves to valuation. Moreover, Plaintiffs' Counsel are not applying for an award of fees against the NFL Parties pursuant to a statute that carves an exception from the "American Rule" that each side is responsible for its own attorneys' fees, so this is plainly not a statutory fee-shifting case. Nonetheless, because the Third Circuit recommends a lodestar cross-check in addition to the percentage of fee recovery analysis, both methods are discussed below.

B. Analysis Under the Percentage of Recovery Method Supports the Requested Award

There are ten factors that the Third Circuit has identified in considering whether an attorneys' fee award is reasonable under the percentage-of-recovery method. Known as the *Gunter/Prudential* factors, these are:

1. The size of the fund and the number of persons benefited;
2. Whether members of the class have raised substantial objections to the settlement terms or fee proposal;
3. The skill and efficiency of the attorneys involved;
4. The complexity and duration of the litigation;
5. The risk of nonpayment;
6. The amount of time devoted to the case by Plaintiffs' counsel;
7. The fee awards in similar cases;
8. The value of benefits attributable to the efforts of class counsel relative to the efforts of other groups, such as government agencies conducting investigations;
9. The percentage fee that would have been negotiated had the case been subject to a private contingent fee arrangement at the time counsel was retained; and
10. Any innovative terms of settlement.

In re Diet Drugs Prods. Liab. Litig., 582 F.3d 524, 541 (3d Cir. 2009); *Gunter v. Ridgewood Energy Corp.*, 223 F.3d 190, 197-201 (3d Cir. 2000); *In re Prudential*, 148 F.3d at 336-40.

1. The Size of the Fund and the Number of Persons Benefited

"In applying the percentage-of-recovery method, [the Court] must begin by making a reasonable estimate of the settlement value." *Cullen v. Whitman Med. Corp.*, 197 F.R.D. 136, 147 (E.D. Pa. 2000). "Generally, the factor given the greatest emphasis [in awarding a percentage of the recovery] is the size of the [recovery] created, because [the recovery] 'is itself the measure of success . . . [and] represents the benchmark from which a reasonable fee will be awarded.'" David F. Herr, *Annotated Manual for Complex Litigation, Fourth* § 14.121, at 220 & n.518 (rev. ed. 2016) (quoting 4 Alba Conte & Herbert B. Newberg, *Newberg on Class Actions* ["*Newberg on Class Actions*"] § 14.6, at 547, 550 (4th ed. 2002)).

When calculating the value of a settlement, courts usually include any cash compensation to class members, cash the defendant must pay to third parties, non-cash relief that can be reliably valued, attorneys' fees and expenses, and administrative costs paid by the defendant. *E.g.*, *In re: Heartland Payment*, 851 F. Supp. 2d at 1080; *In re Oil Spill by the Oil Rig "Deepwater Horizon" in the Gulf of Mexico, on Apr. 20, 2010*, No. 2179, 2016 WL 6215974, at *15-16 (E.D. La. Oct. 25, 2016).

Here, the Class is estimated to exceed 20,000. The Class is composed of three types of claimants:

> (1) Retired NFL Football Players, defined as all living NFL Football Players who, prior to the date of the Preliminary Approval and Class Certification Order, retired, formally or informally, from playing professional football with the NFL or any Member Club, including American Football League, World League of American Football, NFL Europe League and NFL Europa League players ….
>
> (2) Representative Claimants, defined as authorized representatives, ordered by a court or other official of competent jurisdiction under applicable state law, of deceased or legally incapacitated or incompetent Retired NFL Football Players; and
>
> (3) Derivative Claimants, defined as spouses, parents, and children who are dependents, or any other persons who properly under applicable state law assert the right to sue independently or derivatively by reason of their relationship with a Retired NFL Football Player or deceased Retired NFL Football Player.

Settlement §§ 1.1(a) & 2(ee), (eeee), (ffff) [ECF No. 6481-1, at 8, 12, 18].

The Class consists of two Subclasses. Subclass 1 is defined as Retired NFL Football Players who were not diagnosed with a Qualifying Diagnosis prior to the date of Preliminary Approval (July 7, 2014), and their Representative Claimants and Derivative Claimants. *Id.* § 1.2(a) [ECF No. 6481-1, at 8]. Subclass 2 is defined as Retired NFL Football Players who *were* diagnosed with a Qualifying Diagnosis prior to July 7, 2014, and their Representative Claimants

and Derivative Claimants, and the Representative Claimants of deceased Retired NFL Football Players who were diagnosed with a Qualifying Diagnosis prior to death, or who died prior to April 22, 2015 and who received a post-mortem diagnosis of CTE. *Id.* §§ 1.2(b), 6.3(f) [ECF No. 6481-1, at 8].

The Settlement has three components: the uncapped MAF; the BAP, a $75 million medical testing and benefit program, with its central function of establishing the neurocognitive conditions of players when they enter the settlement program; and a $10 million education fund "to promote safety and injury prevention for football players of all ages[.]"

The MAF is an uncapped, inflation-adjusted fund that provides cash awards for Retired NFL Players who receive Qualifying Diagnoses over the next 65 years. In dollar terms, the MAF constitutes the bulk of the Settlement. Actuarial projections are that the MAF will pay out some $900-$950 million by the end of its 65-year term, with the risk of any additional payment for claims being borne entirely by the NFL. *In re NFL*, 307 F.R.D. at 364-66, 418; ECF No. 6167, at 4.[24] The Settlement offers monetary awards of up to $5 million for serious medical conditions associated with concussions and other brain traumas associated with NFL play; the medical conditions include Parkinson's Disease, Alzheimer's Disease, ALS, and others. *See* Settlement, Ex. A-3 [ECF No. 6481-1, at 122 (Monetary Award Grid)]. In terms of the designated dollar amounts, the Court found that "[t]he maximum awards are in line with other personal injury settlements." *In re NFL*, 307 F.R.D. at 405.

[24] The actuarial model that Class Counsel developed anticipated certain participation rates for filed and unfiled cases. It also anticipated certain incident rates for the compensable disease categories (*i.e.*, the Qualifying Diagnoses). Specifically, Class Counsel assumed a 50% participation rate for Class Members who had not filed suit and a 90% participation rate for those who had. Seeger Decl. ¶ 44 n.1. If registrations exceed the participation assumption, as may occur given the pre-registrations and registrations to date, the value of the Settlement, given the negotiated uncapped nature of the MAF, will likely exceed prior valuations. *Id.*

Although the BAP is initially funded at $75 million, a baseline examination is guaranteed for all participating Class Members by the NFL, even if the initial $75 million is exhausted: the Settlement "ensures that all Retired Players with half of an Eligible Season credit have access [during a specified period] to free baseline assessment examinations so that they may monitor their symptoms, and receive Qualifying Diagnoses more easily if their symptoms worsen." *Id.* at 395. Finally, the Settling Parties created a $10 million fund to promote safety and injury prevention for football players of all ages, including youth football players, and to educate Class Members about their NFL CBA Medical and Disability Benefits. Settlement Art. XII [ECF No. 6481-1, at 68]; *In re NFL*, 307 F.R.D. at 368-69.

Under the terms of the Settlement, the NFL Parties are obligated to fund the administrative costs of the Settlement program. First, the NFL Parties paid $4 million for the notice plan. Settlement § 14.1(b) [ECF No. 6481-1, at 70]. Second, the compensation for the Special Masters is paid by the NFL Parties, through the MAF (without, of course, reducing any Class Member's individual MAF benefit because the MAF is uncapped). *Id.* § 10.1(c) [ECF No. 6481-1, at 55]. Third, compensation for the Appeals Advisory Panel and Appeals Advisory Panel Consultants will also be paid by the NFL Parties from the MAF (again, without reducing any Class Member's individual MAF benefit). *Id*. § 9.8(a)(v) [ECF No. 6481-1, at 53]. Fourth, the Settlement also provides that the NFL Parties will pay the reasonable compensation of the Claims Administrator (*id*. § 10.2(c) [ECF No. 6481-1, at 58]) and the Lien Resolution Administrator (*id*. § 11.1(c) [ECF No. 6481-1, at 63-64]) from the MAF.

It is important to note that although the compensation amounts for the Special Master, Appeals Advisory Panel and Appeals Advisory Panels Consultants, the Claims Administrator, and the Lien Resolution Administrator will be paid from the MAF, these amounts are *not* part of

the approximately $950 million actuarial calculations as what the MAF will pay out as *benefits* awards to Class Members over the 65-year term of the Settlement. *See In re NFL*, 307 F.R.D. at 365, 418. Consequently, all of these administrative costs to be borne by the NFL Parties represent an added benefit to the Class.

Finally, as noted in Section III above, an additional value conferred on the Class is that Members will have Plaintiffs' Counsel's attorneys' fees and reimbursement of expenses for common benefit work paid for by the NFL Parties, rather than have a portion of the settlement recovery sliced off to pay fees and expenses, which is ordinarily the case with common fund recoveries.

Thus, when considering these amounts, Plaintiffs' Counsel secured a benefit of nearly $1.2 billion for the Class:

BENEFIT	AMOUNT/VALUE	SOURCE
Monetary Award Fund	$950,000,000	ECF No. 6167, at 4 (NFL Concussion Liability Forecast)
Baseline Assessment Program	$75,000,000	Settlement § 23.1(b)
Education Fund	$10,000,000	Settlement § 23.1(c)
Notice Costs	$4,000,000	Settlement § 14.1(b)
Claims Administration	$11,925,000	Decl. of Orran Brown, Sr.
Attorneys' Fees Provision	$112,500,000	Settlement § 21.1
TOTAL:	**$1,163,425,000**	

These are remarkable benefits for a large class and this factor favors approval of the requested fee and expense award, which seeks an award equal to approximately nine percent of the value of the recovery. Again, it bears repeating that not a penny of this award will come out of the pockets of a single Class Member. *See In re Oil Spill by Oil Rig Deepwater Horizon in*

Gulf of Mexico, on Apr. 20, 2010, 910 F. Supp. 2d 891, 909, 933-34 (E.D. La. 2012) (settlement that provided that defendant would not oppose "a significant award of common benefit attorneys' fees and costs, effectively spar[ed] the class from having to pay for common-benefit fees and expenses"), *aff'd sub nom. In re Deepwater Horizon*, 739 F.3d 790 (5th Cir. 2014).

2. Whether Members of the Class Have Raised Substantial Objections to the Settlement Terms or Fee Proposal

It cannot genuinely be disputed that the reaction of the Class – approximately one-quarter of whose members had individual representation – to the Settlement was overwhelmingly positive.[25] As the Third Circuit noted in affirming this Court's final approval of the Settlement, only about one percent of Class Members objected to the Settlement and approximately another one percent opted out. *In re NFL*, 821 F.3d at 438. Notably, of those opt-outs, a significant number have since revoked their opt-outs with the consent of the Settling Parties and the approval of the Court. *See* ECF Nos. 7117-1 (¶¶ 5-6), 7119.[26]

It was not just the paucity of objections and opt-outs that demonstrated the resoundingly positive response to the Settlement. While objectors' appeals were proceeding, Class Members and their counsel expressed significant interest in the commencement of the Settlement program, and the Settling Parties worked hard to prepare for implementation. At present, more than 12,000 Class Members and their counsel have signed up for future information about the

[25] Prior to the Fairness Hearing, several objectors included challenges to the amount provided for in the Settlement. *See, e.g.*, ECF Nos. 6213, 6233, 6237. These objections baldly asserted that the fees were excessive, with no analysis of relevant Third Circuit caselaw. As discussed throughout this brief, the requested fee is reasonable and any objection asserting that it is excessive lacks merit.

[26] As this Court observed at the time of Final Approval, "[t]hese figures [we]re especially impressive considering that about 5,000 Retired Players [were] represented by counsel in this MDL, and could easily have objected or opted out to pursue individual suits." *In re NFL*, 307 F.R.D. at 389.

settlement program, and provided the Claims Administrator with contact information to receive notification once the Settlement becomes effective. Brown Decl. at 2. Thousands more have communicated with the Claims Administrator about the Settlement since it received this Court's Final Approval. The Settlement website has received over 180,000 unique visits. *Id.* The Claims Administrator has received nearly 1,100 written communications and responded to the over 1,000 that asked questions about the Settlement. The Settlement Call Center has received over 14,000 calls with well over half of the callers speaking directly to live operators for a total of nearly 500 hours. *Id.* at 2-3. "The absence of substantial objections by class members to the fees requested by counsel strongly supports approval." *In re AT & T Corp.*, 455 F.3d 160, 170 (3d Cir. 2006).

3. The Skill and Efficiency of the Attorneys Involved

"The skill and efficiency of Plaintiffs' Counsel is measured by the quality of the result achieved, the difficulties faced, the speed and efficiency of the recovery, the standing, experience and expertise of the counsel, the skill and professionalism with which counsel prosecuted the case and the performance and quality of opposing counsel." *Meijer, Inc. v. 3M*, No. 04-5871, 2006 WL 2382718, at *21 (E.D. Pa. Aug. 14, 2006) (citation omitted). Here, "[c]ounsel are experienced practitioners . . . [t]his experience and the results obtained for the class reflect Class Counsel's skill and efficiency." *In re Wellbutrin SR Antitrust Litig.*, No. 04-5525, 2011 U.S. Dist. LEXIS 158833, at *16-17 (E.D. Pa. Nov. 21, 2011); *In re Linerboard Antitrust Litig.*, No. MDL-1261, 2004 WL 1221350, at *5 (E.D. Pa. June 2, 2004).

No objector challenged the expertise of Plaintiffs' Counsel. Co-Lead Class Counsel Christopher Seeger has spent a quarter-century litigating mass tort and class actions, particularly in the MDL context. He has served as plaintiffs' lead counsel or as a member of the plaintiffs' executive committee or steering committee in dozens of cases. *See* ECF No. 6423-3 (¶¶ 2-4);

Seeger Decl. ¶ 2. In particular, he has served as lead plaintiffs' negotiator for multiple large settlements, including the *Vioxx* settlement totaling $4.85 billion, the DePuy Orthopaedics, Inc. ASR Hip Implant Products settlement, totaling nearly $2.5 billion, and the first and second *Zyprexa* settlements, which resulted in a total $1.2 billion payout. *Id*. ¶ 2.

Co-Lead Class Counsel Sol Weiss, Subclass Counsel Arnold Levin and Dianne Nast, and Class Counsel Gene Locks and Steven Marks possess similarly impeccable credentials. *See In re Diet Drugs Prods. Liab. Litig.*, MDL No. 1203, 2000 WL 1222042, at *44 (E.D. Pa. Aug. 28, 2000) ("Each of the Class Counsel [Messrs. Levin, Weiss, Locks, and others] are experienced in the conduct of class litigation, mass tort litigation and complex personal injury litigation[.]"); ECF No. 6423-3 (¶ 27) (noting that Messrs. Marks and Weiss are "attorneys with decades of class action and MDL litigation experience"); ECF No. 6423-10 (¶ 2) (describing Mr. Levin's leadership positions in over 100 class actions, mass torts, and complex personal injury suits); ECF No. 6423-9 (¶ 2) (discussing Ms. Nast's leadership positions in over 48 complex cases). Plaintiffs' appellate counsel, Professor Samuel Issacharoff of the New York University School of Law, is also an extremely experienced and talented advocate. Professor Issacharoff helped steer the defense of the 23(f) and final approval appeals, successfully arguing twice before the Third Circuit, and serving as counsel of record in the Supreme Court in opposition to the two *certiorari* petitions. Seeger Decl., Ex. O (Issacharoff Decl.).

The achievements of Plaintiffs' Counsel are particularly noteworthy because they went up against the NFL Parties' counsel – Paul, Weiss, Rifkind, Wharton & Garrison – one of this nation's premier law firms. The firm is commonly recognized for its excellence, *see, e.g., In re Warner Communications Sec. Litig*., 618 F. Supp. 735, 749 (S.D.N.Y. 1985), *aff'd*, 798 F.2d 35 (2d Cir. 1986); *In re WorldCom, Inc. Sec. Litig.*, 388 F. Supp. 2d 319, 358 (S.D.N.Y. 2005)

(stating defense counsel, including Paul, Weiss, the lead defense firm, were "formidable opposing counsel" and among "some of the best defense firms in the country"); *In re Schering-Plough Corp.*, No. 08-2177, 2013 WL 5505744, at *27 (D.N.J. Oct. 1, 2013) (noting caliber of the Paul Weiss firm), and it routinely leads the defense of immensely complex and challenging litigation.

The NFL called upon the services of other elite law firms as well in this litigation, such as Dechert LLP and Paul D. Clement (formerly of Bancroft PLLC and now with Kirkland & Ellis), who argued the NFL's motion to dismiss on federal preemption grounds. Simply put, "[c]lass counsel . . . faced formidable opposition from the skilled counsel opposing this litigation. All of these facts weigh in favor of granting Class Counsel's request for attorneys' fees." *In re Wellbutrin SR Antitrust Litig.*, 2011 U.S. Dist. LEXIS 158833, at *16-17; *see also Meijer, Inc. v. 3M*, No. 04-5871, 2006 WL 2382718, at *21 (E.D. Pa. Aug. 14, 2006) ("Defense Counsel are also very experienced … and have defended this suit skillfully."); *Stagi v. Nat'l R.R. Passenger Corp.*, 880 F. Supp. 2d 564, 570 (E.D. Pa. 2012) ("[T]he fact that Plaintiffs' counsel obtained this settlement in the face of formidable legal opposition further evidences the quality of their work.").

4. The Complexity and Duration of the Litigation

As this Court noted, this MDL involved a large class, with events and injuries spread over decades. The litigation "attempt[ed] to resolve issues of considerable scale. Class Members allege[d] negligence and a fraudulent scheme dating back half a century." *In re NFL*, 307 F.R.D. at 388. "The claims of over 20,000 Retired Players [we]re at issue." *Id.* The litigation also encompassed "complex scientific and medical issues not yet comprehensively studied." *Id.* The Court noted further that document discovery, medical record discovery, expert discovery, and motion practice would be complex. *Id.* In particular, the Court noted the

uncertainties in linking CTE to head trauma suffered playing professional football "because clinical study of CTE is in its infancy." *Id*. at 398.

The Third Circuit agreed, concurring with this Court that the "stiff challenges surmounting the issues of preemption and causation" that Class Members faced strongly weighed in favor of the Settlement's approval. *Id.* at 439; *see also id*. at 435 ("Given our experience with similar MDLs, we expect the proceedings would result in years of costly litigation and multiple appeals, all the while delaying any potential recovery for retired players coping with serious health challenges."). In addition, as discussed below, Class Members would have had to confront a litany of defenses, including federal preemption, assumption of risk, lack of causation (both general and specific), and, for many, the statute of limitations. *See generally* Section IV.B.5, *infra*. Given the complexity of this case and the daunting obstacles that stood in the path to a favorable judgment, the settlement benefits of almost $1.2 billion that were secured for the Class truly represent a remarkable achievement, amply justifying the fees requested here that equal approximately nine percent of that recovery.

5. The Risk of Nonpayment

The Court's analysis should logically proceed from the beginning of the case with an evaluation of the serious risks of non-recovery faced by Plaintiffs' Counsel when they committed themselves to this litigation on a contingency basis. *See In re Diet Drugs Prods. Liab. Litig.*, 553 F. Supp. 2d 442, 478 (E.D. Pa. 2008). "Risk must be assessed *ex ante* from the outset of the case, not in hindsight." *In re Cendant Corp*. *Litig*., 264 F.3d 201, 282 (3d Cir. 2001).

"Plaintiffs' Counsel's compensation for their services in this case was wholly contingent on the success of the litigation." *Meijer, Inc.*, 2006 WL 2382718 at *21; *Hegab v. Family Dollar Stores, Inc.*, No. 11-1206, 2015 WL 1021130, at *13 (D.N.J. Mar. 9, 2015) ("Class counsel undertook this action on a contingent fee basis, assuming a substantial risk that they might not be

compensated for their efforts. . . . Courts recognize the risk of non-payment as a major factor in considering an award of attorney fees."). This factor further supports the requested award. *E.g.*, *In re Diet Drugs*, 553 F. Supp. 2d at 479 ("At the inception, and throughout this litigation, there was a substantial risk that the efforts of the Joint Fee Applicants would not be successful."); *In re Am. Investors Life Ins. Co. Annuity Mktg. & Sales Practices Litig.*, 263 F.R.D. 226, 244 (E.D. Pa. 2009) (fee request reasonable where class counsel "undertook representation on a contingency basis[,] . . . advanced hundreds of thousands of dollars in expenses" and prosecuted the case "without any guarantee of payment"); *McGee v. Continental Tire of N. Am.*, No. 066234, 2009 WL 539893, at *15 (D.N.J. Mar. 4, 2009) ("Class Counsel accepted the responsibility of prosecuting this class action on a contingent fee basis and without any guarantee of success or award. Accordingly, this factor weighs in favor of approval."); *In re Ins. Brokerage Antitrust Litig.*, No. 04-5184, 2009 WL 411856, at *5 (D.N.J. Feb 17, 2009) (same).

This litigation presented very significant legal and scientific challenges, any one of which would have spelled doom for Plaintiffs. From the initiation of the litigation, Plaintiffs' claims were at risk due to the NFL Parties' threshold argument that federal labor law precludes the litigation of Plaintiffs' claims in court. In particular, in their motions to dismiss the Master Administrative Class Action Complaint and the Amended Master Administrative Long-Form Complaint on Preemption Grounds, the NFL Parties claimed that Section 301 of the LMRA mandates the preemption of all state-law claims – whether based in negligence or fraud – whose resolution is substantially dependent upon or inextricably intertwined with the terms of a CBA,

or that arise under the CBA. *See* 29 U.S.C. § 185(a) (codifying Section 301(a)); *see also Allis-Chalmers Corp. v. Lueck*, 471 U.S. 202, 220 (1985).[27]

The formidable issue of federal preemption aside, the NFL Parties also could have asserted statute of limitations defenses in future motions to dismiss, a significant potential risk for Plaintiffs and Class Members (several thousand of whom had suits that had been centralized in this MDL at the time of the settlement). *See* ECF 6073-4 (Phillips Decl. ¶ 15). Many of the Retired NFL Football Players have not played for years, or even decades. Certain Class Members' brain injuries and symptoms have been present for several years or even decades. Clearly, these circumstances presented potentially fatal obstacles to Plaintiffs' Counsels' efforts to secure compensation for the Class. Another potential defense for the NFL Parties was the statutory employer defense – with the consequence that Class Members' exclusive remedy would be workers compensation benefits. This is a defense that the NFL Parties had stated they would raise. *See* Seeger Decl. ¶ 22 n.2.

In addition to those threshold defenses, as it has done in other litigation, the NFL would undoubtedly have raised the defense that Plaintiffs had assumed the risks of the cognitive injuries they developed. *See* ECF No. 6073-4 (Phillips Decl. ¶ 15). It is well known that football poses serious injury risks, as countless individuals (at all levels of the game) incur personal injuries every year while playing the sport. It is also well known that countless individuals suffer serious

[27] The risk that Plaintiffs faced on account of this defense is not idle speculation. The NFL had successfully invoked this defense in several individual suits. *E.g.*, *Duerson v. Nat'l Football League*, 12-C-2513, 2012 WL 1658353 (N.D. Ill. May 11, 2012); *Maxwell v. Nat'l Football League*, 11-08394, Order (C.D. Cal. Dec. 8, 2011); *see also Stringer v. Nat'l Football League*, 474 F. Supp. 2d 894 (S.D. Ohio 2007). In each of these cases, the courts held that the NFL players' claims against the NFL or its member clubs relating to duties that are imposed by the CBAs were preempted because they required interpretation of CBA terms. The *Duerson* and *Maxwell* cases involved head injuries and were transferred to this MDL.

head trauma, including concussions, while playing football. Therefore, the NFL Parties would have presented a strong assumption of risk defense to Plaintiffs' claims.

Further hurdles remained. From a scientific standpoint, as the Court aptly noted, "even if Class Members could conclusively establish general causation, the problem of specific causation remain[ed]. Class Members argue[d] that the cumulative effect of repeated concussive blows Retired Players experienced while playing NFL Football led to permanent neurological impairment. Yet the overwhelming majority of Retired Players likely experienced similar hits in high school or college football, before they ever reached the NFL. Brain trauma during youth, while the brain is still developing, could also play a large role in later neurological impairment." *In re NFL*, 307 F.R.D. at 393. It would have been difficult, therefore, to isolate "the effect of hits in NFL Football from hits earlier in a Retired Player's career." *Id*.

The Third Circuit agreed with this Court's assessment, stating that it "concur[ed] with the District Court that this factor weighed in favor of settlement because Class Members face[d] stiff challenges surmounting the issues of preemption and causation." *In re NFL*, 821 F.3d at 439 (citing this Court's opinion; internal quotation marks omitted). In short, Plaintiffs would have had a panoply of daunting (and possibly insurmountable) hurdles to overcome in obtaining a favorable judgment. The risk of non-payment to Plaintiffs' Counsel was therefore, to say the least, considerable.

6. The Amount of Time That Plaintiffs' Counsel Devoted to the Case

Plaintiffs' Counsel have expended a total of almost 51,000 hours on this litigation (including innumerable late nights, weekends, and holidays). Seeger Decl. ¶ 78. As detailed above, this time has included many hours in mediation and negotiations; extensive research of claims from both legal and scientific standpoints; research and briefing for multiple filings and appeals; and wide-ranging coordination with both the Claims Administrator and the Lien

Administrator to establish the administrative infrastructure to ensure effectiveness of the Settlement. *See* Sections III.B-M, *supra*. The needed commitment of so much time and resources to this undertaking – which necessarily resulted in Plaintiffs' Counsel foregoing other professional opportunities – further militates in favor of the instant application. *See*, *e.g.*, *Wellbutrin SR Antitrust Litig*., 2011 U.S. Dist. LEXIS 158833, at *17 (more than 41,000 hours spent on case was a "substantial" time commitment favoring approval of fee application).

To be sure, as some objectors noted (and misguidedly placed undue reliance upon), there may not have been *formal* discovery, but that certainly does not mean that these claims were not intensely litigated or that a great deal of time and resources did not go into achieving the Settlement and putting it into effect. Those efforts included researching Plaintiffs' claims, developing information about the Class, contesting the NFL Parties' threshold preemption motions, consulting with numerous experts (including medical, economic, and actuarial),[28] exchanging reams of information with the NFL Parties, extensive and spirited mediation, and defending the Settlement at three judicial levels (including unorthodox onslaughts such as the attempts at interlocutory review of the Court's preliminary approval). *See* Sections III.B-L, *supra*. "The record of this litigation . . . indicates that the time spent by Plaintiffs' counsel was necessary for the successful prosecution of this case, considering both the complexity of the issues and the robust defense mounted by the defendants." *In re Flonase Antitrust Litig*., 291 F.R.D. 93, 104 (E.D. Pa. 2013); *In re Automotive Refinishing Paint Antitrust Litig*., MDL No. 1426, 2008 WL 63269, at *5 (E.D. Pa. Jan. 3, 2008) ("amount of time and expense"

[28] Plaintiffs' Counsel, with the assistance of their experts, also thoroughly reviewed peer-reviewed medical literature on, *inter alia*, brain injury, concussions, the effect of sub-concussive hits to the head on the brain, the epidemiology of the Qualifying Diagnoses, and the methods of diagnosis and treatment for the Qualifying Diagnoses. Seeger Decl. ¶ 29.

demonstrated counsel's "significant commitment of resources" to litigation and weighed in favor of approving fee petition).

7. Fee Awards in Similar Cases

"This factor requires the Court to compare the percentage of recovery requested as a fee in this case against the percentage of recovery awarded as a fee in other common fund cases in which the percentage of recovery method, rather than the lodestar method, was used." *Meijer, Inc.*, 2006 WL 2382718 at *22; *In re Cendant Corp. PRIDES Litig*., 243 F.3d at 737. Here, Plaintiffs' Counsel request an award amounting to approximately nine percent of the value of the total relief secured for the Class. This is a modest percentage that is well within the parameters for class action fee awards in this Circuit.[29] Indeed, in *In re Rite Aid*, the Third Circuit noted

[29] *E.g.*, *Bodnar v. Bank of Am. N.A.*, No. 14-3224 (E.D. Pa. Aug. 4, 2016) (ECF No. 90) (approving fee request that "would be approximately 36.8 percent of the mere cash value of the fund, and considering non-monetary, injunctive relief as well"); *In re Viropharma Inc., Sec. Litig*., No. 12-2714, 2016 WL 312108, at *16 (E.D. Pa. Jan. 25, 2016) (approving 30% of $8 million settlement fund); *In re Flonase Antitrust Litig*., 951 F. Supp. 2d 739, 751 (E.D. Pa. 2013) (awarding one-third fee on settlement of $150 million); *In re Processed Egg Prods. Antitrust Litig*., MDL No. 2002, 2012 WL 5467530, at *1 (E.D. Pa. Nov. 9, 2012) (approving fees equal to 30% of $25 million fund); *Alexander v. Washington Mut., Inc*., No. 07-4426, 2012 WL 6021103, at *3 (E.D. Pa. Dec. 4, 2012) (30% of $4 million fund); *Stagi v. Nat'l R.R. Passenger Corp*., 880 F. Supp. 2d 564, 571 (E.D. Pa. 2012) ("[T]his District's fee awards generally range between nineteen and forty-five percent of the common fund.") (citing *In re Corel Corp., Inc. Sec. Litig*., 293 F. Supp. 2d 484, 497 (E.D. Pa. 2003), and other cases); *In re Auto. Refinishing Paint Antitrust Litig*., MDL No. 1426, 2008 WL 63269, at *3 (E.D. Pa. Jan. 3, 2008) (33% of $39 million supplement to fund); *Bradburn Parent Teacher Store, Inc. v. 3M*, 513 F. Supp. 2d 322, 342 (E.D. Pa. 2007) (approving 35% of $81 million, plus reimbursement of expenses); *In re Ravisent Techs., Inc. Sec. Litig*., No. 1014, 2005 WL 906361, at *10-11 (E.D. Pa. Apr. 18, 2005) (33% of $7 million fund, and noting that "courts within the [Third Circuit] have typically awarded attorneys' fees of 30% to 35% of the recovery, plus expenses"); *In re Linerboard Antitrust Litig.*, No. MDL 1261, 2004 WL 1221350, at *1 (E.D. Pa. June 2, 2004) (awarding 30% of $202,572,489 settlement fund), *amended*, 2004 WL 1240775, at *1 (June 4, 2004); *In re Rent-Way Secs. Litig.*, 305 F. Supp. 2d 491, 519 (W.D. Pa. 2003) (25% of $25 million settlement fund); *In re Flat Glass Antitrust Litig.*, MDL No. 1200 (W.D. Pa. May 20, 2003) (33% of fund); *In re ATI Techs. Inc. Sec. Litig.*, No. 01-2541, 2003 WL 1962400, at *2 (E.D. Pa. Apr. 28, 2003) (30% of $8 million fund); *In re Cell Pathways Secs. Litig. II*, No. 01-cv-1189, 2002 WL 31528573, at *1 (E.D. Pa. Sept. 23, 2002) (30% of fund comprised of $2 million and 1.7 million

(Footnote continued . . .)

three studies which found that fee awards ranging between 25-33 percent of common funds were not unusual. *In re Rite Aid*, 396 F.3d at 303. If anything, Plaintiffs Counsel's fee request is well below the norm.

Although in the Third Circuit "it may be appropriate for percentage fees awarded in large recovery cases to be smaller in percentage terms than those with smaller recoveries[,] . . . the declining percentage concept does not trump the fact-intensive *Prudential/Gunter* analysis." *In re Rite Aid Corp. Sec. Litig.*, 396 F.3d at 302-03. Indeed, "there is no rule that a district court must apply a declining percentage reduction in every settlement involving a sizable fund." *Id.*[30]

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shares of common stock); *In re Warfarin Sodium Antitrust Litig.*, 212 F.R.D. 231, 262-63 (D. Del. 2002) (22.5% of $44.5 million settlement); *In re Ikon Offices Solutions Inc. Sec. Litig.*, 194 F.R.D. at 192 (30% of $108,915,874.43 settlement fund); *Cullen*, 197 F.R.D. at 150 ("[T]he award of one-third of the fund for attorney's fees is consistent with fee awards in a number of recent decisions within this district."); *Ratner v. Bennett*, No. 92-4701, 1996 WL 243645, at *9 (E.D. Pa. May 8, 1996) (35% of $400,000); *Lazy Oil Co. v. Witco Corp.*, 95 F. Supp. 2d 290, 322-23 (W.D. Pa. 1997) (28% of $18.9 million settlement fund); *In re Greenwich Pharm. Sec. Litig.*, No. 92-3071, 1995 WL 251293, at *6 (E.D. Pa. Apr. 25, 1995) (33.3% of $4,375,000 fund).

[30] Many courts and commentators reject the sliding scale or "mega-fund" (as it is sometimes referred to) approach, including because it irrationally punishes lawyers for achieving large recoveries on behalf of classes. *E.g.*, *In re Linerboard Antitrust Litig.*, No. 98-5055, 2004 WL 1221350, at *16-17 (E.D. Pa. June 2, 2004) ("The Court rejects [the sliding scale] in this case because the highly favorable settlement was attributable to the petitioners' skill and it is inappropriate to penalize them for their success. Moreover, the sliding scale approach is economically unsound."); *In re Ikon Office Solutions, Inc., Secs. Litig.*, 194 F.R.D. at 197 ("[A]pproach also fails to appreciate the immense risks undertaken by attorneys in prosecuting complex cases in which there is a great risk of no recovery."); *In re Synthroid Mktg. Litig.*, 264 F.3d 712, 718 (7th Cir. 2001) ("We have held repeatedly that, when deciding on appropriate fee levels in common-fund cases, courts must do their best to award counsel the market price for legal services, in light of the risk of nonpayment and the normal rate of compensation in the market at the time. . . . We have never suggested that a 'megafund rule' trumps these market rates[.]"); *In re Toyota Motor Corp. Unintended Acceleration Mktg., Sales Practices, & Prods. Liab. Litig.*, No. 8:10-mdl-02151-JVS, at 17 n.16 (C.D. Cal. Jun. 17, 2013) ("The Court also agrees with . . . other courts . . . which have found that decreasing a fee percentage based only on the size of the fund would provide a perverse disincentive to counsel to maximize recovery for the class."); *Allapattah Servs., Inc. v. Exxon Corp.*, 454 F. Supp. 2d 1185, 1213 (S.D. Fla. 2006)

(Footnote continued . . .)

As the Court of Appeals explained in *Rite Aid*, "the reason courts apply the declining percentage principle 'is the belief that in many instances the increase [in recovery] is merely a factor of the size of the class and has no direct relationship to the efforts of counsel.'" *Id*. at 302 (quoting *In re Prudential*, 148 F.3d at 339 (internal quotations omitted). That cannot genuinely be said here.

Thus, in *In re Prudential*, in vacating the fee award of $90 million on a settlement estimated at $1 billion, *id.* at 338-40, much of the Third Circuit's concern was case-specific. In particular, the Court of Appeals questioned such a sizable fee award when much of the settlement apparently had resulted from the work of state regulators and a multi-state insurance task force. *See In re Prudential*, 148 F.3d at 342. In *Rite Aid*, in contrast, the Court found that class counsel's "extraordinarily deft and efficient" handling of the complex securities matter had resulted in a "rich settlement," *In re Rite Aid Corp. Sec. Litig.*, 269 F. Supp. 2d 603, 609-11 (E.D. Pa. 2003), and although it remanded the Court's fee award for further determination because of an error in the lodestar cross-check, it nonetheless agreed that "class counsel's efforts [had] played a significant role in augmenting and obtaining an immense fund," and that the Court had acted within its discretion in declining to apply a "sliding scale" percentage. *In re Rite Aid*, 396 F.3d at 303.

But even taking this "mega-fund" approach into account, an award of approximately nine percent is still well within the norm in this Circuit for class counsel fees in cases involving recoveries that exceed $100 million. *E.g.*, *King Drug Co. of Florence v. Cephalon*, No. 06-cv-01797-MSP, 2015 WL 12843830 at *5 (E.D. Pa. Oct. 15, 2015) (awarding 27.5% of $512 million settlement); *In re Rite Aid Corp. Sec. Litig.*, 362 F. Supp. 2d 587, 588-90 (E.D. Pa. 2005)

(sliding scale does not "reward[] Class Counsel for the additional work necessary to achieve a better outcome for the class" and "creates the perverse incentive for Class Counsel to settle too early for too little.").

(awarding 25% of $125 million fund); *In re Rite Aid Corp. Sec. Litig.*, 146 F. Supp. 2d 706, 736, n.44 (E.D. Pa. 2001) (25% of $193 million fund); *In re Ikon Offices Solutions Inc. Sec. Litig.*, 194 F.R.D. 166, 192 (E.D. Pa. 2000) (30% of $108,915,874.43 settlement fund).[31] In fact, a frequently cited study of class action recoveries found that the average fee award for large class settlements was 13.7% nationwide, with a median of 9.5 percent. Brian T. Fitzpatrick, *An Empirical Study of Class Action Settlements,* 7 J. of Empirical Legal Stud., 811-46, 839 (Dec. 2010) (Table 11) (copy annexed to Seeger Decl. as Exhibit Y).

8. The Value of Benefits Attributable to the Efforts of Class Counsel Relative to the Efforts of Other Groups

"This factor seeks to compare the actions of government prosecutions, similar private cases, and agency litigation to the instant private litigation." *In re Diet Drugs*, 582 F.3d at 544. Here, as noted, Plaintiffs' Counsel began this litigation in 2011, and there was no similar, previously-existing litigation against the NFL that could be used as a template. Plaintiffs' Counsel conducted their own extensive research, developed their own experts, briefed all the

[31] It is also within the norm of awards made by courts outside this Circuit. *E.g.*, *Lawrence E. Jaffe Pension Plan v. Household Int'l, Inc*., No. 02-C05893, ECF No. 2265, at 1-2 (N.D. Ill. Nov. 10, 2016) (awarding 24.68% of $1.575 billion settlement); *In re TFT-LCD (Flat Panel) Antitrust Litig.*, No. M 07-1827, 2013 WL 1365900, at *7 (N.D. Cal. Apr. 3, 2013) (28.5% of $1.1 billion fund); *In re Priceline.com, Inc. Sec. Litig.*, No. 00-1884, 2007 WL 2115592, at *5 (D. Conn. July 20, 2007) (30% of $80 million fund); *In re Tyco Int'l, Ltd. Multidist. Litig.*, 535 F. Supp. 2d 249, 266, 272, 274 (D.N.H. 2007) (14.5% of $3.3 billion fund); *In re Adelphia Communs. Corp. Sec. and Derivative Litig.*, No. 03 MDL 1529, 2006 WL 3378705, at *1, *3 (S.D.N.Y. Nov. 16, 2006) (awarding 21.4% of $455 million fund); *In re Freddie Mac Sec. Litig.*, No. 03-CV-4261 (JES), slip op. at 1 (S.D.N.Y. Oct. 27, 2006) (20% of $410 million fund); *In re Royal Ahold N.V. Sec. & ERISA Litig.*, 461 F. Supp. 2d 383, 387 (D. Md. 2006) (12% of $1.1 billion fund); *Allapattah Servs., Inc. v. Exxon Corp*., 454 F. Supp. 2d 1185, 1192 (S.D. Fla. 2006) (31.33% of $1.1. billion fund); *Shaw v. Toshiba Am. Info. Sys., Inc*., 91 F. Supp. 2d 942, 972 (E.D. Tex. 2000) (15% of $1-1.1 billion award); *In re NASDAQ Mkt.-Makers Antitrust Litig.*, 187 F.R.D. 465, 485-86 (S.D.N.Y. 1998) (14% of $1.027 billion fund).

relevant issues in multiple filings to the Court, and conducted their negotiation sessions without the benefit of previous lawsuits or government prosecutions.

Although there were congressional hearings[32] regarding head injuries in the NFL that produced some useful documentation and testimony, there was no parallel state or federal action that provided any impetus toward resolution – as in, for example, an antitrust case. Here, "[t]here is no contention . . . that the settlement could be attributed to work done by other groups, such as government agencies." *Esslinger v. HSBC Bank Nevada, N.A.*, No. 10-3213, 2012 WL 5866074, at *14 (E.D. Pa. Nov. 20, 2012). Thus, "class counsel in this case was not aided by a government investigation. . . . [T]his [i]s a significant factor for courts to consider." *In re AT & T Corp.*, 455 F.3d at 173, Put simply, there was no "litigation roadmap" of which Plaintiffs' Counsel could avail themselves. *Haught v. Summit Res., LLC*, No. 1:15-cv-0069, 2016 WL 1301011, at *10 (M.D. Pa. Apr. 4, 2016). This factor thus further supports the requested award.

9. The Percentage Fee That Would Have Been Negotiated Had the Case Been Subject to a Private Contingent Fee Arrangement at the Time Counsel Was Retained

Also weighing in favor of the requested award is the fact that the size of the award as a percentage of the recovery obtained (nine percent) is markedly below the "percentage fee that would have been subject to a private contingent fee agreement at the time counsel was retained." *In re AT & T*, 455 F.3d 160 (citing *In re Prudential*, 148 F.3d at 340); *In re CertainTeed Fiber Cement Siding Litig.*, 303 F.R.D. 199, 224 (E.D. Pa. 2014).[33] "In private contingency fee cases,

[32] *E.g.*, in 2009 and 2010, the U.S. House of Representatives Judiciary Committee held several hearings related to head injuries in the NFL.

[33] *Accord, Alexander v. Washington Mut., Inc.*, No. 07-4426, 2012 WL 6021103, at *3 (E.D. Pa. Dec. 4, 2012) (citing *Esslinger*, 2012 WL 5866074, at *14); *In re Remeron Direct Purchaser Antitrust Litig.*, No. 03-0085, 2005 WL 3008808, at *16 (D.N.J. Nov. 9, 2005) ("Attorneys regularly contract for contingent fees between 30% and 40% with their clients in

(Footnote continued . . .)

lawyers routinely negotiate agreements between 30% and 40% of the recovery." *Esslinger*, 2012 WL 5866074 at *14 (citing *In re Ins. Brokerage Antitrust Litig.*, 282 F.R.D. 92, 123 (D.N.J. 2012)); *Schuler v. Meds Co.*, No. 14-1149, 2016 WL 3457218, at *10 (D.N.J. June 24, 2016) ("The attorneys' fees request one-third of the settlement fund . . . comports with privately negotiated contingent fees privately negotiated on the open market.") (citation and internal quotation marks omitted).[34]

10. The Settlement Agreement Contains Many Innovative Features

Also favoring approval of the instant fee petition is that this Settlement contains multiple innovative terms. *See Haught v. Summit Res., LLC*, No. 1:15-cv-0069, 2016 WL 1301011, at *11 (M.D. Pa. Apr. 4, 2016) ("Particularly where a settlement involved 'innovative' or unique terms, such a finding [that the results achieved by class counsel were nothing short of remarkable] may be warranted."); *Tavares v. S-L Distrib. Co.*, 1:13-cv-1313, 2016 WL 1732179, at *13 (M.D. Pa. May 2, 2016) (same).

As noted above, the Settlement provides a 65-year, inflation-adjusted Monetary Award for several Qualifying Diagnoses – including neurological manifestations of a certain severity

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non-class, commercial litigation."); *In re Aetna Inc. Secs. Litig.*, MDL No. 1219, 2001 WL 20928, at *14 (E.D. Pa. Jan. 4, 2001) ("[A]n award of thirty percent is in line with what is routinely privately negotiated in contingency fee tort litigation."); *In re Ikon Office Sols., Inc. Sec. Litig.*, 194 F.R.D. 166, 194 (E.D. Pa. 2000) ("[I]n private contingency fee cases, particularly in tort matters, plaintiffs' counsel routinely negotiate agreements providing for between thirty and forty percent of any recovery.").

[34] In *Chakejian v. Equifax Info. Svcs, LLC*, 275 F.R.D. 201 (E.D. Pa. 2011), the Court analyzed a fee application that involved an attorneys' fees payment that was not to be taken from a common fund but, rather, to be paid separately by the defendant pursuant to a statutory fee-shifting provision. *Id*. at 216. Although there would be no reduction to any common fund to pay attorney's fees, the Court nevertheless looked to the percentage of recovery method as a cross-check, noting that "contingency fees representing 30% to 40% of recovery are fairly typical" and that class counsel's request for attorney's fees equivalent to 11% of the benefits obtained for the class was "comparatively very reasonable." *Id*. at 220.

that are associated with CTE, even though CTE cannot be diagnosed in living people. The Settlement provides an innovative matrix to establish award amounts, based on a Retired NFL Football Player's age at time of diagnosis, and the amount of years played in the NFL (a reasonable proxy for the resulting degree of exposure to concussive and sub-concussive hits). Although a matrix for monetary awards had been used in other mass tort settlements, the application of this concept to multiple neurocognitive and neuromuscular diseases, using years played as a proxy for exposure to head trauma, was truly innovative.

Providing assessments and Qualifying Diagnoses to retired players in various age groups, spread throughout the country, by qualified medical professionals, called for creating medical networks – the Qualified BAP Providers and the Qualified MAF Physicians. The use of these networks will further the Settlement's goals of providing accurate and consistent diagnoses, as well as ready access to qualified medical providers by Retired NFL Players and their families.

The BAP will provide neurocognitive testing for thousands of Retired NFL Football Players. It is an innovative feature designed to detect and diagnose Level 1, Level 1.5 and Level 2.0 Neurocognitive Impairment. The program requires the BAP Administrator to create a network of qualified medical professionals to administer and evaluate the tests, and to provide BAP Supplemental Benefits. Settlement § 5.7(a)(i) [ECF No. 6481-1, at 28]. Qualified BAP Providers from all over the country will participate in the program, easing travel burdens for Retired NFL Players. *Id*. § 5.7(a)(ii) [ECF No. 6481-1, at 28-29]. The BAP includes state-of-the art neuropsychologial exams, and Plaintiffs' Counsel and their experts drafted guidelines for these tests for the doctors to apply.

The Settlement also creates a network of board-certified neurologists, neurosurgeons, and other neuro-specialist physicians – the Qualified MAF Physicians' network. Settlement § 6.5(a)

[ECF No. 6481-1, at 38]. This network will operate for 65 years, in order to provide Qualifying Diagnoses for Retired NFL Football Players for the duration of their lifetimes. As with the BAP, Qualified MAF Physicians will be available throughout the country, and the Settlement will ease the difficulty of Retired Players finding qualified healthcare providers.

As the Court observed, "Retired Players cannot be compensated for CTE in life because no diagnostic or clinical profile of CTE exists, and the symptoms of the disease, if any, are unknown. But the Settlement *does* compensate the cognitive symptoms allegedly associated with CTE." *In re NFL*, 307 F.R.D. at 396-97 (emphasis in original). CTE "inflicts symptoms compensated by Levels 1.5 and 2 Neurocognitive Impairment and is strongly associated with the other Qualifying Diagnoses in the Settlement." *Id*. at 400. The ability to compensate these cognitive symptoms despite the current lack of scientific means to diagnose CTE in a living retired NFL player, is another innovative aspect of the Settlement.

Also innovative is the Settlement's lien resolution program, which will lower Class Members' costs. The Settlement provides for the retention of an expert (the Lien Resolution Administrator) for the purpose of negotiating collective resolution of governmental and health benefit liens against class member recoveries. Absent global resolution, as is common in an individual injury action, such liens can reduce a claimant's gross award by a third or more. As the Court found, "the lien resolution program will streamline this necessary process and ensure that Class Members receive Monetary Awards as quickly as possible," and "the lien resolution process represents a substantial benefit for Class Members" because the appointed administrator "will be able to negotiate on a class-wide basis" and thereby obtain a "discount" for the Class. *In re NFL*, 307 F.R.D. at 367, 421; *see also* Seeger Decl., Ex B (Decl. of Matthew L. Garretson, dated Jan. 20, 2017).

In addition, the Settlement is innovative in that it protects neurocognitive benefits that Retired NFL Players had bargained for. The Settlement ensures that settlement benefits do not in any way compromise pre-existing benefits to which a Retired Player might be entitled. Significantly, it preserves Retired NFL Football Players' rights to pursue claims for workers compensation and any and all medical and disability benefits under any applicable collective bargaining agreement, including the NFL's Neuro-Cognitive Disability Benefit and the "88 Plan" (which reimburses or pays for up to $100,000 in medical expenses per year for qualifying retired players with dementia, ALS, and Parkinson's Disease). Settlement § 18.6 [ECF No. 6481-1, at 79-80]. In addition, the Settlement ensures that the provision included in Article 65 of the current CBA, Section 2 – requiring that players execute a release of claims and covenant not to sue in order to be eligible for the NFL's Neuro-Cognitive Disability Benefit – will not be enforced or used against Class Members in connection with this Settlement. *Id.* § 29.1 [ECF No. 6481-1, at 96].

The appeals process is also an innovative feature of the Settlement in that it provides added structural protections for Class Members. Co-Lead Counsel have standing to appeal as part of the Settlement Agreement. *Id.* § 9.5 [ECF No. 6481-1, at 51]. The Settlement provides rights to appeal various decisions, including denial of registration, denial of Monetary Awards, and the amount of a Monetary Award. *Id.*

C. A Lodestar Cross-Check Shows That the Fee Request Is Reasonable

As noted above, *see* Section IV.A, *supra*, while it has not made it mandatory, the Third Circuit has suggested that, in addition to reviewing the fee award reasonableness factors, "it is 'sensible' for district courts to 'cross-check' the percentage fee award against the 'lodestar' method." *In re Rite Aid*, 396 F.3d at 305 (citing *In re Prudential*, 148 F.3d at 333). The lodestar is calculated by multiplying the number of hours worked by the hourly rates of counsel. The

proposed percentage of the recovery award is then divided by the lodestar to yield the "lodestar multiplier." *In re AT & T Corp.*, 455 F.3d at 164. "The court may then multiply the lodestar calculation to reflect the risks of nonrecovery, to reward an extraordinary result, or to encourage counsel to undertake socially useful litigation." *In re Aetna Inc. Secs. Litig.*, No. MDL 1219, 2001 WL 20928, at *15 (E.D. Pa. Jan. 4, 2001) (citing *In re Ikon*, 194 F.R.D. at 195).

The lodestar cross-check however, "does not trump the primary reliance on the percentage of common fund method." *In re Rite Aid*, 396 F.3d at 307. Moreover, "[t]he lodestar cross-check calculation need entail neither mathematical precision nor bean-counting. The district courts may rely on summaries submitted by the attorneys and need not review actual billing records. . . . [T]he resulting multiplier need not fall within any pre-defined range, provided that the District Court's analysis justifies the award." *Id.* at 306-07 (footnotes and citations omitted). In short, a lodestar cross-check serves merely as a rough yardstick to gauge the reasonableness of a common benefit fee request.

1. Plaintiffs' Counsels' Lodestar Is Eminently Reasonable

Here, Plaintiffs' Counsels' lodestar totals $40,559,978.60. *See* Seeger Decl. ¶ 78 & Exs. C-X (compiling supporting declarations of Co-Lead Counsel, Class Counsel, Subclass Counsel, and all other firms having performed common benefit work). The total hours expended on this litigation were 50,912.39, which included time reasonably spent investigating the claims, conferring on and formulating case strategy, drafting complaints and master administrative complaints, defending against dispositive motions, the extensive and spirited mediation (including the second round that followed the Court's January 2014 rejection of the first settlement agreement), the actual negotiation and drafting of the Settlement (including its precursors), the drafting of Rule 23(e) preliminary and final approval papers, overseeing the preparation and dissemination of Class Notice, dealing with innumerable Class Members,

preparing for implementation of the Settlement, and defending against multiple appeals (both interlocutory and from the final judgment and order approving the Settlement).

Besides the time reasonably expended in this complex MDL and its many (and sundry) moving parts, the hourly attorney rates underlying the lodestar are reasonable. Specifically, Seeger Weiss' rates range from $985 to $500 per hour, Seeger Decl., Addendum 1; Anapol Weiss' rates range from $650 to $275 per hour (Seeger, Decl., Ex. G [Weiss Decl., Ex. 1]); Podhurst Orseck's rates range from $895 to $405 per hour (Seeger Decl., Ex. E [Marks Decl., Ex. 1]); the Locks Law Firm's rates range from $900 to $550 per hour (Seeger Decl., Ex. D [Locks Decl., Ex. 1]); Levin, Sedran & Berman's rates range from $1,350 to $525 per hour (Seeger Decl., Ex. C [Levin Decl., Ex. 1]); and NastLaw's rates range from $800 to $560 per hour (Seeger Decl., Ex. F [Nast Decl., Ex. 1]).[35]

The next question is whether these rates are consistent with prevailing rates in this District. *See generally Interfaith Cmty. Org. v. Honeywell Int'l, Inc.*, 426 F.3d 694, 705 (3d Cir. 2005) (district courts in this Circuit must look to "forum rates," save where special expertise of counsel from distant district is shown or when local counsel are unwilling to handle the case). The answer to that is yes.

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[35] The firms' rates are current, not historical, rates. That reflects the Third Circuit's preference, *see Lanni v. New Jersey*, 259 F.3d 146, 149 (3d Cir. 2001) ("When attorney's fees are awarded, the current market rate must be used."), and counterbalances the delay in payment of counsel given the contingent nature of the services rendered. *E.g.*, *In re Unisys Corp. Retiree Med. Benefits ERISA Litig.*, 886 F. Supp. 445, 479 (E.D. Pa. 1995); *In re Schering-Plough Corp. Enhance Sec. Litig.*, No. 08-2177 DMC, 2013 WL 5505744, at *33 n.28 (D.N.J. Oct. 1, 2013) (citing cases). "[D]istrict [C]ourts in this [C]ircuit do award attorneys' fees based on the current billing rate." *In re Safety Components, Inc. Sec. Litig.*, 166 F. Supp. 2d 72, 103 n.11 (D.N.J. 2001) (internal quotations and citations omitted); *in re Ikon Office Sols., Inc., Secs. Litig.*, 194 F.R.D. 166, 195 (E.D. Pa. 2000) ("Each attorney's hourly rates were appropriately calculated by reference to current rather than historic rates.").

The prevailing market rate is ordinarily reflected in a law firm's normal billing rate. *See In re Avandia Mktg., Sales Practice & Prods. Liab. Litig.*, No. 07-md-01871, 2012 WL 6923367, at *10 (E.D. Pa. Oct. 19, 2012). "The value of an attorney's time generally is reflected in his normal billing rate." *Moore v. GMAC Mortgages*, No. 07-4296, 2014 WL 12538188, at *2 (E.D. Pa. Sept. 19, 2014) (internal citation omitted). Because a "reasonable hourly rate" reflects an attorney's experience and expertise, the rates for individual attorneys vary. *Id.*

Whether the rate charged is reasonable is determined by "assessing the experience and skill of the prevailing party's attorneys and by looking at the market rates in the relevant community for lawyers of reasonably comparable skill, experience and reputation." *Chakejian v. Equifax Info. Svcs, LLC*, 275 F.R.D. 201, 217 (E.D. Pa. 2011) (internal citations and quotations omitted). Here, counsel has applied normal billing rates, rates that have been approved in this Circuit. *E.g*, *In re Viropharma Inc., Sec*. *Litig*., No. 12-2714, 2016 WL 312108, at *18 (E.D. Pa. Jan. 25, 2016) (hourly billing rates of all of plaintiff's counsel ranged from $610 to $925 for partners, $475 to $750 for of counsels, and $350 to $700 for other attorneys); *McDonough v. Toys "R" Us, Inc*., 80 F. Supp. 3d 626, 657 n.30 (E.D. Pa. 2015) (Seeger Weiss LLP's rates approved); *In re Mercedes Benz Tele Aid Contract Litig*., No. 07-2720, 2011 WL 4020862, at *7 (D.N.J. Sept. 9, 2011) (rates of $500-$855 per hour for partners and $370 to $475 for associates were "comparable to rates the courts have approved in similar cases in other metropolitan areas"); *In re Avandia Mktg., Sales Practices & Prods. Liab. Litig.*, 2012 WL 6923367, at *10 (E.D. Pa. Oct. 19, 2012) ("According to a 2011 sampling of nationwide billing rates submitted by the Fee Committee, of which this Court takes judicial notice, partners at GSK's Philadelphia-based firm (Pepper Hamilton) bill up to $825 per hour, and partners at other Philadelphia law firms have similar top hourly rates ($900 at Cozen O'Connor, $875 at Duane Morris, $750 at

Saul Ewing, and $725 at Fox Rothschild)"); *In re Merck & Co., Inc. Vytorin Erisa Litig.*, No. 08-cv-285, 2010 WL 547613, at *13 (D.N.J. Feb. 9, 2010) (approving Seeger Weiss LLP's billing rates, which at the time ranged from $345 - $775).[36]

2. The Requested Award Reflects a Suitable Multiplier

In performing a lodestar cross-check, it is appropriate for the Court to consider the multipliers utilized in comparable cases. *In re Rite Aid*, 396 F.3d at 307 n.17. The Third Circuit has recognized that multipliers "'ranging from one to four are frequently awarded in common fund cases when the lodestar method is applied.'" *In re Cendant PRIDES*, 243 F.3d at 742 (quoting *In re Prudential*, 148 F.3d at 341). Here, as noted above, Plaintiffs' Counsels' combined lodestar is $40,559,978.60. Given the requested attorneys' fees component of the award of $106,817,220.62, the lodestar multiplier in this case is 2.6, which is well within the norm in this Circuit.

D. Plaintiffs' Counsel's Expenses Were Reasonably and Appropriately Incurred, and Are Adequately Documented

Under the common fund doctrine, "a private plaintiff, or plaintiff's attorney, whose efforts create, discover, increase, or preserve a fund to which others also have a claim, is entitled to recover from the fund the costs of his litigation[.]" *In re Diet Drugs*, 582 F.3d at 540

[36] *See also Moore v. GMAC Mortg.*, No. 07-4296, 2014 WL 12538188, at *2 (E.D. Pa. Sept. 19, 2014) (finding reasonable rates that "range from $325 per hour for an associate to $860 per hour for an experienced bankruptcy partner"); *Lugus IP, LLC v. Volvo Car Corp.*, No. 12-2906, 2015 WL 1399175, at *6, *8 (D.N.J. Mar. 26, 2015) (finding rates "between $274.50 and $895.50" to be "reasonable given the experience and specialized expertise of the attorneys involved"); *Mirakay v. Dakota Growers Pasta Co.*, No. 13-CV-4429 JAP, 2014 WL 5358987, at *14 (D.N.J. Oct. 20, 2014) (allowing rates that, "range[d] from $350.00 to $850.00 per hour"); *Louisiana Mun. Police Employees Ret. Sys. v. Sealed Air Corp.*, No. 03-CV-4372 DMC, 2009 WL 4730185, at *9 (D.N.J. Dec. 4, 2009) (allowing hourly rates, "ranging from $225 to $830"); *Sullivan v. DB Invs., Inc.*, No. 04-2819 SRC, 2008 WL 8747721, at *35 (D.N.J. May 22, 2008) (allowing "hourly rates of the attorneys and paralegals . . . which range[d] from $800 to $185 per hour") (emphasis added).

(citations omitted). "[C]ounsel for a class action is entitled to reimbursement of expenses that were adequately documented and reasonably and appropriately incurred in the prosecution of the class action." *In re Safety Components, Inc. Secs. Litig.*, 166 F. Supp. 2d 72, 108 (D.N.J. 2001) (citing *Abrams v. Liehtolier Inc.*, 50 F.3d 1204, 1225 (3d Cir. 1995)). Here, "[c]ounsel had a strong incentive to conserve their expenses, given that they were incurred with no guarantee of recovery." *In re Flonase Antitrust Litig*., 291 F.R.D. 93, 106 (E.D. Pa. 2013).

The supporting declarations of Plaintiffs' Counsel describe the expenses incurred in connection with this litigation. *See*, *e.g.*, Seeger Decl. ¶ 96 & Addendum 2; *id*., Ex. G (Weiss Decl. ¶ 7 & Ex. 2); *id*. , Ex. E (Marks Decl. ¶ 34 & Ex. 2); *id*., Ex. D (Locks Decl. ¶ 23 & Ex. 2); *id*., Ex. C (Levin Decl. ¶ 7 & Ex. 2); *id*., Ex. F (Nast Dec. ¶ 8 & Ex. 2). These expenses are amply documented, and were reasonably incurred in the prosecution and resolution of the litigation. Plaintiffs' Counsel will briefly highlight major categories of expenditure to assist the Court in its evaluation of this application.

This litigation involved detailed scientific and medical research and calculations. For Plaintiffs' Counsel, it was absolutely necessary to understand the types of neurocognitive illnesses that would warrant compensation, to determine how many Retired NFL Football Players had suffered from these illnesses in the past, and to forecast how many Retired NFL Football Players would be diagnosed with them in the future. This is especially so given the NFL's extensive resources and its ability to marshal its own expert analyses.

The case also involved extremely complicated statistical calculations. Incidence rates of the Qualifying Diagnoses had to be calculated several decades out. This also required extensive expert analysis, which is reflected in Plaintiffs' Counsel's expenses. Moreover, as detailed above, Plaintiffs' Counsel formulated and employed an effective public relations strategy, which

kept Class Members informed, counteracted inaccurate information about the litigation and Settlement, and assisted in settlement efforts. Courts routinely allow recovery for expert fees of the sort incurred here. *E.g.*, *In re Viropharma Inc., Sec. Litig.*, No. 12-2714, 2016 WL 312108, at *18 (E.D. Pa. Jan. 25, 2016) (counsel in a class action are entitled to reimbursement of expenses that were "adequately documented and reasonable and appropriately incurred in the prosecution of the class action"); *In re Flonase Antitrust Litig.*, 291 F.R.D. at 106 (costs of "experts, investigators, [and] accountants"); *Cullen*, 197 F.R.D. at 151 (expenses that were "adequately documented, proper and reasonable" reimbursed).

* * *

Lastly, as noted at the outset of this memorandum, Co-Lead Class Counsel Christopher Seeger respectfully requests that the Court entrust him with the responsibility and discretion for making the ultimate allocation of the fee award among counsel for non-objecting Plaintiffs who performed common benefit work (and incurred common benefit expenses) given that he has had overall charge of this litigation for some time now, including the formulation of case strategy, the spearheading of negotiations with the NFL Parties, and the defense of the Settlement.[37] Seeger Decl. ¶ 99. Courts commonly delegate such allocation authority. *E.g.*, *Milliron v. T-Mobile USA, Inc.*, 423 F. App'x 131, 134 (3d Cir. 2011) ("Generally, a district court may rely on lead counsel to distribute attorneys' fees among those involved[.]"); *In re Am. Inv'rs Life Ins. Co. Annuity Mktg. & Sales Practices Litig.*, 263 F.R.D. 226, 251 (E.D. Pa. 2009) (conferring "sole discretion" on Co-Lead Counsel to allocate award of fees and expenses); *In re Viropharma Inc. Sec. Litig.*, Civ. No. 12-2714, 2016 WL 304040, at *4 (E.D. Pa. Jan. 25, 2016) ("Lead

[37] In the alternative, the Court should allow Mr. Seeger to make a proposed allocation, subject to the Court's final approval. *See* Seeger Decl. ¶ 99.

Counsel shall allocate the attorneys' fees awarded amongst Plaintiff's Counsel in a manner which it, in good faith, believes reflects the contributions of such counsel to the institution, prosecution and settlement of the Action."); *In re Fasteners Antitrust Litig.*, No. 08-MD-1912, 2014 WL 296954, at *10 (E.D. Pa. Jan. 27, 2014) (conferring responsibility on Co-Lead Counsel "for allocating and distributing counsel fees and expenses to be paid to Class Counsel"); *In re Auto. Refinishing Paint Antitrust Litig.*, MDL No. 1426, 2008 WL 63269, at *7 (E.D. Pa. Jan. 3, 2008) (noting that co-lead counsel had "directed this case from its inception and [we]re best able to assess the weight and merit of each counsel's contribution"; "allowing Counsel to allocate fees conserves the time and resources of the courts") (citing *In re Linerboard Antitrust Litig.*, 2004 WL 1221350, at *18).

As for the fee petitions filed (or to be filed) by counsel for certain objectors, Plaintiffs' Counsel respectfully propose that the Court direct a segregation or set-aside from the Attorneys' Fees Qualified Settlement Fund of whatever amount it deems appropriate pending resolution of those petitions, but otherwise permit the allocation and distribution of fees and reimbursement of expenses among counsel non-objector Plaintiffs who performed common benefit work and incurred common benefit expenses to proceed. Seeger Decl. ¶ 100.

E. The Five Percent Set-Aside Is Necessary to Support Effectuation and Administration of the Settlement

Anticipating the substantial future efforts that will be necessary for the common benefit of the Class over the coming decades, Section 21.1 of the Settlement provides:

> After the Effective Date, Co-Lead Class Counsel may petition the Court to set aside up to five percent (5%) of each Monetary Award and Derivative Claimant Award to facilitate the Settlement program and related efforts of Class Counsel. These set-aside monies shall be held in a separate fund overseen by the Court. Any future petition for a set-aside will describe: (i) the proposed amount; (ii) how the money will be used; and (iii) any other relevant information (for example, the assurance that any "set-

> aside" from a Monetary Award or Derivative Claimant Award for a Settlement Class Member represented by his/her individual counsel will reduce the attorney's fee payable to that counsel by the amount of the "set-aside"). No money will be held back or set aside from any Monetary Award or Derivative Claimant Award without Court approval.

ECF No. 6481-1, at 82.

The Third Circuit has approved the establishment of separate funds in settlements to provide future common benefit fees for attorneys. As the Court of Appeals explained in *In re Diet Drugs*, 582 F.3d at 532, "[t]he MDL and settlement process yielded four potential sources for fees to compensate the PMC and other attorneys who had a hand in creating common benefits for the enormous class of claimants. First . . . the District Court ordered Wyeth to withhold 9% of the payments it made to plaintiffs whose cases were transferred to the MDL and place those funds in the "MDL Fee and Cost Account," from which Class Counsel would be compensated for providing case-wide services." *Id*. Furthermore, the district court "provided for the sequestration of 6% of the value of claims in state court cases where the litigation was coordinated with the MDL. That money also went into the MDL Fee and Cost Account. The percentages were to be deducted from the fees due to the individual lawyers for the opt-out claimants who recovered against Wyeth." *Id*. Here, the holdback from a particular award will cover work done during the time period from the Effective Date of the Settlement to the player's award date.[38]

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[38] A set-aside of five percent is reasonable, and consistent with holdbacks in MDLs that courts have adopted for the purpose of creating a pool out of which attorneys can be compensated for common benefit work. *E.g.*, *In re Avandia Mktg., Sales Practices & Prods. Liab. Litig.*, MDL No. 1871, 2012 WL 6923367, at *1 (E.D. Pa. Oct. 19, 2012) (7% of individual settlements paid into common benefit fund); *In re Diet Drugs Prods. Liab. Litig.*, 553 F. Supp. 2d at 457-58, 491-96 (describing 9% federal and 6% state assessments later reduced to 6% and 4%, respectively); *In re Genetically Modified Rice Litig.*, MDL 06-1811, 2010 WL 716190, at *6 (E.D. Mo. Feb. 24, 2010) (6% to 8% fee assessments, plus additional 3% for costs); *In re St.*

(Footnote continued . . .)

As the Court is well aware, the Settlement is to cover a period of sixty-five years. Settlement § 6.10 [ECF No. 6481-1, at 42 (Monetary Award Fund Term)]. Common benefit work in connection with the Settlement's implementation – such as the lining of BAP physicians; the drafting, submission for this Court's approval, and dissemination of Supplemental Class Notice; finalization and submission for the Court's approval of the Settlement Trust Agreement; and registration program preparations has already begun. *See* Section III.M, *supra* Seeger Decl. ¶¶ 107-08; ECF Nos. 7107, 7115, 7118.

Plaintiffs' Counsel have had (and will have) to engage in a good deal of work to ensure that Class Members timely register in order to qualify for Settlement benefits. These efforts include the finalization and dissemination of Supplemental Class Notice regarding the registration and benefits timetable, finalizing and overseeing the effectuation of registration forms, overseeing the transition of call center operations to the Claims Administrator, and continuing revisions to the Settlement website (including FAQs). Seeger Decl. ¶ 109. Other efforts are and will be expended in connection with the June 6, 2017 launch of the BAP, including the review of applications of BAP Providers and vetting candidates for retention, receiving reports on contracting with Providers in order to establish networks convenient to a majority of players by metropolitan region, and finalizing BAP procedures (including assessment

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Jude Med., Inc., MDL 1396, 2002 WL 1774232, at *2 (D. Minn. Aug.1, 2002) (6% assessment both for Federal and State cases); *In re Baycol Prods. Litig.*, MDL 1431, 2002 WL 32155266, at *4 (D. Minn. June 14, 2002) (6% assessment for Federal cases and qualifying State cases); *In re Protegen Sling and Vesica System Prods. Liab. Litig.*, MDL 1387, 2002 WL 31834446, at *1, *3 (D. Md. Apr. 12, 2002) (9% assessment for Federal cases and 6% assessment for State cases); *In re Rezulin Prods. Liab. Litig.*, MDL No. 1348, 2002 WL 441342, at *1 (S.D.N.Y. Mar. 20, 2002) (6% withholding in federal cases, 4% in participating state cases); 4 *Newberg on Class Actions* § 14:9 ("Most [MDL] courts have assessed common benefit fees at about a 4-6% level, generally 4% for a fee and 2% for costs."); Paul D. Rheingold, *Litigating Mass Tort Cases* § 7:35 (2010) ("[P]ercentages awarded for common funds in recent MDLs . . . were in the 4-6% range.") (citation omitted).

scheduling and Supplemental Benefits). *Id.* ¶ 110. Still other work has pertained or will pertain to the MAF: the review of applications of MAF Physicians and vetting candidates for retention, finalizing claims forms and processes, and finalizing appeals forms and processes. *Id.* As these BAP Providers and MAF Physicians retire over time, or, for other reasons, become unable or unwilling to continue to serve in those capacities, over the next 65 years, they will have to be replaced, involving additional common benefit work by Plaintiffs' Counsel. *Id.*

In the course of all this, as Supplemental Notice is prepared and registration begins, and continuing over the lengthy period of the Settlement's life, attorneys will continue to spend time and effort to coordinate and work with the Claims Administrator, the BAP Administrator, Lien Resolution Administrator, the Settlement Trustee, and the Court to ensure that Retired NFL Football Players and Derivative Claimants receive their benefits. Plaintiffs' Counsel will also be required, over the next 65 years, to consult with experts to stay abreast of medical developments. *Id.* ¶ 111.

Plaintiffs' Counsel will also have work to perform in connection with the administrative appeals process. They will be called upon to provide assistance for all claimants who have not retained lawyers, and in some instances to assist counsel representing individual Plaintiffs. Co-Lead Class Counsel have standing to appeal as part of the Settlement. Settlement § 9.50 [ECF No. 6481-1, at 51]. The Settlement provides rights to appeal various decisions, including denial of registration, denial of Monetary Awards, and the amount of a Monetary Award. *Id.* Plaintiffs' Counsel will also be called upon to provide assistance for all claimants who have not retained lawyers, and in some instances to assist counsel representing individual plaintiffs. This work will continue over the 65-year life of the Settlement. Seeger Decl. ¶ 112.

In this respect, Plaintiffs' Counsel must retain the Appeals Advisory Panel (composed of five neurologists/board certified neurospecialists) and Appeals Advisory Panel Consultants (three neuropsychologists) by April 7, 2017. *Id*. ¶ 113. This body is charged, at the outset, with reviewing diagnoses made prior to the Effective Date of the Settlement. Settlement § 6.43 [ECF No. 6481-1, at 37-38]. These physicians will be advising the Special Masters and the Court. Seeger Decl. ¶ 113. Thus, this work is critical because it will set the tone for the administration of the Settlement. *Id*. As these physicians retire or for other reasons become unable or unwilling to serve on the Appeals Advisory Panel or as Appeals Advisory Consultants, they will need to be replaced, involving additional common benefit work by Plaintiffs' Counsel. *Id*.

The Settlement requires that the Parties revisit the science every ten years to discuss in good faith possible prospective modifications to the definitions of Qualifying Diagnoses and/or the protocols for making Qualifying Diagnoses, in light of generally accepted advances in medical science. *Id*. § 6.6 [ECF No. 6481-1, at 35]. This too, is anticipated future common benefit work to be performed by Plaintiffs' Counsel.

Plaintiffs' Counsel will also need to establish, review, and conduct ongoing auditing and financial reporting on the BAP and MAF programs. *Id*. § 10.3 [ECF No. 6481-1, at 59-62]. Finally, Plaintiffs' Counsel will need to monitor and ensure the NFL Parties' compliance with the funding and the maintenance of the targeted reserves for the MAF and BAP, as well as to monitor the Settlement Trust and Trustee under Article 23 of the Settlement. Seeger Decl. ¶ 116.

The requested set-aside thus provides a source to facilitate fair and reasonable compensation for these and other necessary services of Plaintiffs' Counsel for the benefit of the Class over the coming years. Although Plaintiffs' Counsel cannot fully or accurately predict the

scope or extent of those necessary services, it is clear that such services will be required to some extent.

Moreover, given the 65-year length of this Settlement, at some point Plaintiffs' Counsel may need to transition the responsibilities for representing the Class and overseeing the implementation of the Settlement to other law firms. Indeed, it is quite possible (if not likely) that this need will rise more than once. The set-aside will also ensure that prospective incoming firms have the financial incentive to undertake these responsibilities by making sure that there is a pool of funds to compensate them for getting up to speed and taking up the mantle.

In accordance with the Settlement, any set-aside from a Monetary Award or Derivative Claimant Award for Class Members represented by their individual counsel will reduce the attorneys' fee payable to that counsel by the amount of the holdback. Seeger Decl. ¶ 103. Should the Court approve the proposed 5% set-aside, Plaintiffs' Counsel will submit, within thirty days of the Court's Order, a detailed plan of administration, including how the funds created from the holdbacks will be pooled and maintained, and how any attorney will apply for compensation for post-Settlement work performed. *Id*. ¶ 119.

F. Incentive Awards for Subclass Representatives

Finally, Petitioners request Case Contribution Awards (often referred to as incentive or service awards) of $100,000 for each of the Class Representatives – Messrs. Swinson, Wooden, and Turner (or, where applicable, their estates). These awards will be taken from the $112,500,000 award requested herein and thus will not increase the NFL's liability for fees, costs, and expenses. *See* Seeger Decl. ¶ 120 n.10; *cf. In re Transpacific Passenger Air Transp. Antitrust Litig.*, No. C 07-05634 CRB, 2015 WL 4776946, at *2 (N.D. Cal. Aug. 13, 2015) ("Incentive awards . . . typically come from the class fund.").

There is ample authority in this District and elsewhere for such incentive awards. *E.g.*, *In re Linerboard Antitrust Litig.*, No. 98-5055, 2004 WL 1221350, at *18 (E.D. Pa. June 2, 2004) ("Like the attorneys in this case, the class representatives have conferred benefits on all other class members and they deserve to be compensated accordingly."); *Tenuto v. Transworld Sys., Inc.*, No. 99-4228, 2002 WL 188569, at *5 (E.D. Pa. Jan. 31, 2002) (incentive award appropriate where class representative "actively assisted counsel in the prosecution of this litigation to the benefit of the class").[39]

For Subclass 1, Plaintiff Swinson served as the original representative. As an integral part of his work as a representative, he met with Subclass 1 counsel Arnold Levin. Seeger Decl. ¶ 121. A retired player who was not diagnosed with neurocognitive impairment, Mr. Swinson had standing to assert the rights of Subclass 1 members. During the negotiations of settlement terms in the summer of 2013, Co-Lead Class Counsel and Mr. Levin conferred with Mr. Swinson concerning the terms of the proposed Settlement. *Id.* Mr. Swinson was aware of and had agreed to the terms of the settlement and he reviewed drafts of the Term Sheet before it was executed. Given Mr. Swinson's passing, Plaintiffs' Counsel accordingly request that the proposed incentive award be paid to Mr. Swinson's estate. *Id.* ¶ 122 n.11.

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[39] *See also Hadix v. Johnson*, 322 F.3d 895, 897 (6th Cir. 2003) (noting that courts make incentive awards "to class representatives for their often extensive involvement with a lawsuit" and that "[n]umerous courts have authorized incentive awards") (citing cases); *Briggs v. PNC Fin. Servs. Grp., Inc.*, No. 1:15-CV-10447, 2016 WL 7018566, at *2 (N.D. Ill. Nov. 29, 2016) ("Incentive awards serve the important purpose of compensating plaintiffs for the time and effort expended in assisting the prosecution of the litigation, the risks incurred by becoming and continuing as a litigant, and any other burdens sustained by the plaintiffs.") (citing cases); *In re Residential Doors Antitrust Litig.*, Nos. 93-3744, 96-2125, 1998 WL 151804, at *11 (E.D. Pa. Apr. 2, 1998) (incentive awards granted to four class representatives whose actions "resulted in a significant benefit to the class"); *Rodriguez v. Infinite Care, Inc.*, No. 15-1824, 2016 WL 6804430, at *10 (E.D. Pa. Nov. 17, 2016) (incentive payment awarded where representative plaintiff "devoted time and energy to the litigation, including assisting with discovery and at the mediation").

After the Term Sheet was announced, and following Mr. Swinson's passing, Plaintiff Wooden became the proposed Subclass 1 representative. ECF Nos. 6423-8 (¶4), 6423-10 (¶ 6). Mr. Wooden played professional football in the NFL from 1996-2004. ECF No. 6423-8 (¶ 1) During his NFL career, he experienced repeated traumatic head impacts, and since his retirement from football he has experienced neurological symptoms, including migraine headaches, sleep problems, concentration issues, and mood swings. *Id.* Mr. Wooden has not been diagnosed with any neurocognitive impairment, but is at increased risk of developing a range of neuromuscular and neurocognitive diseases associated with mild traumatic brain injuries and as alleged in the Complaints, such as dementia, Alzheimer's Disease, Parkinson's Disease, or ALS, as a proximate result of having played professional football in the NFL. *Id.*

On January 24, 2012, Mr. Wooden filed a complaint, through his attorney, Class Counsel Steven Marks of Podhurst Orseck, against the NFL Parties in the Southern District of Florida (*Wooden v. Nat'l Football League*, No. 1:12-cv-20269-JEM). *Id.* ¶ 2. That action was transferred to this MDL on February 23, 2012. Thereafter, on June 7, 2012, a Master Administrative Class Action Complaint for Medical Monitoring was filed on his behalf in the MDL, a complaint whose filing he authorized. *Id.*

Throughout these proceedings, Mr. Wooden followed the litigation closely. *Id.* ¶ 3. He had various meetings, telephone conferences, and email exchanges with Mr. Marks about the status of proceedings, the NFL Parties' preemption motions and the oral argument on the motions, among other things. *Id.*

After meeting with Subclass Counsel Arnold Levin at the latter's offices in Philadelphia, Mr. Wooden agreed to participate as the proposed representative of Subclass 1. *Id.* ¶ 4. Mr. Wooden monitored the progress of settlement negotiations, and he reviewed with counsel drafts

of the settlement agreements and exhibits thereto. *Id.* ¶¶ 5, 7. In addition, he reviewed numerous press articles about the litigation and the settlement. *Id.* ¶¶ 3, 7. Since final approval of the Settlement, Mr. Wooden has remained involved, frequently talking to other Retired NFL Players and family members to provide information about the Settlement. Seeger Decl. ¶ 125.

Subclass 2 was represented by Kevin Turner. This subclass consisted of players who were diagnosed with injuries associated with concussive and sub-concussive head trauma. ECF No. 6423-11 (¶ 5). Mr. Turner played professional football in the NFL as a fullback from 1992-1999. In June 2010, at the age of 41, he was diagnosed with ALS. ECF No. 6423-7 (¶¶ 1-2). As this degenerative disease rapidly progressed, Mr. Turner required around-the-clock care and assistance with even the simplest, most basic daily activities, such as bathing, shaving, and brushing his teeth. Mr. Turner had three young children. *Id.*

On January 20, 2012, Mr. Turner, through his attorney, Class Counsel Steven Marks, filed a complaint against the NFL Parties in the Southern District of Florida (*Jones v. Nat'l Football League*, No. 1:11-cv-24594-JEM). *Id.* ¶ 5. That action was transferred to this MDL on February 14, 2012. *Id.* On July 11, 2012, Mr. Turner filed a Short-Form Complaint against the NFL Parties. *Id.*; ECF No. 1318. In that complaint, he incorporated by reference the allegations of the Master Administrative Long-Form Complaint and specifically alleged that he had sustained repetitive, traumatic sub-concussive or concussive head impacts during NFL games and/or practices, and that he suffered from symptoms of brain injury caused by these head impacts.

Like Mr. Wooden, Mr. Turner followed the litigation closely. ECF No. 6423-7 (¶ 6.) He had numerous meetings, telephone conferences, and email exchanges with Mr. Marks about the status of proceedings, the NFL Parties' preemption motions and the oral argument on same. *Id.*

Beginning in about July 2013, Mr. Marks informed Mr. Turner of the settlement negotiations between the Plaintiffs and the NFL Parties and his possible representation of Subclass 2 members. *See id.*

In August, 2013, Mr. Turner met with Subclass Counsel Dianne Nast at her offices in Philadelphia, regarding his prospective representation of Subclass 2 members in the proposed class action. *Id.* Mr. Marks was present at that meeting, and the three discussed in detail the impending class settlement. After the meeting, counsel determined that Mr. Turner had standing to assert the rights of Subclass 2 members and that he was an adequate representative for them. Mr. Turner monitored the progress of settlement negotiations, and he reviewed drafts of the settlement agreements. *Id*. ¶¶ 7-9. In addition, he reviewed numerous press articles about the Settlement. *Id.* ¶ 7. Mr. Turner passed away on March 24, 2016, shortly before the Third Circuit affirmed this Court's final approval of the Settlement. Seeger Decl. ¶ 129. Plaintiffs' Counsel accordingly request that the proposed Case Contribution Award be paid to Mr. Turner's estate. *Id*. ¶ 129 n.12.

In short, Messrs. Swinson, Wooden, and Turner were actively engaged in this litigation, including the settlement negotiations, and they contributed valuable efforts on behalf of the absent members of their respective Subclasses. Their contributions should be recognized accordingly. *See In re Plastic Tableware Antitrust Litig.*, No. 94-CV-3564, 1995 WL 723175, at *2 (E.D. Pa. Dec. 4, 1995) ("Payments to class representatives may be . . . treated as a reward for public service and for the conferring of a benefit on the entire class"); *Cullen*, 197 F.R.D. at 145 ("Courts routinely approve incentive awards to compensate named plaintiffs for the services they provide and the risks they incurred during the course of the class action litigation.") (citation and internal quotation marks omitted).

To be sure, the amount of the incentive award requested, $100,000, is higher than that awarded in typical cases. As the Court is well aware, though, this was no ordinary or routine case. This has been an extremely high-profile litigation, and at times the Class Representatives were subjected to attacks by objectors and in the press. Moreover, the Class Representatives here were much more actively involved in the settlement process and the overall outcome than are class representatives in more routine litigations. In any event, other courts have occasionally rendered high incentive awards. *E.g.*, *King Drug Co. of Florence v. Cephalon, Inc.*, Civ. No. 06-cv-01797-MSP, 2015 WL 12843830 at *5 (E.D. Pa. Oct. 15, 2015) ($500,000 collective award for six plaintiffs); *In re Graphite Electrodes Antitrust Litig.*, MDL No. 1244 (E.D. Pa. Order of Sept. 8, 2003) ($80,000); *Brotherton v. Cleveland*, 141 F. Supp. 2d 907, 914 (S.D. Ohio 2001) ($50,000). The amount requested for the three Class Representatives here is particularly warranted here, given the historic nature of Settlement, the tremendous work that went into achieving it, the Class Representatives' active involvement (both with their lawyers and their peers), the magnitude of the relief obtained, and the great number of Class Members who stand to benefit.

V. CONCLUSION

For the foregoing reasons, the Court should grant the instant Petition and (i) award the full $112.5 million in fees and reimbursement of costs and expenses to Plaintiffs' Counsel that the NFL Parties agreed to separately pay; (ii) entrust to Co-Lead Class Counsel Christopher Seeger the responsibility for allocating the attorneys' fees and costs and expenses award among Plaintiffs' Counsel; (iii) establish a five-percent set-aside from MAF awards to create a fund pool for the purpose of allowing counsel to seek compensation for future work to be performed in the implementation of the Settlement, and (iv) grant Case Contribution Awards of $100,000.00 to the Subclass Representatives (or, as applicable, their estates).

Respectfully submitted,

Date: February 13, 2017

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CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing was served on all counsel of record via the Court's ECF system on February 13, 2017.

s/ Christopher A. Seeger
Christopher A. Seeger

UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

IN RE: NATIONAL FOOTBALL LEAGUE PLAYERS' CONCUSSION INJURY LITIGATION	
Kevin Turner and Shawn Wooden, on behalf of themselves and others similarly situated, Plaintiffs, v. National Football League and NFL Properties LLC, successor-in-interest to NFL Properties, Inc., Defendants.	No. 2:12-md-02323-AB MDL No. 2323 **Hon. Anita B. Brody** CIVIL ACTION NO: 2:14-cv-00029-AB
THIS DOCUMENT RELATES TO: ALL ACTIONS	

DECLARATION OF CHRISTOPHER A. SEEGER IN SUPPORT OF CO-LEAD CLASS COUNSELS' PETITION FOR AN AWARD OF ATTORNEYS' FEES, REIMBURSEMENT OF COSTS AND EXPENSES, ADOPTION OF A SET-ASIDE OF FIVE PERCENT OF EACH MONETARY AWARD AND DERIVATIVE CLAIMANT AWARD, AND CASE CONTRIBUTION AWARDS FOR CLASS REPRESENTATIVES

Christopher A. Seeger declares, pursuant to 28 U.S.C. § 1746, based upon his personal knowledge, information and belief, the following:

1. I am fully familiar with the matters set forth herein, including the procedural history of this litigation and the class-wide settlement that this Court approved. I submit this Declaration in support of the consolidated petition of Class Counsel for a global award of attorneys' fees and reimbursement of expenses, the adoption of a set-aside of five percent of each monetary award and derivative claimant award, and case contribution (*i.e.*, incentive) awards for the Class Representatives.

Overview

2. I was appointed by the Court in *In re National Football League Players' Concussion Injury Litigation*, MDL No. 2323 (E.D. Pa.) on April 25, 2012, to serve as Plaintiffs' Co-Lead Counsel, and as a member of the Plaintiffs' Executive Committee ("PEC") [ECF No. 64]. I was the principal negotiator and architect of the Class Action Settlement dated June 25, 2014 between the Plaintiff Class and the Defendants National Football League and NFL Properties LLC (collectively, the "NFL Parties") [ECF No. 6073-2], which was preliminarily approved on July 7, 2014 [ECF No. 6084, ¶ 3(b)], and thereafter amended on February 13, 2015 [ECF No. 6481-1] (the "Settlement"). Prior to this litigation, I had served as plaintiffs' lead counsel or as a member of the plaintiffs' executive committee or steering committee in dozens of cases. *See* ECF No. 6423-3, ¶¶ 2-4. In particular, I served as lead plaintiffs' negotiator for multiple large settlements, including the *Vioxx* mass personal injury settlement in MDL No. 1657 in the Eastern District of Louisiana, totaling $4.85 billion; the DePuy Orthopaedics Inc., ASR Hip Implant Products, MDL 2197 in the Northern District of Ohio settlement, totaling nearly $2.5 billion; and the first two *Zyprexa* mass personal injury settlements in MDL No. 1596 in the Eastern District of New York, which resulted in a total $1.2 billion payout.

3. The Court granted final approval to the Settlement on April 22, 2015. ECF Nos. 6509, 6510. On December 12, 2016, following years of hard-fought litigation, negotiation, and ultimately, numerous challenges on appeal, the United States Supreme Court denied further review of the Settlement. By its terms, the Settlement became effective on January 7, 2017, the day after the expiration of the time to seek rehearing of the denials of petitions for writ of *certiorari*. *See* Settlement § 2.1(j) [ECF no. 6481-1, at 12-13].

4. Since the inception of this litigation in 2011, Plaintiffs' Counsel vigorously litigated this case, and labored to achieve a groundbreaking settlement that will benefit a class estimated at over 20,000 Retired National Football League ("NFL") Players. Beginning over five years ago, Plaintiffs' Counsel undertook this matter, in the face of long odds and significant risk, on a wholly contingent basis, dedicating their time, money and energy on behalf of Retired NFL Football Players[1] and their families.

5. Following the formation of this multidistrict litigation ("MDL"), the Court appointed the PEC, me, another Plaintiffs' Co-Lead Counsel (Sol Weiss of the firm then known as Anapol Schwartz, and now known as Anapol Weiss), and the Plaintiffs' Steering Committee ("PSC") composed of various counsel for Plaintiffs in the constituent cases in this MDL [ECF No. 72]. All of the attorneys appointed to the PEC and the PSC demonstrated extensive experience in and impressive credentials for representing plaintiffs alleging personal injuries in aggregate litigation, including multidistrict litigation.

6. The groundbreaking global resolution in these proceedings was the result of many months of intense, hard-fought, arm's-length negotiations between the parties, encompassing collectively thousands of hours of professional time with input from medical, actuarial, and other experts.

7. This Settlement establishes a $75 million Baseline Assessment Program ("BAP") designed to determine the existence and extent of neurocognitive impairment in living Retired NFL Football Players. In the event they are found to suffer from moderate neurocognitive impairment ("Level 1 Neurocognitive Impairment"), they will be entitled to

[1] I employ the term used in the Settlement. *See* Settlement § 2.1(ffff) [ECF No. 6481-1, at 18].

supplemental benefits in the form of medical treatment and/or evaluation, including counseling and pharmaceutical coverage.

8. The Settlement also establishes an *uncapped* Monetary Award Fund ("MAF") to provide much-needed relief to (i) seriously injured retired players with a "Qualifying Diagnosis" (*see* ECF No. 6481-1, at 17, 106-10) [Settlement § 2(yyy) & Ex. A-1]), of Level 1.5 Neurocognitive Impairment (early dementia), Level 2 Neurocognitive Impairment (moderate dementia), Alzheimer's Disease, Parkinson's Disease, and/or Amyotrophic Lateral Sclerosis ("ALS"); (ii) the representatives of certain deceased players who received a Qualifying Diagnosis while living; and (iii) the representatives of certain players who died before the date of Final Approval of the Settlement, April 22, 2015, and were diagnosed post-mortem with Chronic Traumatic Encephalopathy ("CTE"); and their families. In order to receive a Monetary Award, Class Members will not be required to prove that their injuries were caused by the NFL Parties, let alone concussions suffered during professional football play.

9. Another Settlement component is a $10 million Education Fund to promote safety and injury prevention in football players, including youth football players, and to educate Retired NFL Players regarding the NFL's medical and disability benefits programs and initiatives.

10. Significantly, the Settlement preserves Retired NFL Football Players' rights to pursue claims for worker's compensation and any and all medical and disability benefits under any applicable collective bargaining agreement ("CBA"), including the NFL's Neuro-Cognitive Disability Benefit. Settlement § 18.6 [ECF No. 6481-1, at 79-80]. In addition, the Settlement will ensure that the provision included in Article 65 of the current CBA, Section 2 –

requiring that players execute a release of claims and covenant not to sue in order to be eligible for the NFL's Neuro-Cognitive Disability Benefit – will not be enforced or used against Class Members in connection with the Settlement. *Id.* § 29.1 [ECF No. 6481-1, at 96].

11. This Settlement represents the resolution of more than 5,000 lawsuits in this MDL and thousands of additional Retired NFL Football Players' claims against the NFL Parties for injunctive relief, medical monitoring, and compensation for the long-term health risks of mild traumatic brain injuries and other losses suffered by them, allegedly as a result of the NFL Parties' tortious conduct. Considering the volume of the news reports and associated public attention concerning the Settlement, as well as the state-of-the-art class notice program, the reaction of the Class was extremely favorable. Fewer than one percent of Class Members filed requests for exclusion from the Class and over 12,000 potential Settlement beneficiaries have signed up to receive further notices regarding the Settlement and claims process to date. Since the registration period opened on February 6, 2017, the Settlement Claims Administrator has received over 6,100 registrants.

Procedural History of the Litigation

12. This MDL was established on January 31, 2012 when the Judicial Panel on Multidistrict Litigation ("JPML") centralized several actions in this District for coordinated pretrial proceedings, pursuant to 28 U.S.C. § 1407. *See In re Nat'l Football League Players' Concussion Injury Litig.*, 842 F. Supp. 2d 1378 (J.P.M.L. 2012) (MDL No. 2323). The JPML found that these cases "share[d] factual issues arising from allegations against the NFL stemming from injuries sustained while playing professional football, including damages resulting from the permanent long-term effects of concussions while playing professional football in the NFL" and that "centralization under Section 1407 in the Eastern District of

Pennsylvania w[ould] serve the convenience of the parties and witnesses and promote the just and efficient conduct of the litigation." *Id.* at 1379.

13. At the time of argument before the JPML in January 2012, there were sixteen potentially related actions pending against the NFL Parties. *Id.* at 1378. Soon thereafter, 123 cases were filed directly in the MDL or removed from Pennsylvania state court to this Court, and the JPML transferred an additional 163 cases to the MDL.

14. At the first MDL status conference on April 25, 2012, the Court appointed me as Plaintiffs' Co-Lead Counsel for the MDL proceedings, and requested that another co-lead counsel from a Philadelphia-based firm also be selected. Case Mgmt. Order ("CMO") No. 2 [ECF No. 64]. Plaintiffs selected, and the Court confirmed, the appointment of Sol Weiss of Anapol Weiss as Co-Lead Counsel. CMO No. 3 [ECF No. 72].

15. Plaintiffs also created and the Court appointed the PEC and PSC, composed of several of the counsel for Plaintiffs in the cases pending before the Court. ECF Nos. 64, 72. The PEC included counsel who were ultimately also appointed as Class Counsel, Gene Locks and Steven C. Marks, and the PSC included those ultimately also appointed as Subclass Counsel, Arnold Levin and Dianne M. Nast. The appointments of Mr. Weiss and me ultimately changed from Co-Lead Counsel to Co-Lead Class Counsel. ECF No. 6084. The Court confirmed these appointments in the Final Approval of the Settlement on April 22, 2015 [ECF No. 6510].

16. As part of its initial case management orders, the Court determined that the NFL Parties' threshold federal preemption defense under Section 301 of the Labor Management Relations Act ("LMRA"), 29 U.S.C. § 185, should be addressed before proceeding to the merits of Plaintiffs' claims. CMO No. 2 [ECF No. 64] at 2-3; CMO No. 4 [ECF No. 98] ¶ 3.

Accordingly, the Court stayed formal discovery. *See* ECF No. 3384. The Court established a schedule for Plaintiffs to file Master Administrative Complaints and for the NFL Parties to brief the threshold legal issue of whether Plaintiffs' claims were preempted by federal labor law. ECF No. 64.

17. Plaintiffs' Counsel researched, drafted, and filed a Master Administrative Long-Form Complaint, ECF No. 83, and a Master Administrative Class Action Complaint for Medical Monitoring, ECF No. 84, on June 7, 2012. Plaintiffs then filed an Amended Master Administrative Long-Form Complaint, ECF No. 2642, on July 17, 2012.

18. Plaintiffs' Counsel conducted extensive research in connection with the filing of these complaints, preparing 50-state surveys on medical monitoring, preemption, tolling, and fraudulent concealment. Plaintiffs' Counsel also closely examined the worker's compensation laws of the 50 states during this time.

19. The NFL Parties filed their motions to dismiss the operative complaints on federal preemption grounds on August 30, 2012, ECF Nos. 3589, 3590. Plaintiffs' Counsel prepared and filed opposition papers to the motions, ECF Nos. 4130-34. The NFL Parties filed reply papers, ECF Nos. 4254-55, and Plaintiffs' sur-replies closed the briefing, ECF Nos. 4589, 4591.

20. Because of the importance of the preemption motions, Plaintiffs' Counsel spent significant time analyzing, researching, drafting, and discussing their opposition to the NFL Parties' motions. Plaintiffs' Counsel also conducted several mooting sessions, which included leading academics and practitioners in the field, to prepare for oral argument. The Court heard oral argument on the motions on April 9, 2013. ECF Nos. 4737-38.

21. On a separate track, mindful of the pending and anticipated actions in this MDL, as well as the pending putative class claims on behalf of all Retired NFL Football Players, Plaintiffs' leadership carefully evaluated the potential to resolve Plaintiffs' claims on a class basis. In doing so, we took into consideration the significance and severity of the alleged injuries, the science issues relative to causation and mild traumatic brain injuries, and our ability to achieve "full value" compensation for serious injuries related to concussions and sub-concussive hits through settlement, without the need for trials and appeals.

22. In light of the fact that so many former players were extremely ill and dying, we weighed the inherent delays and costs involved in protracted litigation, as well as the risks of litigation, including the array of potential defenses of the NFL Parties, particularly preemption, but also statutes of limitations, statutory employer, and assumption of risk, among others,[2] and the difficulties in proving general and specific causation. Given the Court's determination at the outset, even before discovery, to address the threshold question of whether the Plaintiffs' claims were preempted under federal law (CMO No. 2 at 2 [ECF No. 64]), there was a real threat to the viability of Plaintiffs' case. This evaluation involved the substantial abilities, as well as the committed efforts, of Plaintiffs' legal and science teams.

Settlement Discussions and Mediation

23. Accordingly, after thoroughly researching the state of the science regarding injuries associated with concussions and sub-concussive hits, we approached the NFL Parties about the possibility of settlement. The parties thereafter engaged in discussions regarding settlement structures and injury categories. We had demanded that a broad range of additional alleged injuries be compensated in the Settlement. The Defendants held firm in their

[2] These defenses include both those that the NFL had already asserted or which it advised Class Counsel that it intended to invoke.

willingness to compensate only objectively verifiable and serious injuries, which are supported by the available science. They seemed willing to accept the risk that opt-outs might pursue those additional conditions in litigation outside of the Settlement. Importantly, although not every Retired NFL Player has been diagnosed with a qualifying injury today, all of the Retired Players are eligible to seek a monetary award if and when their symptoms progress to a compensable level and a supplemental monetary award if their condition worsens after that.

24. At the Court's urging, the Parties began to discuss settlement in Jan. 2013, and although Plaintiffs' Counsel worked intensely, progress was slow. In early July 2013, in anticipation of its decision on the preemption motions, the Court "held an informal exploratory telephone conference with lead counsel [and directed the] parties, through their lead counsel, to engage in mediation to determine if consensual resolution [wa]s possible." ECF No. 5128. The Court appointed retired United States District Judge Layn R. Phillips as the mediator, and directed that Judge Phillips report back to the Court on or before September 3, 2013 as to the results of the mediation. *Id.*

25. Co-Lead Counsel formed a negotiating committee, consisting of myself; Messrs. Weiss, Levin, Locks, and Marks; and Ms. Nast (Mr. Levin and Ms. Nast being the respective counsel for the two Subclasses; *see* ¶¶ 121-29, *infra*). ECF Nos. 6423-3 ¶ 27, 6423-10 ¶¶ 5, 9, and 6423-11 ¶¶ 6, 9. Plaintiffs' negotiating team was aware of the ramifications of *Amchem Products, Inc. v. Windsor*, 521 U.S. 591 (1997), and its progeny – namely, the necessity to ensure adequate and unconflicted representation for all Class Members, and the need for the creation of subclasses and separate representation for those with present injuries and those without present injuries. ECF Nos. 6073-4 ¶¶ 7, 11; 6423-3 ¶¶ 11, 12, 29; 6423-6 ¶ 7.

26. The members of Plaintiffs' negotiating team were fully prepared to negotiate with the NFL Parties' lawyers. As further detailed below, Plaintiffs' Counsel thoroughly investigated and analyzed the claims brought in the operative Complaints, retained medical and economic experts, and were well-versed in the relevant medical literature and related issues. Additionally, having completed extensive briefing on the NFL Parties' preemption motions to dismiss, we had a thorough appreciation of the merits of the threshold preemption arguments. *See* ECF No. 6423-3 ¶¶ 19-22, 25, 30, 32.

27. As part of their due diligence and consistent with their responsibilities to the Class and Subclasses, Plaintiffs' Counsel engaged multiple experts in the fields of medicine, namely neurology, neuropsychology, and neuropsychiatry; actuarial science; economics; claims administration; and lien identification and satisfaction to determine, develop, and test an appropriate settlement framework to evaluate and meet the needs of Retired NFL Football Players suffering from or at increased risk for the claimed injuries related to neuromuscular and neurocognitive impairment, and their family members. *See, e.g.*, ECF Nos. 6423-3 ¶¶ 32, 43; 6423-17 ¶¶ 6-9; 6423-18 ¶ 21; 6423-19 ¶¶ 19, 25, 27. The economists and actuaries assisted in modeling the possible disease incidence and adequacy of funding for the Monetary Award levels contained in the Settlement. *See* ECF No. 6423-3 ¶ 30.

28. For nearly two months, the Plaintiffs' negotiating team worked at an intense and grueling pace, expending, collectively, thousands of professional hours and often working around the clock to negotiate a fair and reasonable class settlement on behalf of all Retired NFL Football Players, their Representative Claimants, and Derivative Claimants.[3]

[3] I employ the latter two terms as used in the Settlement. *See* Settlement §§ 2.1(ee) & (eeee), ECF No. 6481-1, at 12, 18].

29. Starting before mediation began, and expanding and refining their work through the mediation process, Plaintiffs' Counsel expended significant time and effort thoroughly researching the medical and scientific issues implicated by Plaintiffs' claims, including, among others, the science of concussions and mild traumatic brain injuries, the effects of sub-concussive hits, the neurocognitive and neuromuscular injuries and progression of disease associated with such brain injuries, the epidemiology of the Qualifying Diagnoses, and the methods of diagnosis and treatment for the Qualifying Diagnoses. In doing so, and guided by our medical and scientific experts, Plaintiffs' Counsel conducted a comprehensive review of peer-reviewed medical literature to support settlement discussions and negotiations. Plaintiffs' Counsel further researched and investigated the appropriate settlement structures to effectively compensate these diseases.

30. Beyond their work with medical and scientific experts, Plaintiffs' Counsel also worked closely with economic and actuarial experts to hone appropriate incidence rates, compensation structures, and funding models for the Settlement.

31. Plaintiffs' Counsel, as well as Plaintiffs' experts, were greatly aided in their understanding of Retired NFL Football Players' head injuries, and the incidence of neurocognitive ailments, through the creation of the Retired Player database. Analyzing the records of over 2,000 Retired NFL Players, Plaintiffs' Counsel essentially created an epidemiological study of their clients. This database required extensive professional work.

32. The database was vitally important to the entire negotiation process because it enabled Plaintiffs' Counsel to appropriately characterize disease and symptom occurrence across the broader Retired NFL Football Player population. The database also served as a

useful cross-check of the published epidemiology of neurocognitive and neuromuscular diseases reportedly associated with NFL football play.

33. In addition to the vigorous conventional legal work that went into this case, early in the litigation, Plaintiffs' Counsel organized and oversaw a communications plan for the litigation. As the litigation – including the settlement discussions and formal mediation – steadily unfolded, Plaintiffs' Counsel were concerned about the dissemination of incomplete or misleading information to Plaintiffs, the broader player community, and the public at large. Plaintiffs' Counsel thus worked to ensure that all were apprised of the relevant factual, medical, and legal issues encompassed by Plaintiffs' claims and the litigation. Given the broad interest in the litigation and its associated issues, Plaintiffs' Counsel worked regularly, both before and after the Settlement was announced, to provide full and complete information to all interested parties.

34. Judge Phillips actively supervised numerous mediation sessions, presiding over dozens of in-person and telephonic meetings with counsel for both sides, either jointly or in separate groups. He also met with the parties' respective experts, without counsel present, to get answers to questions he had regarding the scientific, actuarial, and financial aspects of the settlement. *See* ECF No. 6073-4 (Phillips Decl.) ¶¶ 2 & 5-7; ECF No. 6423-6 ¶ 4. The mediation process culminated in the execution of a Term Sheet on August 29, 2013.

Initial Settlement Agreement

35. That day, the Court announced that "in accordance with the reporting requirements in [its] order of July 8, 2013, the Honorable Layn Phillips, the court-appointed mediator, [had] informed [the Court] that the plaintiffs and the NFL defendants had signed a Term Sheet incorporating the principal terms of a settlement." ECF No. 5235. In its Order, the

Court reserved judgment on the fairness and adequacy of the settlement pending the Settling Parties' presentation to the Court of the settlement agreement, along with motions for preliminary and, eventually, final approval. *Id.*

36. As the Court noted, during their initial negotiations, the Parties did not discuss fees until after the key terms of the Settlement – including the total size of the original, capped MAF – were publicly announced on the docket. *In re Nat'l Football League Players' Concussion Injury Litig.*, 307 F.R.D. 351, 374 (E.D. Pa. 2015) ("According to [Judge] Phillips, the Parties were careful not to discuss fees until after the Court had announced, on the record, an agreement regarding the total compensation for Class Members."); *see* Phillips Supp. Decl. ¶¶ 18-19 [ECF No. 6423-6, at 9]; ECF No. 5235.

37. Following the announcement of the August 29, 2013 Term Sheet, the parties proceeded to negotiate the detailed terms of the settlement agreement itself. Plaintiffs' Counsel conducted numerous meetings with the NFL Parties, continued to work with their consultants, and spent significant time researching an appropriate settlement claims process, which would not be overly burdensome for Class Members, and which would include the right to appeal adverse claims determinations. *See* ECF Nos. 6423-3 ¶ 34, 6423-6 ¶¶ 2, 4.

38. On December 16, 2013, pursuant to Fed. R. Civ. P. 53, the Court appointed Perry Golkin to serve as Special Master to assist the Court in evaluating the financial aspects of the proposed settlement in view of its financial complexities.

39. On January 6, 2014 – after over four months of additional and extensive negotiations – Plaintiffs' Counsel researched, briefed, and filed a motion for preliminary approval of a Class Action Settlement incorporating the terms of the August 2013 Term Sheet. ECF No. 5634-5. This motion contained the negotiated settlement agreement, multiple

supporting declarations from Class Counsel, Subclass Counsel, and player representatives, and extensive briefing. This initial settlement agreement limited the funding of the MAF to $675 million, which the parties and their actuarial and economic experts believed would be sufficient to pay all benefits throughout the 65-year term of the proposed settlement. *See* Class Action Settlement Agreement (ECF No. 5634-2) § 23.1 (Jan. 6, 2014); Report of Analysis Research Planning Corp. to Special Master Perry Golkin (ECF No. 6167) at 33-36; Report of the Segal Group to Special Master Perry Golkin (ECF No. 6168) ¶¶ 19-20.

40. Also on January 6, 2014, Plaintiffs' Counsel filed the *Turner* Complaint on behalf of named Plaintiffs Kevin Turner and Shawn Wooden. ECF No. 5634.

41. On January 14, 2014, the Court denied the motion without prejudice. ECF No. 5657. The Court praised the "commendable effort" of the parties to reach the negotiated class action settlement, but expressed concern as to the adequacy of the proposed $675 million MAF in light of its 65-year lifespan, the settlement class size of more than 20,000 members, and the potential magnitude of the awards. The Court directed the parties to share the documentation described in their submissions with the Special Master. ECF No 5658.

Further Negotiations and New Agreement

42. The parties worked intensely from January to June 2014 to provide the Court with the assurance that "all Retired NFL Football Players who ultimately receive a Qualifying Diagnosis or their related claimants will be paid." ECF No. 5657 at 10. The parties and their actuarial and economic experts met separately with Special Master Golkin and with one another to further analyze the data and to determine whether, and if so, in what manner, the settlement could be amended that would be acceptable to the parties while at the same time satisfying the Court's concerns.

43. Notably, Plaintiffs' Counsel refined and tightened definitions of key terms in the settlement, and improved claim procedures to protect against fraud. These changes were the result of significant analysis, coordination, and research, and they required hundreds of attorney hours to accomplish. These further analyses led to an uncapping of the deal and a revised settlement agreement.

44. Under the revised agreement, the NFL Parties were to pay all valid claims for the next 65 years, and the MAF was no longer fixed at $675 million. At the time of this Court's Final Approval of the Settlement, actuarial projections were that the MAF will pay out some $900-$950 million by the end of its 65-year term, with the risk of any additional payment for claims being borne entirely by the NFL Parties.[4] The NFL Parties remained responsible for providing all of the funding for the MAF, BAP, and Education Fund, as well as paying, either directly or through their funding of the MAF or the BAP, for Class Notice costs, class attorneys' fees, and the fees and expenses of the Special Master, the Claims Administrator, and the BAP Administrator and certain fees of the Lien Resolution Administrator.

45. During this additional five-month negotiation, Plaintiffs' Counsel were assisted by Special Master Golkin, numerous medical and scientific experts, and actuaries and economists. Plaintiffs' Counsel modified the settlement documents to reflect these new features and prepared new briefing to support approval of the revised agreement.

[4] The actuarial model that we developed anticipated certain participation rates for filed and unfiled cases. It also anticipated certain incident rates for the compensable disease categories (*i.e.*, the Qualifying Diagnoses). Specifically, we assumed a 50% participation rate for Class Members who had not filed suit and a 90% participation rate for those who had. If registrations exceed the participation assumption, as may occur given the pre-registrations and registrations to date, the value of the Settlement, given the negotiated uncapped nature of the MAF, will likely exceed prior valuations.

46. On June 25, 2014, Plaintiffs' Counsel filed a motion for preliminary approval of the revised proposed settlement agreement and preliminary class certification. ECF No. 6073. The Court granted preliminary approval of the settlement on July 7, 2014, ECF Nos. 6083-84, and, on July 9, 2014, approved the notice to be disseminated to putative class members, ECF No. 6093.

Efforts to Keep Class Members Informed

47. Plaintiffs' Counsel supervised the setup of the informational Settlement Website www.NFLconcussionsettlement.com, which has provided invaluable information to Class Members and has allowed the Claims Administrator to refine the data in its Class Member database, improving its ability to provide information to the Class.

48. The Settlement Website has been a tremendous source of information for Retired NFL Football Players and family members. The website has received over 180,000 unique visits and provides access to the Settlement Agreement, the Court-approved notices, the Court's Orders and frequently asked questions, among other documents and information. *See* Declaration of Orran R. Brown, Sr., Feb. 8, 2017, at 2 ("Brown Decl."), attached hereto as Exhibit A.

49. The Claims Administrator's other efforts to provide accurate information to Class Members, coordinated with Plaintiffs' Counsel, have been equally successful. The Claims Administrator has received nearly 1,100 written communications and responded those that asked questions about the settlement. The Settlement Call Center has received over 14,000 calls with over 7,200 of these callers speaking directly to live operators for nearly 500 hours. *See* Brown Decl. at 2-3.

50. To date, over 12,000 Class Members and their counsel had signed up for information about the Settlement Program, and provided the Claims Administrator with contact information to receive notification once the Settlement became effective. Thousands more had communicated with the Claims Administrator about the Settlement since it received this Court's Final Approval. *See* Brown Decl. at 3.

51. Starting after the Court granted preliminary approval to the Settlement, and continuing to the present, Co-Lead Class Counsel, as well as other Plaintiffs' Counsel, have devoted hundreds of hours to communicating with Retired NFL Football Players and family members. Co-Lead Class Counsel has conducted multiple seminars and presentations with Retired NFL Football Player groups throughout the country, including presentations at the Super Bowl and the Pro Football Hall of Fame.

52. These sessions, which were very well attended, have educated Retired NFL Football Players about the Settlement's benefits and procedures, and proved to be a valuable and effective means of spreading accurate information about the Settlement. Co-Lead Class Counsel also hosted a series of webinars, with the same goal of increasing awareness of the Settlement. Co-Lead Class Counsel also hosts frequent telephone conference calls with retired players and family members to provide updates on the Settlement.

The Defense of the Settlement Following Preliminary Approval

53. Following preliminary approval, Plaintiffs' Counsel had to contend with a wide array of motions and attempted interlocutory appeals by certain objectors. One group of objectors, represented by MoloLamken LLP, filed a petition for interlocutory review with the Third Circuit, arguing that review of the Court's preliminary approval order was appropriate under Federal Rule of Civil Procedure 23(f) because of this Court's provisional certification of

a settlement class. Those objectors protested the fairness of the Settlement and challenged the preliminary class certification. They maintained that Rule 23(f) allowed immediate appellate review even though there had been no final ruling on class certification.

54. Plaintiffs' Counsel filed an opposition to the 23(f) petition and, after requesting a reply brief from the objectors, the Third Circuit heard oral argument on September 10, 2014. The Court of Appeals denied the petition the next day in a one-page order. The Court subsequently issued a written opinion explaining its ruling, *see In re Nat'l Football League Players' Concussion Injury Litig.*, 775 F.3d 570 (3d Cir. 2014). The majority held that the Third Circuit lacked jurisdiction under Rule 23(f) because this Court had "yet to issue 'an order granting or denying class certification.'" *Id.* at 588-89.

55. In addition to this unsuccessful 23(f) attack, six other Class Members, led by Roy Green and represented by three Missouri-based law firms, mounted their own challenge, filing an appeal to the Third Circuit by invoking appellate jurisdiction under 28 U.S.C. § 1292(a)(1), on the basis that this Court's Preliminary Approval Order had enjoined Class Members' prosecution of litigation against the NFL Parties and was therefore an interlocutory order granting an injunction. After the completion of briefing of that appeal, Plaintiffs' Counsel successfully moved to dismiss it as moot because, in the meantime, the appellants had opted out of the settlement class and were hence no longer Class Members subject to any injunction. *See In re Nat'l Football League Players' Concussion Injury Litig.*, No. 14-3520 (3d Cir. June 4, 2015) (Order dismissing appeal).

56. Plaintiffs' Counsel handled a variety of other motions during this time as well, all in an effort to expedite the process and begin implementation of the Settlement. These

included third-party intervention motions seeking access to documents[5]; Class Member bids to take discovery of Class Counsel as to how the Settlement was negotiated or requests to obtain additional information about the Settlement[6]; motions to intervene[7]; motions seeking to extend the opt-out deadline[8]; amicus curiae requests[9]; and a motion to prevent improper communication with Class Members.[10]

57. The Court received all timely objections to the Settlement by October 14, 2014. On November 12, 2014, Plaintiffs' Counsel filed their brief and exhibits in support of final approval, pursuant to Rule 23(e). ECF No. 6423. Plaintiffs' thorough briefing addressed these objections by approximately 200 represented and pro se objectors, and fully described the Settlement. Plaintiffs' Counsel prepared the Class's motion for final approval of the Settlement, as well as the supporting memorandum of law. The preparation of Plaintiffs' final approval motion papers entailed extensive coordination with the Settlement's administrative support providers for their declarations in support of the motion. This included Katherine

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5 ECF No. 6101 (July 24, 2014) (Am. Mot. to Intervene to Seek Access to Docs. and Inform., filed by Bloomberg L.P., ESPN, Inc.).

6 ECF No. 6155 (July 31, 2014) (Mot. to Permit Access to Med., Actuarial, and Econ. Info. Used to Support the Settlement Proposal); ECF No. 6169 (Sept. 13, 2014) (Morey Plaintiffs' motion for leave to take "limited discovery").

7 ECF No. 6131 (Aug. 13, 2014) (Mot. to Intervene, filed by Richard Dent).

8 ECF No. 6172 (Sept. 19, 2014) (Emergency Mot. to Modify or Amend the July 7, 2014 Order Requiring Opt-Outs on or before Oct. 14, 2014).

9 ECF No. 6180 (Sept. 30, 2014) (Mot. for Leave to File *Amicus Curiae* Brief in opposition to final approval of the settlement, filed by Brain Injury Ass'n of Am.).

10 ECF No. 6257 (Oct. 24, 2014) (Motion for Order Prohibiting Improper Communications with the Class by MoloLamken LLP, filed by the undersigned).

Kinsella, for the notice plan; the Garretson Firm, for BAP and lien resolution administration; and BrownGreer, for claims administration.

58. The Court held an all-day Fairness Hearing, pursuant to Rule 23(e)(2), on November 19, 2014. *See* Fairness Hr'g Tr., Nov. 19, 2014 (ECF No. 6463). At the hearing, the Court heard from fourteen counsel for the various objector groups and the settling parties, and from five unrepresented objectors. ECF No. 6463 *passim*. My partner David Buchanan and I made the presentation on behalf of the Settling Plaintiffs.

59. Plaintiffs assembled and developed a top-flight group of experts to assist in developing the Settlement, and the petition for final approval included declarations from them: Drs. Kenneth C. Fischer, Christopher Giza, David A. Hovda, John G. Keilp, and Richard Hamilton – preeminent specialists in, respectively, the fields of neurology (Dr. Fischer), neuropsychiatry (Dr. Giza), neurosurgery (Dr. Hova), neuropsychology (Dr. Keilp), and sports concussions (Dr. Hamilton). *See* ECF Nos. 6423-17 to 6423-20.

60. The work of Plaintiffs' expert Thomas Vasquez provided important guidance in negotiating, modeling, and valuing the settlement. Dr. Vasquez, a Vice President for Analysis Research Planning Corporation, with over 35 years of experience in management consulting for private sector clients, and the development of economic models for governments and industry, assisted in developing a monetary award grid that could be used in valuing claims and modeling the total cost of resolving all pending and future claims by Retired NFL Players. ECF No. 6423-21.

61. Dr. Grant Iverson is a professor at Harvard University's Medical School, in the department of Physical Medicine and Rehabilitation. He is a specialist in neuropsychology and a clinician scientist in the area of mild traumatic brain injury and mental health, and also

worked extensively with Plaintiffs' Counsel on the Settlement. Dr. Iverson leads an internationally-recognized research program in outcome from mild traumatic brain injury in athletes, civilians, military service members, and veterans. Together with Dr. Keilp, Dr. Iverson's assistance was instrumental in designing the BAP testing program.

62. The Court permitted post-hearing briefing to address certain issues and to afford objectors additional time to file a response to Plaintiffs' Counsels' final approval motion papers. *See* ECF Nos. 6444, 6453-56. On December 12, 2014, Plaintiffs' Counsel filed their reply to the objectors' post-hearing submissions. ECF No. 6467.

Post-Fairness Hearing Amendments to the Settlement

63. On February 2, 2015, the Court "proposed several changes to the Settlement that would benefit Class Members." ECF No. 6479. These were: (1) providing some "Eligible Season" credit for play in NFL Europe; (2) assurance that despite the $75 million cap on the BAP, all those timely registering will receive a baseline assessment examination; (3) moving the cutoff date for a "Death with CTE" award from the preliminary settlement approval date to the final approval date; (4) allowing for a waiver of the appeal fee for those showing financial hardship; and (5) providing the opportunity to demonstrate a Qualifying Diagnosis without the required medical documentation in instances where such documentation was destroyed by a *force majeure* type event.

64. After a new round of negotiations, Plaintiffs' Counsel secured agreement on every change that the Court suggested, and on February 13, 2015, submitted a revised Settlement Agreement, which is the operative Settlement that the Court reviewed and is now effective in the wake of the Supreme Court's denial of *certiorari*. ECF No. 6481.

65. Plaintiffs' Counsel also prepared and filed extensive proposed findings of fact and conclusions of law on March 12, 2015. *See* ECF No. 6497.

66. This Court granted final approval to the Settlement (and final class certification) on April 22, 2015. ECF Nos. 6509-10. The Court's published 132-page opinion comprehensively addressed class certification; the fairness, adequacy, and reasonableness of the Settlement; and, of course, the myriad arguments raised by the objectors.

The Defense of the Settlement Following Final Approval

67. On May 13, 2015, the first of several notices of appeal from the Court's grant of final approval was filed. ECF No. 6539. Ultimately, objectors filed eleven separate briefs in connection with their appeals, which were briefed in tandem and consolidated for argument and decision by the Third Circuit. After receiving the objectors' briefs and those of the two amici curiae opposed to the Settlement (the Brain Injury Association of America ("BIAA") and Public Citizen), Plaintiffs' Counsel devoted extensive attorney time to analyzing the various briefs and researching and drafting their answering brief. Also, Plaintiffs' Counsel prepared for the Third Circuit oral argument, which was held on November 19, 2015.

68. On April 18, 2016, the Third Circuit issued its opinion unanimously affirming this Court in all respects. *In re Nat'l Football League Players' Concussion Injury Litig.*, 821 F.3d 410 (3d Cir. 2016). Certain objectors then filed petitions for *en banc* rehearing. The petitions were denied on June 1, 2016, and the Third Circuit issued its mandate on June 9, 2016.

69. Following the Third Circuit's denial of *en banc* rehearing, two groups of objectors filed petitions for writ of *certiorari* with the United States Supreme Court. *See Gilchrist v. Nat'l Football League*, No. 16-283 (U.S. filed Aug. 30, 2016); *Armstrong v. Nat'l*

Football League, No. 16-413 (U.S. filed Sept. 26, 2016). The same two partisan amici curiae (BIAA and Public Citizen) filed briefs in support of the *certiorari* petitions. Plaintiffs' Counsel prepared and filed their brief in opposition to the petitions on November 4, 2016. On December 12, 2016, the Supreme Court denied the two *certiorari* petitions. *See* 137 S. Ct. 591, 607 (2016).

70. Thus, Plaintiffs' counsel expended a great deal of time, energy, and resources to defend this historic Settlement against challenges filed in this Court, the Third Circuit, and the Supreme Court by what were a small, but nonetheless dogged, band of objectors (and their supporting amici), whose relentless challenges threatened not only to undo the Settlement itself but also to irreversibly wreck any prospect of a class-wide resolution of the Plaintiffs' claims in this MDL. Until the Supreme Court declined review of the last of those misguided challenges, long-awaited relief could not begin flowing to Class Members.

Fees and Expenses of Plaintiffs' Counsel

71. In Case Management Order No. 5: Submission of Plaintiffs' Time and Expense Reports and Appointment of Auditor ("CMO5"), ECF No. 3710, the Court defined "Compensable Time Categories" and "Compensable Expense Categories" and set forth the guidelines for time and expense submission.

72. To date, all PSC members have participated actively in funding the coordinated prosecution of Plaintiffs' (and the Class's) claims, by performing work on a priority basis as assigned and authorized by the undersigned, by incurring the necessary and appropriate out-of-pocket travel and administrative costs to do so, and additionally by contributing assessments to a common benefit fund. This fund has been used, *inter alia*, to retain experts for the litigation, including scientific, medical, actuarial, technical, and procedural experts.

73. An ongoing effort has been made to include and involve interested counsel in the common benefit work of the MDL. To date, attorneys from 23 firms have been requested and authorized by the undersigned to perform work for this MDL, and have submitted records of the time and work performed.

74. Section 21.1 of the Settlement provides that Class Counsel "shall be entitled, at an appropriate time to be determined by the Court, to petition the Court on behalf of all entitled attorneys for an award of class attorneys' fees and reasonable costs." Provided that the "petition does not seek an award of class attorneys' fees and reasonable costs exceeding One Hundred and Twelve Million, Five Hundred Thousand United States dollars (U.S. $112,500,000), the NFL Parties agree not to oppose or object to the petition." *Id.* [ECF No. 6481-1, at 82]. As stated in earlier submissions to the Court, the Settling Parties did not enter into attorneys' fee negotiations until after they had agreed upon the Settlement Term Sheet.

75. Pursuant to the procedures outlined in CMO5, attorneys and staff working at my direction and under my supervision collected and reviewed submissions of common benefit time and reimbursable costs and expenses submitted by the PEC, PSC and by other firms to which I had assigned common benefit work.

76. Only time and expenses that inured to the common benefit of the Class, and that advanced the claims resolved in the Settlement, have been included in the time presented, and the costs submitted herein.

77. The final common benefit time submission includes entries from 23 law firms.

78. The total number of common benefit hours associated with the prosecution and resolution of the claims is 50,912.39. This results in a combined lodestar of $40,559,978.60. The total fees requested – $106,817,220.62 – represent a 2.6 lodestar multiplier.

79. The range of hourly rates varies considerably given the diversity of lawyers and law firms tasked to perform the common benefit work, including some of the most qualified and experienced lawyers in the country whom the Court appointed to the PEC and the PSC. The hourly billing rates ranged from $400 to $1,350 for partners, from $275 to $575 for associates, and from $125 to $340 for paralegals. These are the customary billing rates of the submitting lawyers and paralegals, reflecting their respective experience. My customary hourly rate, for example, which has been accepted and awarded by federal courts, is $985 per hour.

80. The aggregate common benefit costs and expenses total is $5,682,779.38 million.

81. Attached hereto at the noted exhibit references[11] are true and correct copies of the declarations submitted in support of the instant fee petition of the 22 law firms other than Seeger Weiss LLP that have worked for the common benefit of the Class:

Exhibit C: Declaration of Arnold S. Levin (Levin Sedran & Berman)

Exhibit D: Declaration of Gene Locks (Locks Law Firm)

Exhibit E: Declaration of Steven Marks (Podhurst Orseck, P.A.)

Exhibit F: Declaration of Dianne M. Nast (NastLaw LLC)

Exhibit G: Declaration of Sol H. Weiss (Anapol Weiss)

Exhibit H: Declaration of Garrett D. Blanchfield, Jr. (Reinhardt Wendorf & Blanchfield)

Exhibit I: Declaration of William G. Caldes (Spector Roseman Kodroff & Willis, P.C.)

Exhibit J: Declaration of Leonard A. Davis (Herman, Herman & Katz)

[11] Exhibit Y is a true and correct copy of the article *An Empirical Study of Class Action Settlements*, 7 Journal of Empirical Legal Studies, 811-46 (Dec. 2010), by Professor Brian T. Fitzpatrick.

Exhibit K: Declaration of James R. Dugan, II (The Dugan Law Firm)

Exhibit L: Declaration of Daniel C. Girard (Girard Gibbs LLP)

Exhibit M: Declaration of Thomas V. Girardi (Girardi Keese)

Exhibit N: Declaration of Bruce A. Hagen (Hagen, Rosskopf & Earle, LLC)

Exhibit O: Declaration of Samuel Issacharoff

Exhibit P: Declaration of Richard Lewis (Hausfeld LLP)

Exhibit Q: Declaration of Jason E. Luckacevic (Goldberg, Persky & White, P.C.)

Exhibit R: Declaration of Derriel C. McCorvey (McCorvey Law, LLC)

Exhibit S: Declaration of Michael L. McGlamry (Pope McGlamry)

Exhibit T: Declaration of Craig R. Mitnick (Mitnick Law Office, LLC)

Exhibit U: Declaration of David A. Rosen (Rose, Klein & Marias LLP)

Exhibit V: Declaration of Frederick Schenk (Casey, Gerry, Schenk, Francavilla, Blatt & Penfield, LLP)

Exhibit W: Declaration of Anthony Tarricone (Kreindler & Kreindler LLP)

Exhibit X: Declaration of Charles S. Zimmerman (Zimmerman Reed LLP)

Fees and Expenses – Seeger Weiss LLP

82. As noted, I was appointed by the Court to serve as Plaintiffs' Co-Lead Counsel at the outset of this MDL. I was later appointed as Co-Lead Class Counsel in connection with the Court's certification of the settlement class and final approval of the Settlement. As a result, my firm has played a critical role in each step of this litigation. As Co-Lead Counsel and Co-Lead Class Counsel, I was personally involved in each of the activities described above in this declaration. Attorneys at my firm – partners, counsel, and associates – also expended significant time and energy in this litigation. To highlight the contributions of my firm, even prior to formal mediation, my Seeger Weiss colleagues and I spent many hours analyzing

Plaintiffs' claims, and the NFL Parties' defenses. We also studied the critical medical and scientific issues of the litigation at that time. The firm examined possible settlement structures, consulted extensively with other Plaintiffs' counsel, and consulted with experts to explore potential settlement options.

83. Seeger Weiss attorneys devoted thousands of hours to initial negotiations, mediation, and drafting of the initial Term Sheet for the Settlement. This involved significant time spent with Plaintiffs' experts in various fields, with other Plaintiffs' Counsel in the mediation process, and in meetings and negotiations with the NFL Parties. Seeger Weiss conducted hundreds of hours of medical research on brain injuries and the progression of brain disease, and hundreds of hours further researching and developing appropriate settlement structures to effectively compensate these diseases. We also worked extremely closely with our experts; hundreds of hours were spent in honing economic and actuarial modeling for the Settlement.

84. Seeger Weiss attorneys conducted a comprehensive review of peer-reviewed medical literature to support settlement discussion and negotiations. We and other Plaintiffs' Counsel studied articles on brain injury, concussions, the effect of sub-concussive hits to the head on the brain, the epidemiology of the Qualifying Diagnoses, and the methods of diagnosis and treatment for the Qualifying Diagnoses, to name several of the categories of articles studied.

85. After the announcement of the Term Sheet, Seeger Weiss attorneys devoted significant amounts of time to preparing the Settlement Agreement, all supporting documents for the Settlement Agreement, and working through long negotiations with the NFL Parties for the many provisions, exhibits, and modifications of this agreement.

86. Seeger Weiss took the leading role in coordinating and preparing all post-Term Sheet briefing, including motions for preliminary and final approval of the Settlement, and responses to the many assorted motions filed by various objectors' counsel after preliminary approval. These briefing assignments required hundreds of hours of attorney time.

87. After the submission of the initial motion for preliminary approval, Seeger Weiss attorneys led the renewed negotiations on behalf of Plaintiffs. The results of these many hours spent with the NFL Parties were the refining of many key terms of the Settlement, the uncapping of the MAF, and the strengthening of anti-fraud provisions for the claims administration process.

88. Seeger Weiss attorneys also had leading roles in preparing briefing, expert declarations, and exhibits for the Rule 23(e)(2) Fairness Hearing, and for the Plaintiffs' presentation in support of the Settlement at the Fairness Hearing, expending hundreds of hours on these crucial projects.

89. The firm conducted extensive coordination with the BAP and Lien Resolution Administrator, as well as the Claims Administrator. Additionally, Seeger Weiss prepared updates for Class Members and fielded phone calls to provide further information on the updates to Class Members.

90. Seeger Weiss played a key role in preparing oppositions for the multiple appeals filed in the case, as well as Supreme Court briefing.

91. The schedule attached hereto as Addendum 1 of this Declaration is a detailed summary indicating the amount of common benefit time spent by the attorneys and professional support staff of my firm who were involved in, and billed fifty or more hours to,

this litigation, and the lodestar calculation for those individuals based on my firm's current billing rates.

92. For personnel who are no longer employed by my firm, the lodestar calculation is based on the billing rates of such personnel in their final year of employment by my firm. The schedule was prepared from contemporaneous daily time records regularly prepared and maintained by my firm. Time expended in connection with the preparation of this application for attorneys' fees and expenses has been excluded.

93. The hourly rates for the attorneys and professional support staff of my firm included in Addendum 1 of this Declaration are the same as the regular rates charged for their services in other contingent matters and have been accepted by other federal courts in other class action cases prosecuted by my firm.

94. The total number of hours expended on the common benefit of this litigation by my firm during the time period is 21,044.06 hours. The total lodestar for my firm for those hours is $18,124,869.10 consisting of $17,742,064.30 for attorneys' time and $382,804.80 for professional support staff time.

95. My firm's lodestar figures are based solely upon my firm's billing rates, which rates do not include charges for expense items. Expense items are billed separately and such charges are not duplicated in my firm's billing rates.

96. As detailed in Addendum 2 hereto, my firm is seeking reimbursement of a total of $1,498,690.99 in common benefit expenses incurred in connection with the prosecution of this litigation. These expenses are reflected on the books and records of my firm. These books and records are prepared from expense vouchers, check records, and other source material, and are an accurate record of the expenses incurred.

97. With respect to the standing of my firm to share in an award of fees, costs, and expenses, attached hereto as Addendum 3 is a biography of my firm, including the attorneys in my firm who were principally involved in this litigation.

98. Although Seeger Weiss was retained by a number of Class Members, it is waiving any claim to fees pursuant to its individual retainers and will seek compensation only from a common benefit fee and expense award made by this Court, given that my work and that of my colleagues and employees of the firm, and the expenditures incurred by my firm, were overwhelmingly focused on common benefit efforts.

99. I respectfully request that the Court confer upon me, as Co-Lead Class Counsel, the discretion and responsibility to allocate the overall fee and expense award that the Court ultimately makes among Class Counsel and those counsel for non-objecting Class Members who performed common benefit work and incurred common benefit expenses, inasmuch as I have exercised overall oversight and leadership of this litigation and thus have familiarity with the respective roles and contributions of participating Plaintiffs' Counsel. In the alternative, the Court should permit me to propose an allocation of the award – which I would do in a written report – subject to the Court's final approval of the allocation. As discussed in the accompanying memorandum of law in support of the Petition, this is something that courts typically do in the case of class action common benefit fee and expense awards.

100. With respect to the fee petitions filed (or to be filed) by counsel for the Faneca and Jones Objectors (*see* ECF Nos. 7070, 7116), I respectfully propose that the Court direct a segregation or set-aside from the Attorneys' Fees Qualified Settlement Fund (*see* ¶ 121 n.10, *infra*) of whatever amount it deems appropriate pending resolution of those petitions, but

otherwise permit the allocation and distribution of fees and reimbursement of expenses among non-objectors' counsel.

Five Percent Set-Aside from Monetary Awards and Derivative Claimant Awards

101. The Settlement provides that "[a]fter the Effective Date, Co-Lead Class Counsel may petition the Court to set aside up to five percent (5%) of each Monetary Award and Derivative Claimant Award to facilitate the Settlement program and related efforts of Class Counsel. These set-aside monies shall be held in a separate fund overseen by the Court." Settlement § 21.1 [ECF No. 6481-1, at 82].

102. Pursuant to this section, Petitioners request a five percent holdback or set-aside of each Monetary Award and Derivative Claimant Award.

103. In accordance with the Settlement, for a Class Member represented by individual counsel, any set-aside from a Monetary Award or Derivative Claimant Award will reduce the attorney's fee payable to that counsel by the amount of the set-aside. Settlement § 21.1 [ECF No. 6481-1, at 82].

104. The purpose of the set-aside will be to compensate Plaintiffs' Counsel going forward for common benefit work in the post-Effective Date time frame, so as to ensure the successful operation of the Settlement over the course of its 65-year program life. This is distinct from the $112.5 million in attorneys' fees and reimbursement of costs and expenses to be paid by the NFL Parties, which fees are designed to compensate Plaintiffs' Counsel for past common benefit work and past costs and expenses.

105. As the Court is aware, although the Settlement is now effective, there will be continuing stewardship of the Settlement by Class Counsel for years – indeed decades – to come.

106. The work on behalf of the Class was far from finished upon the Supreme Court's rejection of the last judicial challenge to the Settlement. With those challenges out of the way, the Settlement now has to be administered, implemented, and enforced until its benefits have been delivered to all successful Claimants.

107. Even before the Effective Date, since April 2016, the Settling Parties have had regular working calls with Claims Administrator BrownGreer PLC ("BrownGreer") and Lien Resolution and BAP Administrator Garretson Resolution Group, Inc. ("Garretson") to review work plans, draft materials, and settlement implementation issues. BrownGreer prepared and after the Effective Date promptly launched the registration process contemplated by Article IV of the Settlement and the network of physicians who will serve as Qualified BAP Providers and Qualified MAF Physicians is being set up. To date, Plaintiffs' Counsel and the claims and lien resolution administrators have invested significant time and resources to various implementation tasks. ECF No. 6919. *See* Brown Decl.; Declaration of Matthew L. Garretson, dated Jan. 25, 2017, attached hereto as Exhibit B.

108. Post-Effective Date common benefit work began almost immediately. Plaintiffs' Counsel have had to finalize retention of administrators and special masters; finalize the Settlement Trust Agreement; and prepare conflicts of interest plans (in order to secure the Court's approval by April 7, 2017).

109. Moreover, Class Counsel have had (and will have) to engage in a good deal of work related to the need to ensure that Class Members timely register in order to qualify for

settlement benefits. These efforts included the finalization and dissemination of Supplemental Class Notice regarding the registration and benefits timetable, finalizing and overseeing the effectuation of registration forms, overseeing the transition of call center operations to the Claims Administrator, and continuing revisions to the Settlement website (including FAQs).

110. Other efforts are and will be expended in connection with the June 6, 2017 launch of the BAP. These include the review of applications of BAP Providers and vetting candidates for retention, receiving reports on contracting with Providers in order to establish networks convenient to a majority of players by metropolitan region, and finalizing BAP procedures (including assessment scheduling and Supplemental Benefits). Still other work has pertained or will pertain to the MAF (whose claims platform for pre-Effective Date Qualifying Diagnoses opens on March 23, 2017; Retired NFL Football Players will contact MAF physicians on their own from the MAF Network that will open on April 7th): the review of applications of MAF Physicians and vetting candidates for retention, finalizing claims forms and processes, and finalizing appeals forms and processes. As these BAP Providers and MAF Physicians retire over time, or, for other reasons, become unable or unwilling to continue to serve in those capacities, over the next 65 years, they will have to be replaced, involving additional common benefit work by Plaintiffs' Counsel.

111. Continuing over the lengthy period of the Settlement's life, attorneys will continue to spend time and effort to coordinate and work with the Claims Administrator, the BAP Administrator, Lien Resolution Administrator, the Settlement Trustee, and the Court to ensure that Retired NFL Football Players and Derivative Claimants receive their benefits. Plaintiffs' Counsel will also be required, over the next 65 years, to consult with experts to stay abreast of medical developments.

112. Plaintiffs' Counsel will also have work to perform in connection with the administrative appeals process. Co-Lead Class Counsel have standing to appeal as part of the Settlement. Settlement § 9.50 [ECF No. 6481-1, at 51]. The Settlement provides rights to appeal various decisions, including denial of registration, denial of Monetary Awards, and the amount of a Monetary Award. *Id.* Plaintiffs' Counsel will also be called upon to provide assistance for all claimants who have not retained lawyers, and in some instances to assist counsel representing individual plaintiffs. This work will continue over the 65-year life of the Settlement.

113. In this respect, Class Counsel must retain the Appeals Advisory Panel (composed of five neurologists/board certified neurospecialists) and Appeals Advisory Panel Consultants (three neuropsychologists) by April 7, 2017. This body is charged, at the outset, with reviewing diagnoses made prior to the Effective Date of the Settlement. *Id.* § 6.43 [ECF No. 6481-1, at 37-38]. These physicians will be advising the Special Masters and the Court. Thus, this work is critical because it will set the tone for the administration of the Settlement. As these physicians retire or for other reasons become unable or unwilling to serve on the Appeals Advisory Panel or as Appeals Advisory Consultants, they will need to be replaced, involving additional common benefit work by Plaintiffs' Counsel.

114. The Settlement requires that the Parties revisit the science every ten years to discuss in good faith possible prospective modifications to the definitions of Qualifying Diagnoses and/or the protocols for making Qualifying Diagnoses, in light of generally accepted advances in medical science. *Id.* § 6.6 [ECF No. 6481-1, at 35]. This too, is anticipated future common benefit work to be performed by Plaintiffs' Counsel.

115. Class Counsel will also need to establish, review, and conduct ongoing auditing and financial reporting on the BAP and MAF programs. *Id.* § 10.3 [ECF No. 6481-1, at 59-62].

116. Finally, Class Counsel will need to monitor and ensure the NFL Parties' compliance with the funding and the maintenance of the targeted reserves for the MAF and BAP, as well as to monitor the Settlement Trust and Trustee under Article 23 of the Settlement.

117. The set-aside thus provides a source to facilitate fair and reasonable compensation for these and other necessary services of Plaintiffs' Counsel for the benefit of the Class over the coming years. Although Class Counsel cannot fully predict the scope or extent of those necessary services, it is clear that such services will be required to some extent.

118. Moreover, given the 65-year length of this Settlement, at some point Class Counsel may need to transition the responsibilities for representing the Class and overseeing the implementation of the Settlement to other law firms. Indeed, it is quite possible (if not likely) that this need will rise more than once. The set-aside will also ensure that prospective incoming firms have the financial incentive to undertake these responsibilities by making sure that there is a pool of funds to compensate them for getting up to speed and taking up the mantle.

119. If the Court approves the proposed 5% set-aside concept, Plaintiffs' Counsel will submit, within thirty days of the Court's Order approving the set-aside, a detailed plan of administration, including how the funds created from the holdbacks will be pooled and maintained, and how any attorney will apply for compensation for post-Settlement work performed. As experience with the Settlement Program unfolds and as applications for compensation are presented, the Court can adjust the set-aside administration protocols.

Incentive Awards for Class Representatives

120. Last but not least, Petitioners request that the Court make Case Contribution awards (also commonly known as incentive or service awards) of $100,000.00 to each of the three representatives of the two Subclasses – Messrs. Corey Swinson, Shawn Wooden, and Kevin Turner.[12] Through their efforts, the Class Representatives have conferred benefits on all other Class Members, and should be compensated accordingly.

121. For Subclass 1, Plaintiff Swinson served as the original representative. As an integral part of his work as representative, he met with Subclass 1 counsel Arnold Levin. A retired player who was not diagnosed with neurocognitive impairment, Mr. Swinson had standing to assert the rights of Subclass 1 members (those not currently diagnosed with injuries associated with concussive and sub-concussive head trauma). During the summer 2013 negotiations, Co-Lead Class Counsel and Mr. Levin conferred with Mr. Swinson concerning the terms of the proposed settlement. Mr. Swinson was aware of and agreed to the terms of the settlement and he reviewed drafts of the Term Sheet before it was executed.

122. After the Term Sheet was announced, and when Mr. Swinson passed away suddenly in September 2013,[13] Plaintiff Shawn Wooden became the proposed Subclass 1 representative. ECF No. 6423-10 ¶ 6. Mr. Wooden played professional football in the NFL from 1996-2004.

123. On January 24, 2012, Mr. Wooden had filed a complaint, through his attorney, Class Counsel Steven C. Marks of Podhurst Orseck, PA, against the NFL Parties in the

[12] If the Court grants this request, the total sum of $300,000 in Case Contribution Awards would be paid out of the $112.5 million Attorneys' Fees Qualified Settlement Fund, *see* Settlement § 21.2 & 23.7 [ECF No. 6481-1, at 82, 90], and will not increase the NFL's obligations.

[13] Given Mr. Swinson's passing, we request that the Case Contribution Award be made to his estate.

Southern District of Florida (*Wooden v. National Football League*, No. 1:12-cv-20269-JEM). *Id*. ¶ 7. That action was transferred to this MDL on February 23, 2012. Thereafter, on June 7, 2012, a Master Administrative Class Action Complaint for Medical Monitoring was filed on his behalf in the MDL. *Id*.

124. Throughout these proceedings, Mr. Wooden has followed the litigation closely. ECF No. 6423-8 ¶ 3. He has had various meetings, telephone conferences and email exchanges with Mr. Marks about the status of proceedings, the NFL Parties' preemption motions, and the oral argument on the motions, among other things. *Id.* In addition, he has reviewed numerous press articles about the litigation and the settlement. *Id.* Since final approval of the Settlement, Mr. Wooden has remained involved, frequently talking to other retired NFL players and family members to provide information about the Settlement.

125. On October 16, 2013, Subclass Counsel Arnold Levin met with Mr. Wooden in his offices in Philadelphia regarding his prospective representation of Subclass 1 Class Members in the proposed settlement class action. *Id*. ¶ 4. Mr. Wooden asked a number of questions regarding the settlement and the proposed class action mechanism by which it would be implemented, and Mr. Levin comprehensively discussed these issues with him. *Id*. He supported the Settlement and agreed to participate as the proposed representative of Subclass 1. *Id.*

126. Subclass 2 was represented by Kevin Turner. This Subclass consisted of players who were diagnosed with injuries associated with concussive and sub-concussive head trauma. ECF No. 6423-7. Mr. Turner played professional football in the NFL as a fullback from 1992-99. In June 2010, at the age of 41, he was diagnosed with ALS. ECF No. 6423-7 ¶¶ 1-2.

127. On January 20, 2012, Mr. Turner, through his attorney, Class Counsel Steven Marks, had filed a complaint against the NFL Parties in the Southern District of Florida (*Jones v. National Football League*, No. 1:11-cv-24594-JEM). That action was transferred to this MDL on February 14, 2012. On July 11, 2012, Mr. Turner filed a Short Form Complaint in the MDL against the NFL Parties.

128. Throughout these proceedings, Mr. Turner followed the litigation closely. ECF No. 6423-7 ¶ 6. He had numerous meetings, telephone conferences, and email exchanges with Mr. Marks about the status of proceedings, the NFL Parties' preemption motions and the oral argument on same. *Id*. Beginning in about July 2013, Mr. Marks informed Mr. Turner of the settlement negotiations between the Plaintiffs and the NFL Parties and discussed his possible representation of Subclass 2 members. *See id.*

129. In August 2013, Subclass Counsel Dianne Nast met with Mr. Turner at Ms. Nast's offices in Philadelphia regarding his potential representation of Subclass 2 members of the proposed settlement class. *Id.* Mr. Marks was present at that meeting, and the three discussed in detail the impending proposed class-wide settlement. After the meeting, counsel determined that Mr. Turner had standing to assert the rights of Subclass 2 members and that he was an adequate representative for them. Following this Court's April, 2015 Final Approval ruling, Mr. Turner continued to actively monitor and discuss the litigation with Class Counsel, even though his physical condition gravely deteriorated on account of the ALS with which he was afflicted. Mr. Turner passed away on March 24, 2016, during the pendency of objectors' Third Circuit appeals.[14]

[14] Given Mr. Turner's passing, we request that the Case Contribution Award be made to his estate.

130. In short, all three Subclass Representatives were actively involved in this litigation and made valuable contributions to its final outcome far beyond those of representatives of typical certified classes, and their superior contributions on behalf of the many absent Class members should be appropriately recognized.

I declare under penalty of perjury that the foregoing is true and correct.

Executed this 13th day of February, 2017.

s/ Christopher A. Seeger
CHRISTOPHER A. SEEGER
Co-Lead Class Counsel

ADDENDUM 1

IN RE: NATIONAL FOOTBALL LEAGUE PLAYERS' CONCUSSION INJURY LITIGATION

No. 12-md-2323-AB

SEEGER WEISS LLP

LODESTAR REPORT

January 31, 2012 through December 28, 2016

NAME	HOURS	HOURLY RATE	AMOUNT
PARTNERS:			
Christopher A. Seeger	6,955.90	985	$6,851,561.50
David Buchanan	3,867.10	975	3,770,422.50
Dion Kekatos	722.00	925	714,100.00
Jonathan Shub	133.30	750	99,975.00
Michael L. Rosenberg	180.00	825	148,500.00
Moshe Horn	630.90	850	536,265.00
TerriAnne Benedetto	3,331.54	895	2,981,728.30
OF COUNSEL:			
Christopher M. Van de Kieft	1,532.00	785	$1,202,620.00
Jim O'Brien	313.60	775	243,040.00
Scott George	1,337.60	795	1,063,392.00
ASSOCIATES:			
Denise Stewart	91.60	600	$54,960.00
STAFF ATTORNEYS:			
CONTRACT ATTORNEYS:			
Jacob Abbott	151.00	500	$75,500.00
PARALEGALS:			
Caitlyn Garcia	130.40	215	$28,036.00
Constance Guistwhite	87.80	215	18,877.00
Corey Madin	50.20	215	10,793.00
Daniel Mora	88.60	295	26,137.00
Keri L. Newman	991.52	215	213,176.80
Lauren Griffith	399.00	215	85,785.00
TOTALS:	**21,044.06**		**$18,124,869.10**

ADDENDUM 2

IN RE: NATIONAL FOOTBALL LEAGUE PLAYERS' CONCUSSION INJURY LITIGATION

No. 12-md-2323-AB

SEEGER WEISS LLP

COST AND EXPENSE REPORT

January 31, 2012 through December 28, 2016

NUMBER	CATEGORY	AMOUNT
1	Assessments	$500,000.00
2	Commercial Copies	$12,704.07
3	Computerized Research	$42,250.30
4	Court Reporters/Transcripts	$1,576.90
5	Expert Services	$729,782.98
6	Facsimile	
7	Filing & Service Fees	$1,777.92
8	In-House Copies	$8,694.45
9	Long Distance Telephone	$5,443.60
10	Postage/Express Delivery	$6,312.10
11	Travel/Meals/Lodging	$185,732.68
12	Miscellaneous	$4,415.99
TOTAL EXPENSES		**$1,498,690.99**

ADDENDUM 3

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Firm Biography

Founded in 1999, SEEGER WEISS LLP is broadly admired as one of the nation's premier plaintiffs' law firms. The Firm currently numbers approximately 25 attorneys operating out of offices in New York City; Newark, NJ; and Philadelphia, PA, and regularly litigates in state and federal courts throughout the United States. It focuses on mass tort and class action litigation, with particular emphasis in the areas of products liability, pharmaceutical injury, consumer protection, environmental and toxic tort, securities fraud, antitrust, insurance, ERISA, employment, and *qui tam* litigation. The Firm is made up of experienced litigators, including former state and federal prosecutors. Seeger Weiss's reputation for leadership and innovation has resulted in its appointment to numerous plaintiffs' steering and executive committees in a variety of multidistrict litigations throughout the United States, and it regularly serves as court-appointed Liaison Counsel in New York and New Jersey federal and state courts.

The Firm's manifold accomplishments—including favorable jury verdicts for $47.5 million in *Humeston v. Merck & Co.* (N.J. Super. Ct. Atlantic County); over $10.5 million in *Kendall v. Hoffman-La Roche, Inc.* (N.J. Super. Ct. Atlantic County); $11.05 million in *Owens, et al v. ContiGroup Companies, et al* (Mo. Cir. Ct., Jackson County); and $25.16 million in *McCarrell v. Hoffman-La Roche, Inc.* (N.J. Super. Ct. Atlantic County)—earned it the distinction of being one of only 8 law firms named by the *National Law Journal* to its exclusive "Plaintiffs' Hot List," among numerous awards and recognitions bestowed upon the firm.

Building off its successes in the courtroom and ability to litigate successfully to trial, the Firm has been at the helm of some of the most notable settlements in recent decades, including:

- The settlement in *In re National Football League Players' Concussion Injury Litigation* estimated to be worth $1 billion which includes a Baseline Assessment Program to evaluate the current cognitive state of retired NFL players and provide immediate treatment and therapies to qualified players, as well as monetary payments

of up to $5 million to certain qualifying diagnoses over the 65 year term of the settlement.

- The $14.7 billion settlement in *In re Volkswagen "Clean Diesel" Marketing, Sales Practices and Products Liability Litigation* which combines a massive buyback program, paying pre-scandal buyback pricing to eligible owners, as well as billions of dollars to environmental remediation efforts and green vehicle technology.
- A $47.5 million jury verdict in the key bellwether Vioxx trial, *Humeston v. Merck & Co.*, which laid the foundation for the eventual $4.85 billion global settlement covering more than 45,000 personal injury claims for heart attack, sudden cardiac death, and ischemic stroke.
- The $700 million first-round settlement of over 8,000 Zyprexa claims alleging that Zyprexa caused diabetes and diabetes-related injuries and the subsequent, second-round settlement of $500 million.

Mass Torts and Pharmaceutical Litigation

During the past 15 years, Seeger Weiss has emerged as one of the premier mass torts firms in the United States, particularly in the area of pharmaceutical torts. The Firm's expertise in this area has been recognized by courts throughout the U.S. which have appointed the Firm to numerous plaintiffs' steering committees in a variety of multidistrict litigations, including, among others:

Vioxx. Seeger Weiss has served at the helm of the nationwide Vioxx litigation since its inception, playing highly prominent roles in both the federal and New Jersey state court litigations against Merck & Co, the manufacturers of the prescription arthritis drug now thought to lead to an increased risk of heart attack and stroke. On April 8, 2005, the Honorable Eldon E. Fallon, who presides over the Vioxx multidistrict litigation in New Orleans, Louisiana, appointed firm partner, Christopher A. Seeger, as Co-Lead of the Plaintiffs' Steering Committee. Additionally, partner David R. Buchanan was appointed Co-Liaison counsel in the New Jersey state Vioxx litigation before the Honorable Carol E. Higbee, J.S.C. In a 2005 class certification ruling involving claims brought on behalf of all third-party payors, including health-maintenance organizations, managed-care organizations, employers and unions, challenging Merck's advertising practices and pricing policies, Judge Higbee recognized Seeger Weiss's prominence in Vioxx-litigation in noting that "there is probably no other law firm as knowledgeable about Vioxx."

In 2007, Mr. Seeger served as Lead Co-Counsel in *Humeston v. Merck & Co*. in New Jersey Superior Court, Atlantic County. There, he and other Seeger Weiss partners David R. Buchanan, Moshe Horn and Laurence Nassif obtained a $47.5 million jury verdict for the

plaintiff for injuries caused by Vioxx—as cited in the "Top 20 Personal Injury Awards of the Year (2007)" published by the *New Jersey Law Journal*.

Only months after achieving that verdict, Mr. Seeger, along with co-counsel on the Vioxx Negotiating Committee, concluded a $4.85 billion global settlement with Merck, covering more than 45,000 personal injury claims for heart attack, sudden cardiac death, and ischemic stroke. It represents the largest "global" settlement of personal injury claims stemming from a pharmaceutical product in U.S. history.

Zyprexa. In 2004, Seeger Weiss partner Christopher Seeger was appointed by the Honorable Jack B. Weinstein of the U.S. District Court for the Eastern District of New York to serve as Liaison Counsel in the multidistrict litigation against Ely Lilly & Co. relating to the anti-psychotic drug Zyprexa. On June 7, 2005, Eli Lilly and Mr. Seeger, on behalf of the Plaintiffs' Steering Committee, announced a $700 million settlement of over 8,000 Zyprexa claims alleging that Zyprexa caused diabetes and diabetes-related injuries. Mr. Seeger was one of the chief architects and leading negotiators of this landmark settlement. He also took a leading role in negotiating a second-round settlement of $500 million between plaintiffs and Eli Lilly.

Accutane. In 2005, Seeger Weiss partners Christopher Seeger and Dave Buchanan were jointly named to serve on the Plaintiffs' Steering Committee in connection with consolidated litigation against New Jersey based Hoffman-LaRoche, Inc., involving the company's acne medication, Accutane. The mass tort litigation, which came before the Honorable Carole E. Higbee in Atlantic County, involved the consolidation of claims throughout the state of New Jersey alleging severe side effects resulting from the use of Accutane, including birth defects; suicidal impulses among young adults; and inflammatory bowel disease ("IBD"), including Chrohn's disease and ulcerative colitis, a debilitating and life-altering disease with no known cure.

To date, Mr. Buchanan—who, with Seeger Weiss partner Christopher Seeger, served as liaison counsel for the New Jersey coordinated proceedings in the Accutane litigation—has served as co-trial counsel in the three cases tried in New Jersey that involved Accutane-related injuries, all of which resulted in verdicts for the Plaintiff. One, *McCarrell v. Hoffman-La Roche, Inc.*, in New Jersey Superior Court, Atlantic County, resulted in a $25.16 million verdict for the Plaintiff, an Alabama resident who suffered IBD from using Accutane. Seeger Weiss partner Michael Rosenberg also served on the trial team in that case. Another, *Kendall v. Hoffman-La Roche, Inc*., in the same court, resulted in a verdict for the plaintiff, a Utah woman who suffered the same ailment from using Accutane, of nearly $10.6 million. The third, a consolidated trial for *Mace v. Hoffmann LaRoche Inc.*, *Speisman v. Hoffmann LaRoche Inc*., and *Sager v. Hoffmann LaRoche Inc*., garnered a $12.9 million award from the New Jersey jury in November 2008.

Rezulin. Seeger Weiss plays a major role in products liability actions against Pfizer and Warner Lambert involving Rezulin, a prescription drug used to treat Type II diabetes. The Firm is a court-appointed member of the Executive Committee in the federal suits coordinated by the Judicial Panel on Multidistrict Litigation ("JPML") before Judge Lewis A. Kaplan in the U.S. District Court for the Southern District of New York. The Firm is also a member of the New Jersey Rezulin Steering Committee in In re: Rezulin Litigation, currently pending before the Superior Court of New Jersey, Middlesex County. The Firm also successfully represented numerous individuals who commenced personal injury damage actions in various courts throughout the country, all of which claims have been resolved through confidential settlement.

Notably, in March 2003, following a six-week jury trial, the Firm achieved a $2 million verdict against Pfizer on behalf of Concepcion Morgado, a Brooklyn resident who sustained liver injury and was hospitalized for 10 days following her Rezulin use. The case was the first and only Rezulin matter to be tried in New York and represented a watershed result in the nationwide Rezulin litigation.

Vytorin and Zetia. Seeger Weiss has taken the lead in Zetia and Vytorin litigation, negotiating a $41.5 million settlement with Merck & Co., Inc. and Schering-Plough Corporation, which resolved nationwide fraud claims that arose from the sale and marketing of the companies' co-ventured prescription drugs. Plaintiffs contend that Merck conspired with Schering-Plough in 2003 to combine Zocor—an enormously popular statin cholesterol drug, with Zetia—another widely used non-statin cholesterol drug, under the new name Vytorin. The two companies began marketing Vytorin as more effective in reducing cholesterol than Zetia and Zocor alone, as well as being effective in blocking arterial plaque that can cause heart attack and stroke. The lawsuits allege that the companies have known since 2006 that Vytorin was no more effective than the generic version of Zocor in blocking plaque, despite being effective in lowering LDL, or "bad" cholesterol. In failing to disclose these facts, Merck and Schering-Plough were allegedly able to cause consumers and third-party purchasers to pay significantly higher prices than the cost of equally effective alternatives available on the market.

Founding partners Christopher A. Seeger and Stephen A. Weiss served as Co-Liaison Counsel for the Plaintiffs' Executive Committee for *In Re Vytorin/Zetia Marketing, Sales Practices and Products Liability Litigation*, the coordinated group of 140 actions against the two pharmaceutical companies, located in Newark before the Honorable Dennis M. Cavanaugh of the United States District Court of New Jersey. Seeger acted as the principal negotiator for the Plaintiffs' Executive Committee, aided by Weiss and Seeger Weiss partner Diogenes P. Kekatos.

Noteworthy Current Pharmaceutical Mass Tort Prosecutions

Gadolinium. The Firm is at the forefront of litigation against multiple defendant manufacturers of Gadolinium-based contrast agents ("GBCAs") used in certain diagnostic imaging procedures. In December 2006 the U. S. Food and Drug Administration ("FDA") issued a second and stronger Public Health Advisory concerning a link between GBCAs used during Magnetic Resonance Imaging ("MRI") and Magnetic Resonance Angiography ("MRA") procedures, and a debilitating and potentially fatal skin disorder known as Nephrogenic Systemic Fibrosis or Nephrogenic Fibrosing Dermopathy ("NSF/NFD"). Since it released its first Public Health Advisory in June 2006, the FDA has been further investigating the apparent relationship between contrast agents containing gadolinium and NSF/NFD. As of December 2006, the FDA had received reports of 90 patients that developed NSF/NFD within 2 days to 18 months after exposure to such contrast agents.

In February 2008, the Judicial Panel on Multidistrict Litigation ordered all federal actions involving personal injuries stemming from Gadolinium-based contrast dyes centralized in the U.S. District Court for the Northern District of Ohio, before the Honorable Dan Aaron Polster, who has appointed Seeger Weiss partner Christopher Seeger to serve on the Plaintiffs' Steering Committee and Executive Committee in the multidistrict litigation against multiple defendant manufacturers of GBCAs used in MRI and MRA diagnostic imaging procedures. Partner Dave Buchanan serves as court-appointed Federal-State Liaison Counsel for the litigation. Also in 2008, Seeger Weiss partners Christopher Seeger and Dave Buchanan were appointed Liaison Counsel in connection with the consolidated mass tort litigation against manufacturers of GBCAs in New Jersey, before the Honorable Jamie D. Happas of the Superior Court of New Jersey, Middlesex County.

Fosamax. In August 2006, the JPML ordered all federal litigation involving Merck & Co.'s prescription medication Fosamax—used in the treatment of osteoporosis but found to have caused a number of adverse effects, in particular, osteonecrosis (death of bone tissue)—centralized in the U.S. District Court for Southern District of New York (Manhattan), before the Honorable John F. Keenan. Seeger Weiss partner Christopher A. Seeger has been appointed Plaintiffs' Liaison Counsel, and also served on the Executive Committee of the Plaintiffs' Steering Committee in the multidistrict litigation.

Mirena. In April 2013, the JPML ordered all federal litigation involving Bayer's intrauterine ("IUD") device marketed under the brand name Mirena—an IUD containing a hormone, levonorgestrel, designed to be implanted in the uterus for as long as five years——centralized in the U.S. District Court for Southern District of New York (in White Plains, New York), before the Honorable Cathy Seibel. Meanwhile, many hundreds of lawsuits in the New Jersey state courts have been centralized before the Honorable Brian R. Martinotti in Bergen

County. The Plaintiffs allege that Bayer failed to warn about the longer-term risks of migration of the Mirena device and perforation of the user's uterus, having warned about the risk of migration and perforation only at the time of device's insertion. Other complications that Bayer failed to warn about include migration and embedment of the device in the uterus. Seeger Weiss partners Diogenes P. Kekatos and David R. Buchanan have been appointed as Plaintiffs' Liaison Counsel in the federal multidistrict and New Jersey state multicounty Mirena litigation, respectively.

Yaz, Yasmin, and Ocella. In November 2009, Seeger Weiss partner Christopher A. Seeger was named to the Plaintiff's Steering Committee in the *Yasmin and YAZ (Drospirenone) Marketing, Sales Practices and Products Liability Litigation* (MDL No. 2100) by Judge David R. Herndon, United States District Court, Southern District of Illinois. More than a hundred lawsuits have been filed against Bayer Healthcare, the pharmaceutical giant that produces Yaz and Yasmin. This litigation, which is expected to include hundreds of women asserting severe health complications resulting from taking these birth control pills, was centralized in the Southern District of Illinois in October 2009 by order of the United States Judicial Panel on Multidistrict Litigation.

Actos. In November 2012, founding partner Christopher A. Seeger was appointed to the Multidistrict Litigation (MDL) Actos Product Liability Plaintiffs' Steering Committee. In June 2011, a European study found that among a group of 155,000 patients, one fifth of those who developed bladder cancer had been taking the drug Actos. However, the health warnings that accompany the prescription fail to alert users of this risk. The governments of France and Germany have now banned the type-2 diabetes medication, and the FDA has issued warnings to American doctors who prescribe the drug. Takeda Pharmaceutical Co., the makers of Actos and Asia's largest pharmaceutical company, may face up to as many as 10,000 claims.

Other Pharmaceutical and Medical Device Prosecutions

Depuy Orthopaedics, Inc ASR Hip Implant Products. Seeger Weiss partner Christopher A. Seeger was named to the Plaintiffs' Executive Committee in the *In Re: Depuy Orthopaedics, Inc ASR Hip Implant Products* (MDL No. 2197) by Judge David A. Katz, United States District Court, Northern District of Ohio in January 2011. More than a hundred lawsuits have been filed against Johnson & Johnson, the pharmaceutical giant that is also the parent company of Depuy Orthopaedics, Inc. In August 2010, Johnson & Johnson and its medical device subsidiary, DePuy Orthopaedics, recalled two acetyabular cups hip replacement systems because of their high rate of failures, after a study from the National Joint Registry of England and Wales showed that 1 out of every 8 patients (12%-13%) who had the devices had to undergo revision surgery within five years of receiving it. By the time of the recall, more than 93,000 patients worldwide were fitted with an ASR hip implant. Roughly a third of those were patients

in the United States. This litigation was centralized in the North District of Ohio in December 2010 by order of the United States Judicial Panel on Multidistrict Litigation.

PPA. Seeger Weiss remains actively involved in litigation against numerous manufacturers of pharmaceutical products containing PPA (phenylpropanolamine), until 2000 an ingredient in virtually every over-the-counter cold medication and many appetite suppressant products. The Firm serves on the Plaintiffs' Steering Committee in the federal suits consolidated by the JPML in the U.S. District Court for the Western District of Washington, and as the court-appointed Liaison Counsel in the New York PPA actions coordinated before Judge Helen Freedman. In 2003, the Firm was one of the lead negotiators of a nationwide settlement agreement with the manufacturers of Dexatrim, a leading over-the-counter appetite suppressant that until 2000 contained PPA. The settlement covers the claims of all individuals who suffered stroke-related injuries resulting from the ingestion of PPA-containing Dexatrim.

Propulsid. Seeger Weiss held national leadership positions in pharmaceutical products liability litigation against Johnson & Johnson and Janssen Pharmaceutica, Inc., the manufacturers of Propulsid—a prescription drug used to treat nocturnal heartburn. Seeger Weiss LLP was a member of the court-appointed Plaintiffs' Steering Committees in both the federal litigation, which have been consolidated by the JPML in the Eastern District of Louisiana, and in the statewide consolidated actions in Middlesex County, New Jersey. The Firm served as counsel to numerous individuals who have commenced personal injury damage actions in various courts throughout the country.

Guidant and Medtronic Heart Device Litigations. Seeger Weiss served as a court-appointed member of the Plaintiffs' Steering Committee in multidistrict litigation in the U.S. District Court for the District of Minnesota against Medtronic and Guidant involving defective heart defibrillators and pacemakers. The heart devices at issue are surgically implanted in persons who have a type of heart disease that creates the risk of a life-threatening heart arrhythmia (abnormal rhythm). Both Medtronic and Guidant had disclosed defects in certain of their defibrillators that caused the devices to fail without warning. The Firm filed one of the first actions in the U.S. against Guidant on behalf of patients.

Other Pharmaceutical Products. In addition to aforementioned pharmaceutical, the Firm serves or has served as counsel in numerous lawsuits in state and federal courts throughout the country brought by individuals who have suffered personal injury or death resulting from the use of various pharmaceutical or medical device products, including **Baycol**, **Celebrex**, **Elidel**, **Ephedra**, **Fen-Phen**, **Kugel Mesh** hernia patches, **Lamisil**, **Neurontin**, **OxyContin**, **Ortho Evra** birth control patches, **Protopic**, **Serevent**, **Serzone**, and **Sporanox**.

Consumer Litigation

Seeger Weiss LLP has achieved notable recoveries and currently holds leadership roles in many major consumer class action litigations throughout the country. Among the consumer class action litigations in which Seeger Weiss LLP plays or has played a major role are, in alphabetical order:

Alexander v. Coast Professional Services. Seeger Weiss represented federal student loan borrowers who were in default on their student loan payments, but denied federally mandated offers of rehabilitation by Coast Professional Services, one of the private collecting agency under contract with the United States Department of Education. After obtaining class certification, Seeger Weiss negotiated a settlement which provided the maximum statutory damages available to the class under the Fair Debt Collections Practices Act. Scott Alan George was primarily responsible for the litigation

In re Armstrong World Industries, Inc.: $7 million settlement achieved in the United States Bankruptcy Court for the District of Delaware after transfer. The Firm represented the State of Connecticut, one of numerous property damage claimants which sought injunctive relief and monetary damages resulting from the presence of Armstrong-manufactured asbestos-containing resilient floor tile and sheet vinyl in residences and buildings throughout the United States.

In re Azek Building Products, Inc. Marketing and Sales Practices Litigation. Pending in the District of New Jersey, this litigation seeks relief for purchasers of Azek composite decking, marketed to consumers as a high-end, low-maintenance, and fade-resistant decking. Despite these representations, this expensive decking line contains a design defect which makes it prone to significant fading in outdoor exposure. Rather than replace the defective decking or compensate consumers, the Defendant recommended the application of an expensive after market product, DeckMax, which only temporarily masks the manifestation of the defect and requires a laborious application process. Seeger Weiss is interim co-lead counsel in the case. The parties recently concluded a hard fought discovery process and Plaintiffs are now preparing to file a motion for class certification.

In re Bridgestone/Firestone, Inc. ATX, ATX II and Wilderness Tires Products Liability Litigation: Seeger Weiss represented Firestone tire owners and purchasers of Ford Explorers equipped with certain models of Firestone tires. Plaintiffs sought damages flowing from design defects that resulted in severe, life-threatening accidents. Specifically, the consumer class sought a tire recall, recovery for the cost of tire replacement, and recovery for the diminution in the value of Ford Explorer vehicles resulting from the subject design defects. Following the filing of a number of federal class actions, the litigations were transferred for pre-trial proceedings to the

Federal court in Indianapolis. In those coordinated actions, which the JPML had centralized before the Honorable Sarah Evans Barker of the U.S. District Court for the Southern District of Indiana (Indianapolis), Seeger Weiss served as a member of the Plaintiffs' Law Committee. Following extensive discovery and motion practice, Plaintiffs achieved a favorable nationwide settlement of their class claims.

In re Caterpillar, Inc., C13 and C15 Engine Products Liability. Representing the Plaintiffs in the first filed action in this Multi-District Litigation, Seeger Weiss was among the firms that brought substantial relief to owners of busses and trucks with Caterpillar's C13 and C15 diesel engines. These diesel engines used a defective "Caterpillar Regeneration System," an anti-pollution system that was designed to ensure engine emissions complied with federal regulations, but would fail under normal operating conditions leading the engines to "de-rate" and shut down without warning.

After fully briefing class certification for the first-filed Plaintiffs, the MDL Plaintiffs prevailed against two motions to dismiss, including a motion arguing for federal preemption of all claims. The settlement discussion which quickly followed resulted in a $60 million common fund class settlement, providing up to $10,000 per engine (depending on the number of de-ratings) or $15,000 in proven consequential losses. Approval of this settlement is currently pending.

Ecker v. Ford: The Superior Court of California granted final approval to the class action settlement in this litigation after the Firm obtained contested class certification. The settlement provided full cash reimbursement for qualifying parts and labor for all California owners and lessees of Ford Focus vehicles who experienced premature front brake wear, including reimbursement for brake pads and rotors. The court had earlier appointed the Firm to act as co-lead counsel in the litigation. Seeger Weiss partner Christopher Seeger and Scott Alan George were primarily responsible for the litigation.

In re: Ford Fusion and C-Max Fuel Economy Litigation. Pending in the Southern District of New York, this Multi-District litigation seeks relief for purchasers and lessees of Ford's 2013 CMax and Fusion hybrid cars. As of mid-2012, Ford held a tiny fraction of the hybrid market. But with the 2013 model year, Ford launched a massive and misleading advertising campaign designed to convey to the auto-buying public that two of its new 2013 hybrid models—the all new second generation Fusion Hybrid and the C-MAX—had made a quantum leap in fuel economy and now delivered 47 city, 47 highway and 47 MPG combined. While Ford realized record sales of its new hybrid vehicles, the owners and lessees of these cars realized no better fuel efficiency than earlier models. Seeger Weiss is serving as a member of the Plaintiffs' Steering Committee with Scott Alan George having primary responsibility.

Lester v. Percudani: The Firm represented over 170 first-time homeowners in the United States District Court for the Middle District of Pennsylvania who purchased homes at inflated valuations based upon fraudulent appraisals and in violation of federal mortgage lending guidelines. The action includes federal civil RICO and state consumer fraud claims against a group of RICO co-conspirators. In 2008, the district court denied motions for partial summary judgment that had been filed by two of the Defendants (Chase Home Finance LLC and one of its officers), and later denied their motion for reconsideration of that ruling. Following those rulings, the parties entered court-approved mediation, which resulted in a settlement that provided millions of dollars' worth of relief to the aggrieved homeowners, including substantial mortgage rate reductions.

In re MCI Non-Subscriber Telephone Rates Litigation: $88 million class settlement completed in the United States District Court for the Southern District of Illinois following a transfer to that district by the JPML. The settlement resolved claims brought by class members to recover overcharges arising from MCI's improper imposition of non-subscriber rates and surcharges on certain of its customers. Seeger Weiss was a member of the Plaintiffs' Steering Committee and served as Chair of the Discovery Committee.

In re Mercedes-Benz Emissions Litigation. In the wake of the Volkswagen "clean diesel" scandal, Seeger Weiss was one of the first firms to first investigate and initiate litigation an action against Mercedes-Benz for its own long-term efforts to cover-up the fact that their own BlueTEC "clean diesel" vehicles pollute far more than regular engines and more than regulations allow. The litigation is pending in the United States District Court for the District of New Jersey where several similar actions have been consolidated. Christopher Seeger and Scott Alan George are primarily responsible for this litigation.

Pro et al. v. Hertz Equipment Rental Corporation. This nationwide settlement in the United States District Court for the District of New Jersey provided both substantial monetary and injunctive relief related to Hertz Equipment Rental Corporations' ("Hertz") deceptive charges for Loss and Damage Waivers ("LDW") and Environmental Recovery Fees ("ERF"). Plaintiffs' claimed that Hertz's LDW and Environmental Recovery Fee ("ERF") were unconscionable in that the LDW provided only illusory coverage and that the ERF did not reflect any actual additional fees or expenses related to the protection of the environment. Plaintiffs succeeded in certifying a national class of purchasers before undertaking court-ordered mediation in 2012. Two members of Seeger Weiss, Scott Alan George and Jonathan Shub, were appointed as part of the settlement to serve as Co-lead Counsel. Under the terms of the Settlement, Hertz reimbursed Class members who paid for damages sustained to equipment they rented up to 75% of the amount of the deductible paid during the class period *or* provided partial reimbursement for the total amount of LDW paid during the Class period, offering the choice of

either future rental discounts or cash payment. Hertz also agreed to improve the disclosures it makes about the LDW and ERF programs.

In Simply Orange Orange Juice Marketing and Sales Practices Litigation. Seeger Weiss is co-lead counsel in a pivotal litigation regarding food fraud in connection with the most widely consumed juice in the United States—orange juice, and some of the mostly widely consumed products by the American public—Simply Orange and Minute Maid orange juice products. Unknown to consumers, Coca-Cola, the manufacturer of these juices, adds flavors to the juices, to impart a signature, market-distinguishing taste to the juices and to mask flavor loss that occurs during long term storage of the juice. Coca-Cola adds these flavors to the juices but omits disclosure of them while marketing the juices as 100% Pure Squeezed Orange Juice with no additives. The practice violates the federal standard of identity for pasteurized and from concentrate orange juices as well as state laws prohibiting misleading marketing and advertising. The litigation has been hard fought; the parties' summary judgment motions were denied last year and the parties are now in the midst of class certification briefing. The case is pending in the Western District of Missouri.

Sternberg v. Apple Computer, Inc. **and** ***Gordon v. Apple Computer, Inc***.: Nationwide settlement completed in California state court. Plaintiffs recovered class-wide damages resulting from Apple's deceptive advertisements for its iMac and G4 brand computers—specifically the functionality of the DVD playback feature. Seeger Weiss served as co-lead counsel for the classes.

Taha v. Bucks County. The firm served as co-counsel and was appointed Co-class Counsel by the United States Court for the Eastern District of Pennsylvania to represent a class of persons whose privacy rights had been violated by Bucks County Prison. In contravention of Pennsylvania state law, Bucks County Prison began in 2011 to post publicly and freely on the Internet through its "Inmate Look-Up Tool" the intake information and photos of each person who had passed thorough the facility since 1938. Seeger Weiss obtained both certification of a class and summary judgment on liability. Appeal by defendants is currently pending to the Third Circuit.

Tennille v. The Western Union Company. Seeger Weiss served as co-Class Counsel in consolidated nationwide class action suits filed in the U.S. District Court for the District of Colorado, alleging that Western Union, in violation of consumer fraud laws, wrongly failed to inform customers who purchased money transfers if a money transfer failed to go through to the intend recipient. Western Union could then sit on the funds for years, earning income and administrative fees off them while , in many cases, the funds eventually escheated to state governments. Following years of extensive discovery and motion practice, including defeating Western Union's bid to compel arbitration, the parties reached a settlement, brokered by the

Tenth Circuit's chief mediator. Under the settlement, Western Union agreed to the establishment of a cash fund (valued at over $135 million at the time of final approval of the settlement) for the return to class members of funds not already escheated to states; the payment of interest to those class members whose wire transfer funds had already escheated to a state government; the formation of a process for assisting class members in securing the return of their funds if they have already escheated; the creation of a 7-1/2 year notice plan, whereby Western Union was required to inform customers within 60 days if their wire transfers are unsuccessful; and the undertaking of robust efforts to update customers' stale contact information. The settlement received final approval from U.S. District Judge John L. Kane in June 2013.

In re Tropicana Orange Juice Marketing and Sales Practices Litigation. The allegations in this case are similar to the *Simply Orange* litigation. As with Coca-Cola, Tropicana Products adds flavors to Tropicana Orange Juice to alter and improve the flavor of stored orange juice with flavors created by fragrance and flavor manufacturers and specifically designed to meet consumer taste preferences. Despite the addition of flavors, Tropicana markets the juice as pure and fails to disclose the addition of flavors to consumers. Seeger Weiss along with co-counsel recently filed a motion for class certification. Along with the motion for class certification, Seeger Weiss filed a motion for appointment as co-lead counsel. The case is pending in the District of New Jersey.

Truth-in-Lending Act Litigation: The Firm served as co-counsel in several dozen proposed nationwide class actions that were filed in 2007 and 2008 in the various federal courts in California against banks and other mortgage lenders, asserting claims under the federal Truth-in-Lending Act ("TILA"), and California consumer fraud statutes and common law. These actions sought recovery of damages as well as equitable relief, including rescission, in connection with highly-deceptive so-called Option Adjustable Rate Mortgage ("ARM") loans. The loan documents given to Option ARM borrowers failed to adequately disclose to borrowers that the initial "teaser" interest rate of 1%-3% would last only 30 days and that, after that time, the minimum payment specified in the payment schedule would be insufficient to cover even monthly interest charges, let alone loan principal. As a result, borrowers who secured these deceptive loans lost equity in their homes and were no longer able to secure the refinancing necessary to get out from under these loans. In several of the lawsuits, the courts sustained the Plaintiffs' claims against the defendant lenders' dispositive motions, and several cases resulted in the certification of classes. A number of the suits culmimated in settlements providing cash and/or other relief to borrowers. Seeger Weiss partners Christopher A. Seeger, Jonathan Shub, and Diogenes P. Kekatos all played a substantial role in these hard-fought litigations.

In re Volkswagen "Clean Diesel" Marketing, Sales Practices and Products Liability Litigation: In the largest consumer automotive industry class action settlement in history, Volkswagen ("VW") has agreed to create a funding pool of over $10 billion, an amount which is

sufficient to allow for buybacks of 100% of the VW and Audi 2.0-liter diesel vehicles in the United States which are equipped with "defeat device" software. This software was designed to allow vehicles to meet emissions standards when undergoing emissions testing, but to bypass emissions controls at all other times and pollute the environment by emitting nitrous oxides at levels up to 40 times higher than when the vehicles are being tested. In addition to the direct monetary benefits to consumers, VW also has agreed to pay $2.7 billion for environmental remediation and to make a $2 billion investment in "green" vehicle technology.

The settlements were reached with VW through the efforts of lawyers on behalf of the consumer class, working in conjunction with government lawyers, including those from the Environmental Protection Agency and the Federal Trade Commission. The judge overseeing the Multidistrict litigation centralized in the Northern District of California, the Honorable Charles R. Breyer, pushed the lawyers involved to work diligently and quickly in order to reach the settlements expeditiously (or face a quick trial) in order to meet the ultimate goal of removing the polluting cars from the roads as soon as possible.

Christopher Seeger was appointed by Judge Breyer to serve on the Plaintiffs' Steering Committee ("PSC"). He worked closely with court-appointed Lead Counsel, Elizabeth Cabraser, spending countless hours poring over settlement documents and in meetings with VW's lawyers and the government's lawyers in order to reach a fair settlement. Indeed, at the Status Conference held on May 24, 2016, Judge Breyer even commented that he had been advised by the Settlement Master that all of the lawyers had "devoted substantial efforts, weekends, nights, and days, and perhaps at sacrifice to your family" in order to reach the proposed settlement. David Buchanan was one of the counsel on the PSC leading this effort. In addition, TerriAnne Benedetto, Scott Alan George and others spent significant hours on the case, both on the settlement and litigation tracks.

In re Vonage Marketing and Sales Practice Litigation*:* Seeger Weiss was co-Lead Counsel in this litigation which culminated in a nationwide settlement in the United States District Court for the District of New Jersey. The lawsuit involved Vonage's promotional "one month free" and "money back guarantee" offers and application of certain charges (disconnection, cancellation and termination fees, and subscription fees despite requests for cancellation), which allegedly violated the laws of several states. Vonage agreed to pay $4.75 million to fund the settlement, which offered eligible class members full reimbursements for certain payments made by Vonage subscribers.

In re Whirlpool Corp. Front-Loading Washer Products Liability Litigation. This hard-fought Multi-District Litigation (relating to Whirlpool washers) pending in the Northern District of Ohio running parallel to the *Butler v. Sears Roebuck & Co.* (relating to Kenmore washers) pending in the Northern District of Illinois provided substantial relief to owners of early-year

Whirlpool and Kenmore front-loading washing machines which are prone to develop mold and foul smells in ordinary use. With two members on the Plaintiffs' Steering Committee (Scott Alan George and Jonathan Shub), Seeger Weiss was a leader among the firms that obtained certification of classes in both the Whirlpool and Kenmore litigations and, ultimately a substantial settlement after a bellwether trial of Ohio purchasers. Under the settlement, owners of the front-loading washers can choose among a range of benefits, including reimbursements of up to $500 for out-of-pocket expenses for repairs or replacements due to mold or odor problems.

Securities Litigation

Seeger Weiss has emerged as a leading innovator in the realm of securities litigation, with special emphasis on IPO litigation, auction rate securities, securities fraud class action, and, recently, the Bernard Madoff Ponzi scheme. The Firm brought action against some of the largest financial entities in the world, including Goldman Sachs, Morgan Stanley, Credit Suisse, JPMorgan Chase, Bank of America and Merrill Lynch.

IPO Litigation

In re Initial Public Offering Securities Litigation is one of the largest and most significant coordinated securities fraud prosecutions in United States history. In this coordinated action, Seeger Weiss serves on the Plaintiffs' Steering Committee and as Co-Chair of the Plaintiffs' Legal Committee. The litigation consists of 310 class actions involving IPOs marketed between 1998 and 2000. The defendants include 310 individual companies and 55 investment bank underwriters, which includes Wall Street's largest and most well-known investment houses, including Goldman Sachs, Morgan Stanley, and Credit Suisse. The class actions allege that the IPOs were manipulated by the issuers and investment banks to artificially inflate the market price of the securities of those companies by inducing customers to engage in aftermarket "tie-in" agreements in exchange for IPO allocations. The cases further allege that the investment banks extracted significant undisclosed compensation from their customers in exchange for giving them the IPO allocations. The actions are coordinated before Judge Shira A. Scheindlin in the U.S. District Court for the Southern District of New York (Manhattan).

In connection with these actions, the Firm was instrumental in defeating a recusal motion brought by certain of the underwriter-defendants in 2001, and was the principal author of the electronic data preservation protocol that was entered by Judge Scheindlin in the litigation. The Firm has been extensively involved in all phases of the litigation, which recently entered a new phase of class certification proceedings following the U.S. Court of Appeals' 2007 reversal of Judge Scheindlin's certification of six test classes.

Auction Rate Securities

Seeger Weiss is part of a consortium of law firms that have taken a leading role in bringing actions against the broker-dealers involved in the auction rate securities market's collapse. Seeger Weiss has sued UBS, DeutscheBank, Merrill Lynch, Wachovia, TD Ameritrade, Morgan Stanley, JPMorgan Chase, E*Trade, Raymond James, Wells Fargo, Oppenheimer, Bank of America and Royal Bank of Canada, alleging that they knew, but failed to disclose material facts about the auction rates market and the securities they sold to their investors, including that the securities were not cash alternatives, like money market funds but, rather, were complex, long-term financial instruments with 30-year or longer maturity dates; and that they were only liquid at the time of sale because the broker-dealers were artificially supporting and manipulating the auction market to maintain the appearance of liquidity and stability. Indeed, the broker-dealers simultaneously withdrew their support of the auction rate securities market on the same day in February 2008, resulting in its collapse. One *New York Times* reporter has referred to the collapse of the auction rates market as a "hostage crisis," in which thousands of investors, including senior citizens, have hundreds of billions of dollars in investments that they cannot access despite having been told that they were liquid investments that were as good as cash.

The Honorable Shira A. Scheindlin of the U.S. District Court for the Southern District of New York (Manhattan) has appointed Seeger Weiss to serve as Liaison Counsel in *Waldman v. Wachovia*, No. 08 Civ. 2913 (SAS) (S.D.N.Y.). Seeger Weiss also was appointed as Liaison Counsel in *Chandler v. UBS AG*, No. 08 Civ. 2697 (SAS) (LMM) (S.D.N.Y.); *Humphrys v. TD Ameritrade*, No. 08 Civ. 2912 (PAC) (S.D.N.Y.); and *Ciplet v. JPMorgan Chase & Co.*, 08 Civ. 4580 (RMB) (S.D.N.Y.). Additionally, counsel with whom Seeger Weiss is working have been appointed Lead Counsel in these and several other cases against the broker-dealers.

Securities Fraud Class Actions

The Firm holds leadership roles in a variety of national securities class action litigations. For example, Seeger Weiss LLP served as lead counsel in an action against *ATEC Group, Inc.*, in which the Firm recovered $1.7 million for the class in the United States District Court for the Eastern District of New York. Additionally, Seeger Weiss LLP serves as lead counsel in an action against *The Miix Group*, a medical malpractice insurance carrier based in New Jersey, and several of its former and current directors and officers which is pending in the District of New Jersey, and chaired the Executive Committee in a derivative action against *Legato Systems, Inc.* in California.

The Firm also represents or has represented shareholders in a variety of securities litigations, including those against *ATEC Group* (E.D.N.Y.); *Axonyx* (S.D.N.Y.); *Bell South* (N.D. Ga.); *Bradley Pharmaceutical* (D.N.J.); *Broadcom Corp*. (C.D. Ca.); *Buca, Inc*. (D. Minn.); *Cryo-Cell International, Inc*. (M.D. Fl.); *eConnect, Inc*. (C.D. Ca.); *FirstEnergy Corp*. (N.D. Ohio); *Friedman, Billings, Ramsey Group* (S.D.N.Y.); *Gander Mountain* (D. Minn.); *Genta* (D.N.J.); officers and directors of *Global Crossing* (C.D. Ca.); *Grand Court Lifestyles, Inc*. (D.N.J.); *Impath* (S.D.N.Y.); *IT Group Securities* (W.D. Pa.); *Mattel, Inc*. (C.D. Ca); *Matrixx Initiatives* (D. Ariz.); *MBNA* (D. Del.); *MIIX Group* (D.N.J.); *Molson Coors Brewing Company* (D. Del.); *Mutual Benefits Corp*. (S.D. Fla.); *New Era of Networks, Inc*. (M.D.N.C.); *Nuance Communications* (N.D. Ca.); *NVE Corporation* (D. Minn.); *Omnivision Technologies, Inc*. (N.D. Ca.); *Par Pharmaceuticals* (D.N.J.); *Pixelplus, Co*. (S.D.N.Y.); *Procter & Gamble Co*. (S.D. Ohio); *Priceline.com* (D. Conn.); *Purchase Pro* (S.D.N.Y.); *Quintiles Transnational* (D. Colo.); *Read Rite Corporation* (N.D. Ca.); *Sagent Technology* (N.D. Ca.); *Sina Corporation* (S.D.N.Y.); *The Singing Machine, Inc*. (S.D. Fl.); *Terayon, Inc*. (C.D. Ca.); and *Tesoro Petroleum Corp*. (E.D. Tex); *Viisage Technology, Inc*. (D. Mass.), among others.

Madoff Investment Securities Litigation

Seeger Weiss LLP has moved to the forefront of litigation against Bernard L. Madoff Investment Securities, the engine of Madoff's $50 billion Ponzi scheme, and has been retained to represent more than $500 million in claims from defrauded shareholders around the world. Madoff's brand of deception, though similar to a pyramid scheme, proved far more insidious because it relied Madoff's good standing and the fundamental trust the trading community placed in his abilities. Investors were lead to believe that their investments would be handled competently by Madoff and that their returns would be produced through sound investments. Thousands of investors and institutions have been defrauded by Madoff and his firm.

Seeger Weiss, along with co-counsel from Milberg LLP, filed a petition in April 2009 that, if granted, could make Madoff's personal assets available for investors to recover a portion of their investments. The petition was filed soon after Judge Louis Stanton reversed an earlier decision that blocked that option. The SEC and the prosecution maintained that nearly all of Madoff's personal assets were linked to his financial crimes, and personal bankruptcy could delay recovery by victims of his Ponzi scheme, but Judge Stanton disagreed, and reversed the prior holding.

General Complex Class Action Litigation

Seeger Weiss has long excelled at general complex class action litigation, having achieved major victories in the past and working on several important class action cases in the present, against large agricultural and pharmaceutical corporations.

Bayer CropScience Rice Contamination MDL. The Firm served as a member of the court-appointed Plaintiffs' Executive Committee in this MDL brought on behalf of national rice-growers who sought to recover damages against Bayer CropScience and numerous parents and affiliates to the value of their rice crops resulting from contamination by LLRICE 601 and LLRICE 604, varieties of long-grain rice that have been genetically modified to produce rice crops resistant to glufosinate—the active ingredient in Liberty® Herbicide, another Bayer product. This "glufosinate-tolerant" trait allows growers to spray Liberty® herbicide over the entire crop, killing all weeds without risking any damage to the rice crop. Following revelations in August 2006 and again in March 2007 that U.S. rice crops had been found to be contaminated with these varieties (which, at the time, had not been approved for commercial use), the world's leading importers of American rice, including the European Union, Japan, and South Korea, quickly announced embargoes of U.S. rice, triggering sharp declines in the market price of U.S. rice. The JPML centralized these actions, and others similar, before the Honorable Catherine D. Perry of the U.S. District Court for the Eastern District of Missouri (St. Louis). Following the district court's denial of class certification, the cases proceeded to completion of discovery and trial. Following multiple bellwether trials before Judge Perry, both resulting in significant victories for the Plaintiffs, the parties entered into a global settlement totaling $750 million.

In re "StarLink" Corn Products Litigation. Similar to the rice contamination litigation against the Bayer companies, this litigation was centralized by the JPML in the U.S. District Court for the Northern District of Illinois, Eastern Division (Chicago). The U.S. Environmental Protection Agency had licensed "StarLink" brand corn—which had been genetically-modified to create its own insecticidal protein, making it resistant to various corn pests—only for the growing of corn used for animal feed and industrial purposes (such as the growing of corn for manufacturing ethanol), was found to have entered the U.S. food chain. The news swiftly led to Japan and other major overseas buyers of U.S. corn placing embargoes on American corn, and the resulting collapse of the export market for U.S. corn and a sharp decline in the market price of U.S. corn. The Firm was one of four court-appointed co-lead counsel for a class of corn farmers in various corn-belt states against Aventis CropScience USA—the developer of StarLink corn seed (which was later purchased by Bayer AG and became Bayer CropScience, the developer of the genetically-modified rice seeds that are the sources of the rice contamination litigation in which the Firm is currently involved)—and Garst Seed Company, the principal licensee and distributor of the corn seed. In the actions, the corn growers sought damages representing the loss in value of their corn crops due to the improper marketing, handling, and

distribution of StarLink corn. In April 2003, following much discovery and the denial of the Defendants' motion to dismiss the Plaintiffs' claims, U.S. District Judge James B. Moran gave final approval to a $110 million nationwide settlement of the class claims.

OxyContin Third-Party Payor Litigation. Seeger Weiss has been appointed co-lead counsel in a proposed class action pending in the U.S. District Court for the Southern District of New York (Manhattan) before the Honorable John G. Koeltl. The litigation against the drug's maker, Purdue Pharma LLP, involves the marketing and promotion of OxyContin. In 2007, Purdue pled guilty to federal violations of misbranding of OxyContin, for which it was fined over $600 million in criminal and civil penalties. The Firm represents insurance providers and other "third-party payors," including self-funded health plans, which have purchased, reimbursed, or otherwise paid for OxyContin for their plan members or participants. The Plaintiffs assert violations of federal RICO and state consumer fraud statutes. Specifically, they allege that, as a result of Defendants' fraudulent over-promotion and off-label promotion of OxyContin, members of the class paid a much higher price, for many more prescriptions, than they would have absent Defendants' fraudulent over-promotion. After discovery, spirited negotiations, and briefing and argument on Purdue's motion to dismiss the complaint, Seeger Weiss secured a $20 million settlement, which received preliminary approval from the district court in December 2008. A final approval (fairness) hearing is scheduled for May 15, 2009.

Environmental and Toxic Tort Litigation

Seeger Weiss has brought several environmental and toxic tort cases on behalf of homeowners, small landowners and farmers who have suffered from environmental damage and degradation.

Factory Hog and Poultry Farm Environmental Litigation. The Firm was involved in the prosecution of various environmental and common law claims against several of the nation's largest industrial hog and poultry farm operators. These cases, which were filed in various jurisdictions throughout the country, were brought on behalf of riparian property owners and other residents in the vicinity of factory hog and poultry farms who suffered from atmospheric degradation caused by the illegal discharge of harmful toxins and other pollutants contained in the enormous quantities of hog and poultry feces and other wastes produced by the industrial farmer defendants. The Firm served as co-lead counsel in several of these actions. For example, the Firm served as court-appointed co-lead counsel in an action in the state District Court of Mayes County, Oklahoma pertaining to environmental damages to the Grand Lake O'Cherokees caused by the disposal of massive quantities of chicken litter by the operations of various major poultry integrators and their contract growers. In that action, the Firm achieved the certification of two classes of owners of property around the 44,000-acre lake after a three-day hearing by the District Court, and that ruling was only narrowly overturned by the Oklahoma appellate courts

during nearly two and one-half years of appeals. The Firm dismissed these claims following the class decertification.

Hog Odor Nuisance Litigation. In September 2006, following a three-week trial in which Firm partner, Stephen A. Weiss, served as co-lead trial counsel, a state court jury sitting in Jackson County, Missouri returned a $4.5 million combined verdict against industrial hog producers Premium Standard Farms, Inc. and ContiGroup Companies, Inc. in favor of six neighbors of the Defendants' vast farm operations in northern Missouri. In March 2010, a group of fifteen neighbors brought Premium Standard Farms before the state court again, alleging that the overpowering hog odors had not abated since the original trial. A Jackson County jury awarded the plaintiffs an $11.05 million verdict. This verdict is the largest monetary award against a hog farm in an odor nuisance case. Following these verdicts, Mr. Weiss served as lead negotiator of a global settlement that successfully resolved approximately 300 related claims against these Defendants on a confidential basis.

Lead Poisoning Litigation. The Firm represented families and property owners living within Tar Creek, one of the nation's most notorious hazardous waste sites, situated within the former Picher Mining Field in Northeast Oklahoma. The site had ranked consistently near the top of EPA's National Priorities List for over a decade. Seeger Weiss pursued two types of cases on behalf of the residents: claims on behalf of seven minor children who have irreversible brain damage as a result of exposure to the lead left behind by the mining companies; and a prospective class of residents whose properties have been devalued and who have been exposed to this toxic mining waste. These claims were successfully resolved through confidential settlements.

Chinese-Manufactured Drywall. Seeger Weiss is currently pursuing action against Chinese manufacturers of contaminated drywall, which is reported to contain high levels of hydrogen sulfides, compounds that when exposed to prolonged heat or humidity, release sulfur gasses resulting in terrible odors, metal corrosion, and physical injuries. Christopher A. Seeger was named to the Plaintiff's Steering Committee in the Chinese-Manufactured Drywall Products Liability Litigation (MDL No. 2047) by Judge Eldon E. Fallon, United States District Court, Eastern District of Louisiana. This litigation, which includes thousands of claimants asserting property damage and personal injury claims, was centralized in the Eastern District of Louisiana in June 2009 by order of the United States Judicial Panel on Multidistrict Litigation.

Mr. Seeger tried the first defective Chinese-manufactured drywall case in the country, resulting in a $2.6 million verdict for seven Virginia families. Mr. Seeger also tried the second bellwether case, which determined whether manufacturers were responsible for damages the drywall's toxic fumes cause to plumbing, electronics, and appliances, securing a $164,049 judgment for the Hernandez family.

With those successes, Mr. Seeger was a key part of a negotiating team that obtained a breakthrough settlement to remediate homes affected by Chinese drywall. The agreement was reached with several key defendants including Knauf Plasterboard Tianjin (KPT), builders, drywall suppliers and their insurers, and other Knauf entities, and totaled over $1 billion in recoveries. Seeger Weiss remains engaged in litigation against the other, key manufacturer of this contaminated drywall as well as its parent corporations.

Asbestos Litigation

Seeger Weiss handles numerous lawsuits seeking compensation for victims of asbestos and mesothelioma and has recovered millions of dollars for mesothelioma victims nationwide. These cases include a $3.1 million settlement on behalf of an auto mechanic and Navy veteran who was diagnosed with mesothelioma at age 61, and a $2 million settlement on behalf of an 80-year-old California man who was diagnosed with mesothelioma after having worked on shipyards in California and across the country.

Fair Labor Standards Act Litigation

Seeger Weiss LLP is engaged in a wide variety of Fair Labor Standards Act ("FLSA") litigation matters representing aggrieved employees in courts throughout the country. The following are examples of such FLSA actions in which the Firm is involved:

Seeger Weiss served as lead counsel in an action—titled *Schaefer-LaRose v. Eli Lilly & Co.*, which was filed in November 2006 and transferred to the U.S. District Court for the Southern District of Indiana—charging that Eli Lilly & Co. had a common practice of refusing to pay overtime compensation to its pharmaceutical representatives—including Sales Representatives, Senior Sales Representatives, Executive Sales Representatives, Senior Executive Sales Representatives, and those with similar job descriptions and duties—in violation of the federal FLSA. The plaintiffs, Lilly employees who promoted or detailed pharmaceutical products to medical professionals, alleged that Lilly unlawfully characterized its employees as exempt in order to deprive them of overtime pay. In February 2008, the court approved Plaintiffs' motion to conditionally certify the case as a collective action—the FLSA equivalent of a class action. The class consisted of approximately 400 current and former pharmaceutical representatives employed by Lilly across America.

Seeger Weiss was also co-counsel in a similar federal collective action lawsuit charging that Pfizer Inc. had adopted a common practice of refusing to pay overtime compensation to its

pharmaceutical representatives—including Professional Healthcare Representatives, Therapeutic Specialty Representatives, Institutional Healthcare Representatives, Specialty Healthcare Representatives, Specialty Representative, and Sales Representatives—in violation of the FLSA. That action, *Coultrip v. Pfizer Inc.*, was filed in October 2006 in the U.S. District Court for Southern District of New York. In August 2008, that court granted Plaintiffs' motion to certify the case as a FLSA collective action.

The FLSA litigations against the various drug-makers were extremely hard fought and led to a split among the circuit courts of appeals, with the Seventh Circuit affirming the district court's grant of summary judgment in favor of Eli Lilly and the Ninth Circuit similarly holding in favor of defendant SmithKline Beecham, while the Second Circuit held in favor of the plaintiffs in a cognate action brought against Novartis. The claims wound their way up to the U.S. Supreme Court, where a sharply-divided Court affirmed the Ninth Circuit in a 5-4 decision in June 2012. Seeger Weiss partner Stephen A. Weiss and Counsel James A. O'Brien III (who argued the plaintiffs' appeal in the Seventh Circuit) spearheaded the litigation for Seeger Weiss.

Pension and ERISA Litigation

Seeger Weiss has represented thousands of clients whose employers recklessly tampered with their retirement benefits.

Schol v. Bakery and Confectionary Union and Industry Int'l Pension Fund. Seeger Weiss represented eight former union employees of the Entemann's Bakery in Bay Shore, New York and two from the now-shuttered Keebler Food Co. plant in Denver, in a class action lawsuit filed against the Bakery and Confectionery Union and Industry International Pension Fund. Many of these and other union workers accepted "buy-out" offers from the company as it downsized its personnel in recent years or accepted management positions, based on the understanding and expectation that they would qualify for a full pension under alternative formulas known as Plan G and Plan C, or more commonly the "Golden 80" and "Golden 90" options, respectively, whereby pension plan participants could quality for a full pension if their age and combined years of service added up to 80 and 90, respectively. But as of July 1, 2010, Pension Plan participants not already eligible for their full pension under the Golden 80 and 90 formulas lost their right to qualify for those pensions if they were no longer in working in covered (unionized) employment. The result of this amendment was that participants could qualify for a full pension only at age 65 and the only early retirement pension available to them was a reduced benefit hat was as much as 60% lower than the Golden 80 and 90 pensions. The *Schol* action—the first one of several filed in the country to challenge the pension plan amendment—was filed in the U.S. District Court for the Eastern District of New York and subsequently transferred to the Southern District of New York (in White Plains, New York), where it was consolidated with a similar action, ***Alcantara v. Bakery and Confectionary Union and Industry Int'l Pension Fund***. In June 2012, Judge Vincent L. Briccetti granted Plaintiffs' motion for judgment on the pleadings, agreeing with Plaintiffs that the Pension Plan's 2010 amendment violated ERISA's prohibition against the cutback of accrued pension benefits.

Judge Briccetti agreed that the pension Plaintiffs had been promised and were earning credits toward was an accrued benefit, and could not be reduced merely because they had not already reached the required number of total credits of age plus years of service before last July 1, 2010. In May 2014, the U.S. Court of Appeals for the Second Circuit affirmed Judge Briccetti's decision in a published opinion, ***Alcantara v. Bakery & Confectionery Union & Indus. Int'l Pension Fund Pension Plan*, 751 F.3d 71 (2d Cir. 2014)**. The victory secured by Seeger Weiss and its co-counsel has benefitted over 540 Pension Plan participants. The case was successfully prosecuted by Seeger Weiss partner Diogenes P. Kekatos .

In re Delta Air Lines Inc. Seeger Weiss served as Lead Counsel in a nationwide ERISA multidistrict litigation centralized by the JPML in the federal court in Atlanta, Georgia before the Honorable Julie E. Carnes. The Firm represented active and retired Delta Air Lines pilots challenging various company pension plan amendments and practices that had caused them to forfeit accrued and vested pension benefits. Plaintiffs challenged, among other things, the methodology employed by Delta in calculating and paying lump sums of pension benefits to pilots, the company's retroactive freeze of a benefit formula previously pegged to increases in investment performance, and automatic reductions of pension benefits of married retirees hired before 1972. In September 2005, the federal court in Atlanta granted final approval to a class action settlement providing for payment of $16 million in cash to certain retired Delta pilots hired before 1972 or their spouses or beneficiaries and 1 million stock purchase warrants to lump sum pension benefits recipients. The settlement represented a significant recovery in light of Delta Air Lines' rapidly-deteriorating financial plight, with the court's final approval coming only days before Delta filed for bankruptcy protection. Seeger Weiss continued to represent Plaintiffs and class members through a number of twists and turns in the bankruptcy proceedings and beyond, and vigorously fought for and, in 2008, secured the complete and final distribution of all settlement proceeds to the class members.

In re BellSouth Corp. ERISA Litigation. Seeger Weiss represented tens of thousands of aggrieved BellSouth management employees in a class action suit against the company and the administrators of the employees' 401K plan, in connection with "Enron-like" breaches of fiduciary duty. These claims stemmed from Defendants' failures to advise employees of investment diversification options and their having created a falsely optimistic outlook in Defendant BellSouth's stock as a prudent investment for the plan. Defendants encouraged employees to invest their earnings in company stock at a time when the company was noting positive operating results, artificially-optimistic revenue growth, and other financial indicators that were found to be materially false, including revelations of accounting irregularities and losses from the company's risky venture into the highly-speculative Latin American wireless phone market. In 2006, after considerable motion practice and discovery in the litigation, the federal court in Atlanta, Georgia, which oversaw the litigation, granted final approval to a class action settlement that provides for, among other things, BellSouth to make matching 401K plan contributions to employees for a three-year period in cash rather than company stock; for

employees during that period to have the same investment options for the company's matching contributions as they have for their own contributions; the availability of certain additional investment choices; and during that period a guaranteed minimum percentage for one of the components in the formula used to determine the company's matching contributions.

Insurance Litigation

For over a decade, the Firm has played a pivotal role in many notable insurance market practices class actions brought against members of the life insurance industry. These nationwide suits resulted from alleged misrepresentations made in connection with the sale of certain life insurance products, including "vanishing premium" policies which, due to market-sensitive dividend projections, required customers to pay premiums on a more prolonged basis than originally expected. The Firm has also reviewed annuity claims in the Claims Review Process.

The firm serves on the Plaintiffs' Executive Committee in the multidistrict *Aetna UCR Litigation* (MDL No. 2010), pending before Judge Katherine Hayden in the United District Court for the District of New Jersey. That litigation raises ERISA and other claims against Aetna, Ingenix, and UnitedHealth Group pertaining to reimbursement rates for out-of-network heath care services. The insurers were reported to have knowingly created and used flawed data – a rigged database created by Ingenix, which was once the largest provider of healthcare billing information in the country and is now a subsidiary of UnitedHealth Group – to produce reimbursements often far below genuinely usual, customary, and reasonable rates.

In 1995, the firm was appointed as the national Policyowner Representative in *Wilson v. New York Life Insurance Company* sales practices litigation, the first settlement of a nationwide class action relating to the vanishing premium insurance product. *Wilson* involved claims brought by a class of approximately 3.2 million New York Life policyowners who suffered damages as the result of allegedly improper sales practices by the company and its agents, including the alleged failure to properly disclose the market-sensitivity of the company's premium payment projections. As Policyowner Representative, the firm served as the principal advocate on behalf of members of the class who elected to pursue individual claim relief before independent appeal boards.

Following its appointment in the *New York Life* litigation, the firm served as the Attorney Representative in the *In re Prudential Life Insurance Sales Practices Litigation*. In that role, the firm, and others serving under its auspices, represented individual class members in connection with over 53,000 separate claim arbitrations.

In addition to the *New York Life* and *Prudential* matters, the firm has served as the Policyowner Representative, Attorney Representative, or Claim Evaluator in the following

insurance and annuity sales practices class actions: *Ace Seat Cover Company v. The Pacific Life Insurance Co.*; *Benacquisto v. American Express Financial Corporation*; *Duhaime v. John Hancock Mutual Life Ins. Co.*; *Garst v. The Franklin Life Insurance Co.*; *In re General American Life Insurance Co. Sales Practices Litigation*, *In re Great Southern Life Insurance Co. Sales Practices Litigation*; *Grove, et al. v. Principal Mutual Life Insurance Co.*; *Joseph F. Kreidler, et al. v. Western-Southern Life Assurance Co.; Lee v. US Life Corp.*; *In re Lutheran Brotherhood Variable Products Co. Sales Practices Litigation*; *Manners and Philip A. Levin v. American General Life Insurance Co.*; *In re Manufacturers Life Insurance Co. Premium Litigation*; *In re Metropolitan Life Insurance Co. Sales Practices Litig.*; *Moody v. American General Life and Accident Insurance Co.*; *In re New England Mutual Life Insurance Company Sales Practices Litigation*; *Roy v. Independent Order of Foresters*; *Murray v. Indianapolis Life Insurance Co.*; *Snell v. Allianz Life Insurance Company of North America*; *In re Sun Life Assurance Company of Canada Insurance Litigation*; *Varacallo, et al. v. Massachusetts Mutual Life Insurance Co.;* and *Wemer v. The Ohio National Life Insurance Co.*

Nursing Home Litigation

Seeger Weiss LLP has served as counsel in over two dozen personal injury and wrongful death actions on behalf of victims of severe nursing home abuses and neglect. These cases, both pending and settled, were litigated in various state courts throughout the country and have earned the Firm a national reputation in the area of nursing home litigation.

Personal Injury Litigation

The Firm maintains a highly-selective docket of matters involving serious personal injury or wrongful death. Unlike many personal injury practices in which attorneys may handle hundreds of slip-and-fall matters at a time, the Firm's philosophy is to allow its attorneys to concentrate on a smaller number of "high-end" catastrophic injury cases, thereby permitting the highest quality of attention and service available in the field.

In re National Football League Players' Concussion Injury Litig. Christopher Seeger served as co-lead counsel to NFL players and lead negotiator in the NFL concussion litigation, multidistrict litigation involving thousands of lawsuits brought by former NFL players that the JPML ordered centralized in the Eastern District of Pennsylvania), in which the players alleged that the League had suppressed information concerning the linkage between repeated head trauma and serious neurological ailments. The litigation has gained significant media attention.

Judge Brody appointed Seeger Weiss founding partner Christopher A. Seeger as Co-Lead counsel for the Plaintiffs, and several other Seeger Weiss partners and other attorneys, including David R. Buchanan and TerriAnne Benedetto, have been actively involved in the litigation. The settlement was achieved after many months of spirited negotiations led by Mr. Seeger, including before a court-appointed mediator.

The settlement will provide an uncapped Monetary Award Fund for 65 years which will pay all valid claims for certain neuro-cognitive impairments, with individual awards of up to $5 million; $75 million to fund a Baseline Assessment Program Fund that will offer eligible retired NFL players a baseline neuropsychological and neurological examination to determine the existence and extent of any cognitive deficits, and in the event retired players are found to suffer from moderate cognitive impairments certain supplemental benefits in the form of specified medical treatment and/or evaluation, including, as needed, counseling and pharmaceutical coverage; and a $10 million Education Fund to fund safety and injury-prevention programs for football players.

The U.S. Court of Appeals rebuffed the effort of a small group of objectors to challenge the preliminary approval determination in an opinion published at 775 F.3d 570. After extensive proceedings, culminating in a final approval hearing in November 2014, Judge Brody approved the settlement in an exhaustive opinion issued in April 2015 (published at 307 F.R.D. 351), agreeing with Seeger Weiss and its co-counsel that the objections to the settlement lodged by a small percentage of class members lacked merit. In May 2016, a U.S. Court of Appeals for the Third Circuit panel unanimously affirmed Judge Brody's final approval determination in a published opinion and denied rehearing *en banc*. And finally, in December 2016, the United States Supreme Court denied a petition for certiorari relating to the settlement. The denial of certiorari removed the final obstacle to implementation of the landmark settlement.

In addition to Christopher Seeger, partners David Buchanan and TerriAnne Benedetto and counsel Scott Alan George are responsible for this litigation.

Wildcats Bus Crash Litigation. In June 2009, Seeger Weiss was lauded for its staunch representation of 11 victims and their families in the Wildcats Bus Accident Case, after the defendants' agreed during trial to accept 100% of the responsibility for the tragic crash. The horrific accident, which resulted in four fatalities and countless other serious injuries, occurred when a Coach Canada bus carrying an "under 21" Canadian female hockey team named the Wildcats veered off of Interstate 390 near Rochester, New York and struck a parked tractor-trailer on the shoulder of the roadway. Led by Christopher Seeger, Moshe Horn and Marc Albert, the Seeger Weiss team took more than 20 depositions, reviewed thousands of pages of documents and retained multiple experts in preparation for the trial in the Supreme Court,

Livingston County. Seeger Weiss represented a total of eleven victims of the accident and their families. In March 2010, a jury awarded $2.25 million to three of the victims and their families, who were represented by partners Moshe Horn and Marc Albert. Following this verdict, the Firm successfully negotiated a global settlement of $36 million on behalf of all of the Wildcats bus accident victims.

Other Personal Injury Matters. Partner Christopher A. Seeger represented a six-year-old boy and his family in a medical malpractice action against a hospital for failing to timely diagnose meningitis, which resulted in severe brain damage to the boy. The case settled for $3.25 million in the Supreme Court of Kings County.

Partners Christopher A. Seeger and Stephen A. Weiss represented the wife and two minor children of a 41-year-old successful technologist who was tragically killed when a boat upon which he was a passenger collided with the Greenport Breakwater, a 1,000 foot long structure constructed of large boulders in Greenport, Long Island. The victim was thrown from the boat upon impact and ultimately drowned. This case was settled for $2.9 million.

Seeger Weiss secured a $1.4 million verdict for client Debbie D'Amore in her case against Met Life and American Building Maintenance for serious injuries which she suffered as a result of a fall on July 13, 2004 at the Met Life Building in New York City. Ms. D'Amore was vigorously represented by Christopher Seeger and Marc Albert of Seeger Weiss LLP over the course of the week-long trial held before the Honorable Judge Michael Stallman of the Supreme Court, New York County. The jury deliberated over a two day period and returned with a $1.4 million verdict, $1 million of which was awarded for Ms. D'Amore's past pain and suffering, with $400,000 awarded for future pain and suffering. The jury found defendants Met Life and its cleaning contractor, American Building Maintenance responsible for the fall and the serious injuries which Ms. D'Amore sustained as a result. Ms. D'Amore suffered a tri-malleolar ankle fracture in the fall which required multiple surgeries, including ultimately, an ankle fusion.

Antitrust Litigation

Seeger Weiss LLP has been involved in nationally-prominent antitrust litigation, where it has recently expanded its presence.

Compact Disc Litigation. Seeger Weiss was involved in this consumer antitrust litigation, which sought damages against the wholesale sellers of pre-recorded music sold in the form of compact discs. The Plaintiffs alleged that the Defendants had conspired to artificially inflate the retail prices of compact discs in violation of the Sherman Act. The litigation was settled favorably in the United States District Court for the District of Maine, where the litigation had been centralized for coordinated pretrial proceedings by the JPML.

McDonough v. Toys "R" Us, Inc. Seeger Weiss represents a proposed class of consumers and smaller retailers of baby and juvenile products against Babies "R" Us (an affiliate of the Toys "R" Us chain) and several manufacturers of baby products, including strollers, bedding, car seats, and other items, in consolidated actions pending in the U.S. District Court for the Eastern District of Pennsylvania (Philadelphia) before the Honorable Anita B. Brody. The Plaintiffs allege that Babies "R" Us conspired with the manufacturers of baby products in a scheme whereby the manufacturers required other retailers to sell their products at prices above those being charged by Babies "R" Us. As a result, Babies "R" Us was able to monopolize the retail market, resulting in consumers being forced to pay more for baby products. The district court denied the Defendants' motion to dismiss the consolidated complaints. Briefing of Plaintiffs' motion for class certification has been completed, and a decision from the court is expected shortly.

Monsanto Genetically-Modified Soybean and Corn Seed Litigation. The Firm serves as Co-Lead Counsel in *Schoenbaum v. E.I. DuPont de Nemours and Company*, thirteen consolidated proposed class actions against Monsanto Company, E.I. DuPont de Nemours and Company, and Pioneer Hi-Bred International Inc. currently pending before the Honorable E. Richard Webber in the U.S. District Court for the Eastern District of Missouri (St. Louis). These lawsuits, brought on behalf of farmers who purchased genetically-modified Roundup Ready soybean and YieldGard corn seeds, allege violations of federal and state antitrust, state unfair trade practices statutes, and common law claims for unjust enrichment. The claims stem from the defendants' conspiracy to fix the price of these seeds through the imposition of "technology fees," ostensibly for the purpose of allowing Monsanto to recoup its research and development costs of those seed products but which, in reality, capitalized on and exploited Monsanto's development of those seeds in order to monopolize -the market for those seeds and thereby charge and collect premium prices. After extensive briefing, both pre- and post-argument, and an all-day hearing on the Defendants' motion to dismiss the Plaintiffs' Master Consolidated Amended Action Complaint, the district court sustained most of Plaintiffs' claims. Following spirited motion practice, which included discovery disputes and the Plaintiffs' motion for leave to file an amended complaint in order to, among other things, assert additional claims against Monsanto for misuse of patent, Plaintiffs reached individual settlements with all of the

defendants. The settlements will provide a significant recovery to each of the more than two dozen named Plaintiffs.

In re Packed Ice Antitrust Litigation. The Firm represents direct purchasers of packaged ice in a proposed class action brought against the five American and Canadian manufacturers and distributors who possess the dominant share of the $2.5 billion per year packaged ice industry in North America. The Firm has been appointed Co-Chair of the Class Certification Committee in that litigation. Plaintiffs allege that Defendants have violated the antitrust laws by conspiring to fix prices and allocate market share for packaged ice. The U.S. Justice Department's Antitrust Division commenced an investigation into the packaged ice industry sometime prior to March 2008 and grand jury subpoenas were issued to the Defendants. The cases from around the country have been centralized in the U.S. District Court for the Eastern District of Michigan, and a hearing will be held in March 2009 respecting the selection of Lead Counsel.

In re Rail Freight Fuel Surcharge Antitrust Litigation. The Firm represents shipping customers in a proposed class action brought against the country's four major railroads for antitrust violations. The Defendants in this multidistrict litigation, pending in the U.S. District Court for the District of Columbia, are alleged to have conspired to fix the prices of "rail fuel surcharges" above competitive levels, causing the Plaintiffs to pay exorbitant rates for unregulated rail freight transportation services—rates that were unrelated to fuel costs. The district court denied the Defendants' motions to dismiss the direct purchasers' claims and the indirect purchasers' federal antitrust claims. The district court held a two-day hearing on Plaintiffs' motion for class certification in October 2010 and, in June 2012, issued an exhaustive 145-page decision, granting the motion. In August 2013, the D.C. Circuit remanded the case for further proceedings, principally in light of the Supreme Court's then-recent decision in *Comcast Corp. v. Behrend*, 133 S. Ct. 1426 (2013). Further proceedings have been conducted on remand, including additional expert witness discovery and voluminous briefing. The district court will soon hold a multi-day hearing on the class certification motion. Seeger Weiss serves as Co-Chair of the Law and Briefing Committee.

Other Commercial Litigation

In addition to its diverse complex litigation practice, Seeger Weiss LLP is engaged in a wide variety of commercial litigation matters representing individuals and businesses in state and federal courts throughout the country. The following are examples of such commercial actions in which the Firm is involved:

Automobile Dealership Warranty Litigation: The Firm represents dozens of franchised automobile dealerships located throughout New York State in separate actions against the "Big Three" automobile manufacturers — Ford, General Motors, and DaimlerChrysler. These actions

are pending in federal court in New York and are based on the manufacturers' failure to comply with the New York State Vehicle & Traffic Law § 465. These actions assert claims that in violation of New York State statute and the franchise agreement that governs the relationship between the dealerships and the factories, the manufacturers have failed to adequately reimburse the dealerships for parts used in performing repairs pursuant to the manufacturers' warranties. In addition to the three federal court actions, the Firm also represents close to a dozen franchised Chrysler dealerships in arbitrations pending before the American Arbitration Associations asserting the same claims.

Arzoomanian v. British Telecommunications PLC. The Firm represented a small businessman who had brokered a multi-million dollar global telecommunications deal between two multi-national corporations, British Telecommunications PLC ("BT") and Unilever PLC, and then was cut out of the deal by the companies and refused his fee. In 2004, the Firm successfully overcame BT's motion to dismiss the action on *forum non conveniens* grounds (in which BT argued that the action should not have been brought in the United States). After extensive discovery—both in the United States and overseas—and further motion practice, the case was settled in 2007. This is one of a number of cases that the Firm has handled on behalf of small businesses which have been wronged by behemoth corporations.

In re ETS Praxis Principles of Learning and Teaching: Grades 7-12 Litigation is a consolidated national class action on behalf of more than 4,100 prospective teachers as to whom ETS negligently and wrongfully reported failing scores on the Praxis Principles of Learning and Teaching test for grades 7 through 12 (the "PPLT" test) during the period from January 2003 through April 2004. The PPLT is a test that is required in many states in order for teachers to obtain their teaching certification. In December 2004, the various class actions filed around the country were transferred to the Honorable Sarah Vance of the United States District Court for the Eastern District of Louisiana (New Orleans). Judge Vance appointed Seeger Weiss LLP to the position of State Court Litigation Liaison Counsel. This case was settled in 2006 for $11.1 million.

HMO Litigation. The Firm was counsel to individual doctor-members of the Connecticut State Medical Society ("CSMS") and the Medical Society of the State of New York ("MSSNY") in connection with various putative statewide class actions filed in Connecticut and New York state courts, respectively against several national health management organizations (HMOs). The class members sought damages resulting from the defendants' improper, unfair and deceptive practices designed to deny, impede or delay lawful reimbursement to CSMS and MSSNY physicians which rendered necessary healthcare services to members of the HMO managed care plans. The case was successfully resolved.

VOIP, Inc. v. Google, Inc. The Firm represents VOIP, Inc. in a trade secrets and breach of contract action filed in New York State Supreme Court in February 2011. The suit claims that Google developed its "Click to Call" feature, which allows users to make Internet phone calls by just clicking on a link, using misappropriated VoIP trade secrets.

SEEGERWEISS LLP
COMPLEX LITIGATION | SIMPLE JUSTICE

Selected Attorney Biographies

Partners

Christopher A. Seeger

Position: Founding Member Co-Managing Partner.

Admitted: New Jersey, 1990; New York, 1991;

U.S. District Court for the Southern District of New York and U.S. District Court for the District of New Jersey, 1991; U.S. District Court for the Eastern District of New York, 2000; U.S. District Court for the District of Colorado, 2011.

Education: Hunter College of the City University of New York (B.A., *summa cum laude*, 1987); Benjamin N. Cardozo School of Law (J.D., *magna cum laude*, 1990).

Honors: Managing Editor, *Cardozo Law Review*.

Author: "The Fixed Price Preemptive Right in the Community Land Trust Lease," 11 *Cardozo Law Review* 471, 1990; "Developing Assisted Living Facilities," New York Real Estate Law Reporter, Volume XII, Number 10, August 1998.

Lecturer: "The Use of ADR in Class Actions and Mass Torts," New York University School of Continuing and Professional Studies, October 13, 2000.

Director: American Friends of Rabin Medical Center, Inc.; Benjamin N. Cardozo School of Law, Yeshiva University, 1999-2000.

Co-Chair: Cardozo Law School Alumni Annual Fund, 1998-2000.

Awards: Best Lawyers in America, 2006, 2012; New York Super Lawyer, 2006-2013; New Jersey SuperLawyers, 2006-2014; Law Dragon 500, 2007-2013; Best Lawyers, Mass Tort Litigation; Hunter College Hall of Fame, 2007; Cardozo Alumnus of the Year, 2009.

Member: The Association of the Bar of the City of New York; New Jersey State Bar Association; Board of Advisors, New York Real Estate Law Reporter; Annual Fund Committee, 1999-present; American Bar Association; American Association for Justice, Trail Lawyers for Public Justice; Fellow, American Bar Foundation.

Practice Areas: Consumer Fraud, Products Liability, Antitrust; Insurance, Class Actions, Mass Torts.

Stephen A. Weiss

Position: Founding Member and Co-Managing Partner.

Admitted: New York, 1991; U.S. District Courts for the Southern and Eastern Districts of New York, 1991.

Education: Brandeis University (B.A., 1986); Benjamin N. Cardozo School of Law (J.D., 1990).

Honors: Business Editor, *Cardozo Law Review*, 1989-1990.

Author: "Environmental Liability Disclosure Under the Federal Securities Law," *Law Education Institute*, Inc., 1998; "Liability Issues and Recent Case Law Developments Under CERCLA, New Environmental Issues of Liabilities of Government Agencies & Government Contractors," *Federal Publications*, Inc., Chapter 4, 1995; "New York Proposes Legislation to Restrict Shareholder Derivative Suits," *Insights*, Vol. 8, No. 3, p. 24, 1994; "Suretyship as Adequate Protection Under Section 361 of the Bankruptcy Code," *Cardozo Law Review*, Vol. 12, p. 285, 1990.

Director or Officer: Benjamin N. Cardozo School of Law, Yeshiva University, 2000-present; New York State Trial Lawyers Association, 2012-present; New York State Academy of Trial Lawyers, Vice President,1st Department, 2012-2013.

Co-Chair: Cardozo Law School Alumni Annual Fund, 1998-2000.

Awards: International Humanitarian Achievement Award, Shaare Zedek Medical Center, 2002; Trial Lawyer of the Year, Finalist, Public Justice Foundation, 2010.

Member: American Association for Justice; American Bar Association; Badge of Honor Memorial Foundation, General Counsel, 2008-present.

Practice Areas: Complex Litigation, including Antitrust, Consumer, Employment, Environmental, Insurance, Products Liability, Pharmaceutical, Qui Tam and Securities Litigation.

David R. Buchanan

Position: Member.

Admitted: New Jersey, 1993; New York, 1994; U.S. District Court for the District of New Jersey, 1993; U.S. District Court for the Southern District of New York, 1994; U.S. District Court for the Eastern District of New York, 1999.

Education: University of Delaware (B.S., 1990); Benjamin N. Cardozo Law School (J.D., *magna cum laude*, 1993)

Honors: Samuel Belkin Scholar, 1993; Member, 1991-93, and Administrative Editor, 1992-93, *Cardozo Law Review*.

Awards: Best Lawyers in America, 2007, 2012; New York Super Lawyer, 2007; Legal 500; Law Dragon 3000

Member: American Bar Association (Litigation, Intellectual Property sections).

Practice Areas: Complex and Mass Tort Litigation, including Antitrust, Consumer, Environmental, Insurance, Intellectual Property, Pharmaceutical, Products Liability, and Securities Litigation.

Diogenes P. Kekatos

Position: Member.

Admitted: New York, 1984; U.S. District Courts for the Southern and Eastern Districts of New York, 1984; U.S. Courts of Appeals for the Second, Third, Seventh, Eighth, Ninth, and Tenth Circuits, 1985, 2008-14; U.S. Supreme Court, 1987.

Education: Columbia College, Columbia University (B.A., Dean's List all 8 semesters, 1980); Brooklyn Law School (J.D., 1983).

Honors: Named to New York *Super Lawyers*, 2013-16; recipient of letters of commendation from the U.S. Court of Appeals Staff Counsels and from Attorney General Janet Reno for outstanding performance and high level of professionalism in appellate mediation, 1999.

Experience: Special Assistant U.S. Attorney, 1986-88, and Assistant U.S. Attorney, 1988-2000; Office of the United States Attorney for the Southern District of New York, and Chief, Financial Litigation Unit, 1988-90; and Immigration Unit, 1990-2000. Has argued some 130 appeals and motions in the U.S. Court of Appeals for the Second Circuit, including a successful *en banc* rehearing, with scores of cases resulting in published opinions; and has handled hundreds of appellate mediations.

Awards: Executive Office for U.S. Attorneys Director's Award for Superior Performance as an Assistant U.S. Attorney, 1996; Award from U.S. Attorney Mary Jo White for Exceptional Achievement, 1995; and numerous other award nominations.

Practice Areas: Class Action and Complex Litigation, Federal Civil Litigation, Federal Appellate Litigation.

Moshe Horn

Position: Member.

Admitted: New York and New Jersey, 1994; U.S. District Courts for the Southern and Eastern Districts of New York.

Education: George Washington University (B.A., 1989); Benjamin N. Cardozo School of Law (J.D., 1993).

Honors: Member of Championship team in a national Securities Law Moot Court competition at Fordham University, 1993; Winner tri-state trial competition, runner up Best Advocate, 1993.

Experience: Assistant District Attorney, New York County, 1993-2002 (where he held numerous supervisory positions and tried 50 jury cases); Senior Associate, Kaye Scholer LLP, 2002-2004. Member of the Firm's trial team that achieved a $47.5 million verdict for Vioxx-related cardiovascular injury in *Humeston v. Merck & Co.* in 2007 in the New Jersey Superior Court, Atlantic County. Member of the Firm's trial team that achieved a $1.4 million verdict for Currently an Adjunct Professor of Law at Benjamin N. Cardozo School of Law, teaching "Introduction to Trial Advocacy." Has previously taught "Advanced Trial Advocacy" and "Mass Torts," and served as advisor and coach to the law school's Mock Trial Team.

Member: American Bar Association, American Association for Justice, New York State Trial Lawyers Association.

Practice Areas: Pharmaceutical and Medical Device Litigation, Personal Injury Litigation, Complex Litigation, Asbestos Litigation, Criminal Defense.

Michael L. Rosenberg

Position: Member.

Admitted: New Jersey, 1989; U.S. District Court, District of New Jersey, 1989; New York, 1990.

Education: Rutgers-Camden School of Law (J.D., 1989), University of Delaware (B.A. 1986).

Experience: Has been with the Firm since its 1999 inception. Has negotiated individual settlements on behalf of hundreds of clients injured by pharmaceutical products, including over-the-counter medicines containing PPA and the anti-cholesterol drug Baycol. Played an integral role in the settlement of personal injury claims against the manufacturers of Dexatrim, a PPA-containing weight loss product, on behalf of 500 stroke victims who claimed that their strokes were caused by Dexatrim. The settlement is valued at approximately $200 million. Serves as a member of the Delaco Trust Advisory Committee tasked with overseeing the administration of the settlement. Was a member of the trial team that won a $2.6 million verdict for the Plaintiff in *McCarrell v. Hoffman-La Roche, Inc*, in New Jersey Superior Court, Atlantic County.

Member: American Bar Association and American Association for Justice.

Practice Areas: Complex and Mass Tort Litigation, including Pharmaceutical, Products Liability and Insurance Litigation.

Terrianne Benedetto

Position: Member.

Admitted: Pennsylvania, 1990; New Jersey, 1991; U.S. District Courts for the District of New Jersey, 1991; Eastern District of Pennsylvania, 1991; Western District of Wisconsin, 1993; New York Supreme Court, Appellate Division, Third Department, 2009; and New York Superior Court, 2009.

Education: Franklin & Marshall College (B.A., 1986); Villanova University (J.D., 1990).

Honors: Member of the *Villanova Law Review*; Law Clerk to the Honorable Jacob Kalish of the Commonwealth Court of Pennsylvania, and the Honorable William W. Vogel of the Montgomery County Court of Common Pleas.

Author: "Database Technology: A Valuable Tool for Defeating Class Action Certification," published in *Pennsylvania Law Weekly*, Vol. XX, No. 47, November 24, 1997, and *Mealey's Litigation Report*: *Lead*, Vol. 7, No. 14, April 24, 1998.

Experience: At the beginning of her career as a class action litigator, was co-counsel for defendants in *Reilly v. Gould Inc.*, 965 F. Supp. 588 (M.D. Pa. 1997); *Dombrowski v. Gould Electronics Inc.*, 954 F. Supp. 1006 (M.D. Pa. 1996); and *Ascher v. Pennsylvania Insurance*

Guaranty Association, 722 A.2d 1078 (Pa. Super. 1998). Thereafter, joined nationally recognized plaintiffs' firms where she represented individuals, small businesses and the Office of the Attorney General for the Commonwealth of Pennsylvania in numerous antitrust and consumer fraud class actions, many resulting multimillion dollar settlements, including *In re Lupron Marketing and Sales Practices Litigation*, MDL No. 1430 (D. Mass.); *In re Pharmaceutical Industry Average Wholesale Price Litigation*, MDL No. 1456 (D. Mass.); *In re Graphite Electrodes Antitrust Litigation*, No. 2:97-CV-4182 (E.D. Pa.); *In re Magnetic Audiotape Antitrust Litigation*, No. 99 Civ. 1580 (S.D.N.Y); *In re Vitamins Antitrust Litigation*, MDL No. 1285 (D.D.C.); *In re Maltol Antitrust Litigation*, No. 99 Civ. 5931 (S.D.N.Y.); *In re Compact Disc Antitrust Litigation*, MDL No. 1216 (C.D. Cal.); *In re Flat Glass Antitrust Litigation*, MDL No. 1200 (W.D. Pa.); and *In re Carpet Antitrust Litigation*, MDL No. 1075 (N.D. Ga.).

Member: Pennsylvania Trial Lawyers Association, Philadelphia Bar Association.

Practice Areas: Complex Commercial and Class Action Litigation, including Consumer Protection, Antitrust, Products Liability, and Securities Litigation.

Counsel

James A. O'Brien III

Position: Counsel.

Admitted: New York, 2000; Massachusetts, 1988; U.S. District Court, District of Massachusetts, 1991.

Education: University of Massachusetts at Amherst (B.A., 1984); New England School of Law (J.D., 1988).

Experience: Attorney Advisor, U.S. Department of Labor, 1988-89; Assistant District Counsel, U.S. Immigration and Naturalization Service, 1990; Special Assistant United States Attorney, 1990-2001, Southern District of New York.

Practice Areas: Class Action and Complex Litigation, Federal Civil Litigation, Federal Appellate Litigation.

Scott Alan George

Position: Counsel.

Admitted: Pennsylvania and New Jersey, 1998; U.S. District Courts for the Eastern District of Pennsylvania and the District of New Jersey, 1998; U.S. Court of Appeals for the Third Circuit, 1998; New York (2010); U.S. District Court for the Northern District Illinois (2012); U.S. District Court for the Eastern District of Michigan (2016).

Education: Stevens Institute of Technology (1984); Goddard College (B.A., 1989); Temple University School of Law (J.D., *cum laude*, 1998).

Author: Spotlight on Cost-Shifting of E-Discovery, Law 360, Nov 6, 2012 (with Jonathan Shub)

Experience: In addition to providing occasional lectures at Temple University and litigation seminar on class actions, he has been in the leadership of many complex cases and class actions, including: *Pro et al. v. Hertz Equipment Rental Corporation*, 06-3830 (D.N.J.) (appointed co-lead for class settlement); *In re Whirlpool Corporation Front Loading Washer Products Liability Litigation*, MDL 2001 (N.D.Oh.) (member of the Plaintiff Steering Committee); *Alexander v. Coast Professional Services*, 2:12-cv-01461 (E.D.Pa.) (appointed co-Class Counsel); *Taha v. Bucks County*, 2:12-cv-06867 (E.D.Pa.) (appointed class counsel); and *In re Ford Fusion and CMax Fuel Economy Litigation*, MDL 2450 (S.D.N.Y) (Plaintiffs Executive Committee). Additionally, he has been a key member in litigation such as: *In re Volkswagen "Clean Diesel" Marketing, Sales Practices and Products Liability Litigation*, MDL 2672 (N.D.Ca.); *In re Caterpillar, Inc., C13 and C15 Engine Products Liability*. MDL 2450 (D.N.J.); *In re National Football League Players' Concussion Injury Litigation*, MDL 2323 (E.D.Pa.); *In re Chinese Manufactured Drywall Products Liability Litigation*, MDL 2047 (E.D.La.); *In re Vonage Marketing and Sales Practices Litigation*, MDL 1862 (D.N.J.),

Honors: Member of the Moot Court Honor Society.

Practice Areas: Complex and Class Action Litigation.

Christopher Van de Kieft

Position: Counsel.

Admitted: New York, 2003; U.S. District Courts for the Southern and Eastern Districts of New York, 2005.

Education: Johns Hopkins University (B.A., 1990), Benjamin N. Cardozo School of Law (J.D., 2002).

Honors: Editor-in-Chief, *Cardozo Law Review*; recipient of Cardozo Law School's prestigious Samuel Belkin Award, awarded each year to one graduating student for "exceptional contribution to the growth and development of the Law School."

Experience: Prior to attending law school, served in the U.S. Army from 1990-98, attaining rank of Captain. Prior to joining the Firm was an associate at Fried Frank Harris Shriver & Jacobson.

Practice Areas: Pharmaceutical and Medical Device Mass Tort Litigation; Class Action Litigation.

Associates

Parvin K. Aminolroaya

Position: Associate.

Admitted: New Jersey, 2008; New York, 2009; U.S. District Court, District of New Jersey, 2008.

Education: Fordham University (B.A., 2004, with honors); Benjamin N. Cardozo School of Law (J.D., 2008).

Honors: Named to New York Rising Stars *Super Lawyers*, 2014-16; Cardozo Alumni Association Young Leadership Award, 2016; Jacob Burns Medal awarded for outstanding contribution to Moot Court; Benjamin N. Cardozo Writing Award; Editorial Board, Moot Court Honor Society; First Place Oralist Team and First Place Brief, Regional Competition of the New York City Bar Association, National Moot Court Competition, 2007; First Place Brief and Second Place Oralist Team, Fordham Irving Kaufman Securities Moot Court Competition, 2007.

Member: Executive Committee, Benjamin N. Cardozo School of Law Alumni Association; Vice-Chair, Benjamin N. Cardozo School of Law Black Asian Latino Alumni Group Association, 2012-2016.

Practice Areas: Complex Litigation, including Antitrust, Consumer, Products Liability, Pharmaceutical, and Securities Litigation.

Asim M. Badaruzzaman

Position: Associate.

Admitted: New Jersey, 2010.

Education: Rutgers University (B.A., with honors, 2006); Seton Hall University School of Law (J.D., 2009).

Honors: Best Brief Author for Appellate Advocacy, 2008; William Paterson Award, New Jersey Lawyer Chapter of the American Constitution Society.

Experience: Marketing Contractor at Anadigics, Inc., 2006-2007; Research Assistant to Professor Mark P. Denbeaux, 2007; Legal Intern to Professor Meetali Jaine at the Center for Social Justice at Seton Hall, 2007; Intern at the Civil Litigation Clinic, 2009; Law clerk at Seeger Weiss LLP, 2008; Associate at Seeger Weiss LLP, 2009.

Member: American Bar Association, New Jersey State Bar Association.

Practice Areas: Pharmaceutical Drug Injury, Medical Device Liability, Mass Tort Litigation.

Asa R. Danes

Position: Associate.

Admitted: New York State, 2004; United States District Courts for the Eastern and Southern Districts of New York, 2006 and Western District of Tennessee, 2009.

Education: Oberlin College (B.A., 1994); Brooklyn Law School (J.D., *cum laude*, 2001).

Honors: Notes and Comments Editor, *Brooklyn Journal of International Law*.

Experience: Associate at Paul, Hastings, Janofsky & Walker LLP; Law Clerk to the Honorable James T. Trimble, Jr. in the United States District Court for the Western District of Louisiana.

Practice Areas: Complex personal injury matters; mass tort, consumer fraud and securities class actions; shareholder derivative and corporate governance disputes and other commercial litigation.

Michael C. Hughes

Position: Associate.

Admitted: New Jersey, 2013; U.S. District Court, District of New Jersey, 2013, New York, 2014.

Education: Seton Hall University (B.A., 2009); Seton Hall University School of Law (J.D., 2013).

Experience: Law Clerk and Contract Attorney at Seeger Weiss, LLP; Legal Extern to Hoboken Mayor Dawn Zimmer and Office of Corporation Counsel; Legal Intern at Meadowlands Hospital Medical Center In-House Counsel; Law Clerk at Blume Donnelly Fried Forte Zerres & Molinari (formerly Blume Goldfaden Berkowitz Donnelly Fried & Forte, P.C.)

Honors: Certificate, J.D. Program Health Law Concentration

Practice Areas: Pharmaceutical Injury Litigation, Medical Device Litigation, Mass Tort Litigation.

James J. Leavy

Position: Associate.

Admitted: New Jersey, 2008; U.S. District Court, District of New Jersey, 2008.

Education: University of Phoenix (B.A., 2005, with honors 3.89/4.00); Seton Hall University School of Law (J.D., 2008).

Honors: Interscholastic Moot Court Board, Member; 2008 Lefkowitz National Moot Court Championships, 3rd Place; 2008 Lefkowitz National Moot Court Eastern Regional Champion & Best Brief Award; 2007 BMI Entertainment and Media Law Moot Court Competition, Quarterfinalist.

Practice Areas: Mass Torts and Pharmaceutical Product Liability Litigation.

Perpetua N. MgBada

Position: Associate.

Admitted: New York, 1995; Nigeria 1984.

Education: University of Maiduguri, Bornu State (LL.B., 1983); University of Nigeria, Enugu State (LL.M., 1998).

Experience: Works on various Mass Torts and Pharmaceutical Product Liability cases, including information management, maintaining spreadsheets, case reviews, all intake related functions, reviewing medical records, preparing settlement enrollment materials, reviewing cases for ineligibility and points, preparing appeals, preparing extraordinary injury claims and uploading relevant documents to the portal, as well as handling client contact.

Practice Areas: Mass Torts and Pharmaceutical Product Liability.

Andrea Mercedes Pi-Sunyer

Position: Associate.

Admitted: New York, 1996.

Education: Oberlin College (B.A., 1987); Northeastern University School of Law (J.D., 1994).

Experience: Processes settlements obtained in the firm's pharmaceutical injury practice; Has worked with hundreds of clients in this process and has guided them through complex issues, including helping them decide whether a structured settlement or a Special Needs Trust is most appropriate for their needs; Has significant experience negotiating with Medicare and Medicaid when clients have obtained relief in pharmaceutical injury cases and works extensively with co-counsel in states throughout the country to obtain court approval for certain settlements involving minors, estates, or guardianships; Has more than one hundred hours of training and practicum in both Basic Mediation Training and Divorce Mediation.

Practice Areas: Pharmaceutical Injury Litigation, focusing on settlement effectuation matters involving the Firm's clients.

Denise K. Stewart

Position: Associate.

Admitted: Florida, 1982 (currently inactive); New Jersey, 1990; U.S. District Court for the District of New Jersey, 1990.

Education: Monmouth University (B.A., 1972); University of Miami School of Law (J.D., 1982).

Experience: Prior to joining the Firm at its inception in 1999, litigated personal injury and professional malpractice cases in Florida. Has been involved in state and federal complex mass tort and multidistrict litigation, including New Jersey litigation against Hoffmann-La Roche relating to gastrointestinal injuries stemming from use of the prescription acne drug Accutane; New Jersey litigation against Ortho-McNeil Pharmaceutical involving strokes, deep vein thromboses, and other thrombotic events related to use of the birth control patch Ortho Evra; and a nationwide settlement involving individuals who suffered strokes caused by use of over-the-counter products containing PPA.

Practice Areas: Pharmaceutical Product Liability Litigation.

David R. Tawil

Position: Associate.

Admitted: New Jersey, 2014.

Education: New York University (B.A. History, 2007); Tulane University (J.D., 2012).

Honors: Senior Notes and Comments Editor, Tulane Journal of International and Comparative Law; Associate Justice, Tulane University Law School's Moot Court Board.

Author: Kiobel v. Royal Dutch Petroleum Co.*: The Second Circuit Rejects Corporate Liability Under the Alien Tort Statute* (19 Tul. J. Int'l & Comp. L. 709) and *Implications of* PLIVA, Inc. v. Mensing: *The Reemergence of Federal Preemption* (unpublished).
Experience: Law clerk to the Honorable Jessica R. Mayer, J.S.C., one of New Jersey's three Multicounty Litigation judges; certified trained mediator by the New Jersey Courts.
Member: John C. Lifland American Inn of Court.
Practice Areas: Drug and Medical Devices.

UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

IN RE: NATIONAL FOOTBALL LEAGUE PLAYERS' CONCUSSION INJURY LITIGATION	NO. 12-MD-2323 (AB) MDL NO. 2323
THIS DOCUMENT RELATES TO: **ALL ACTIONS**	Hon. Anita B. Brody

COMPENDIUM OF EXHIBITS FOR DECLARATION OF CHRISTOPHER A. SEEGER IN SUPPORT OF CO-LEAD CLASS COUNSELS' PETITION FOR AN AWARD OF ATTORNEYS' FEES, REIMBURSEMENT OF COSTS AND EXPENSES, ADOPTION OF A SET-ASIDE OF FIVE PERCENT OF EACH MONETARY AWARD AND DERIVATIVE CLAIMANT AWARD, AND INCENTIVE AWARDS FOR CLASS REPRESENTATIVES

Exhibit Name **Exhibit**

Declaration of Orran S. Brown, Sr. on Class Communications, Registrations and Cost Projections .....A
- Attachment – Claims Administrator Update

Declaration of Matthew L. Garretson .....B

Declaration of Arnold Levin (Levin Sedran & Berman) C
- Exhibit 1 – Lodestar Report
- Exhibit 2 – Cost and Expense Report
- Exhibit 3 – Firm Biography

Declaration of Gene Locks (Locks Law Firm) .....D
- Exhibit 1 – Lodestar Report
- Exhibit 2 – Cost & Expense Report
- Exhibit 3 – Firm Biography

Declaration of Steven C. Marks (Podhurst Orseck, PA) .....E
- Exhibit 1 – Lodestar Report
- Exhibit 2 – Cost & Expense Report
- Exhibit 3 – Firm Biography

Declaration of Dianne M. Nast (NastLaw LLC) .....F
- Exhibit 1 – Lodestar Report
- Exhibit 2 – Cost & Expense Report
- Exhibit 3 – Firm Biography

Brian T. Fitzpatrick, *An Empirical Study of Class Action Settlements*, 7 Journal of Empirical Legal Studies, 811-46 (Dec.2010) .....Y

EXHIBIT A

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

IN RE: NATIONAL FOOTBALL LEAGUE PLAYERS' CONCUSSION INJURY LITIGATION	:	No. 2:12-md-02323-AB
	:	MDL No. 2323
	:	Hon. Anita B. Brody
THIS DOCUMENT RELATES TO:	:	
ALL ACTIONS	:	

DECLARATION OF ORRAN L. BROWN, SR. ON CLASS COMMUNICATIONS, REGISTRATIONS AND COST PROJECTIONS

I, ORRAN L. BROWN, SR., hereby declare and state as follows:

1. ***Introduction*****.** My name is Orran L. Brown, Sr. I am the Chairman and a founding partner of BrownGreer PLC, located at 250 Rocketts Way, Richmond, Virginia 23231 ("BrownGreer"). BrownGreer is the Court-appointed Claims Administrator in connection with the class action settlement that this Court approved on April 22, 2015.

2. ***Purpose*****.** I submit this Declaration to provide information requested by Co-Lead Class Counsel on our communications with the Settlement Class to date, the opening of Registration, and on the possible costs of administration in the Claims Administrator's role in the implementation of the Settlement Agreement.

3. ***NFL Concussion Settlement Website.*** Pursuant to Section 4.1 of the Settlement Agreement, and in consultation with the Parties and the Settlement Class Notice Agent, BrownGreer developed a public, informational website, www.NFLConcussionSettlement.com (the "Settlement Website"), to provide notice and

additional courtesy information and services to the Settlement Class. The Settlement Website provides notice materials, Court documents, frequently asked questions ("FAQs"), alerts, and a link to register.

4. ***Website Visitor Activity.*** As of February 6, 2017, the Settlement Website had received 180,982 unique visitors, with representation from all 50 states, as determined by IP Address. There are 8,946 visitors who have used the "Sign Up for Future Information" feature and provided contact information for the Settlement Program to use to reach them, including, among others, Retired NFL Football Players, family members of Retired NFL Football Players, and counsel for Retired NFL Football Players (including those with large client inventories). Tables 1 and 2 in the Attachment to this Declaration present detailed information on website visitor activity and sign ups.

5. ***Post Office Box.*** As of February 6, 2017, BrownGreer had received 139 letters to a P.O. Box established for Settlement Class Members and others to send general questions about the Settlement Agreement or Settlement Program. We responded to 88 of these letters. We did not respond to the remaining 51 inquiries because they did not pose questions, were requests to update contact information only, or we consolidated multiple letters from one individual into a single response. Along with answering the letters, we also signed up 80 individuals for more information as a result of receiving their letter. Table 3 in the Attachment to this Declaration presents additional information on communications sent to and from BrownGreer as the Claims Administrator.

6. ***Claims Administrator Email Inbox.*** As of February 6, 2017, BrownGreer had received 1,096 emails to ClaimsAdministrator@NFLConcussionSettlement.com. We responded to 1,037 of these emails. We did not respond to the remaining 59 inquiries

because they did not pose questions, we consolidated multiple emails from an individual into a single response, or we forwarded the questions to the Parties or to Garretson Resolution Group ("GRG"), the Court-appointed Lien and BAP Administrator, as the party more appropriate for handling the inquiry. We also signed up 820 individuals for more information as a result of receiving their email, and added them to the Notice Mailing List.

7. ***Additional Contacts and Sign Ups to Receive More Information.*** We also received 25 emails, letters, and faxes directly to individuals at BrownGreer. We responded to 18 of these communications. We did not respond to the remaining seven because they did not pose questions or we forwarded the questions to GRG as the party more appropriate for handling the inquiry. We received 32 inbound phone calls and made 20 outbound phone calls. As a result of these activities, we signed up 25 individuals for more information.

8. ***Call Center Activity***. Through February 3, 2017, the Settlement Program's Call Center, which had been staffed by Heffler Claims Group ("Heffler"), had received 14,423 calls, logging over 837 hours of call time, with 7,297 of these callers speaking with live operators for over 489 hours. Through those communications, individuals have received updates on the status of the litigation and had other questions answered. As a result of these additional calls, we signed up 2,351 individuals for more information, resulting in a total of 12,222 individuals signed up for more information on the program. On February 3 at 8:30 p.m. Eastern Time, pursuant to plan, Heffler transitioned to us the toll-free number for the Settlement Program. Starting on February 6, 2017, callers reached our live agents. Through February 7, 2017, we had received 392 calls, totaling over 43 hours.

9. ***Registration***. On February 6, 2017, we opened Registration as required by Article IV of the Settlement Agreement. Settlement Class Members and attorneys can now

register for Settlement benefits by visiting the Settlement Website and clicking the "Register Now" button. Settlement Class Members can also register by submitting a hard copy Registration Form that was included in the Settlement Class Supplemental Notice packet mailed on February 6, 2017. Through February 7, 2017, we received 2,729 registrants through the Settlement Website.

10. ***Projected Administrative Costs*****.** Class Counsel asked us to project our potential administrative costs of the Claims Administrator over the 65-year life of the Settlement Program. This is very difficult to do before we know how many Settlement Class Members will register with us, how many claims we will receive, how complete they will be, how many outcomes will be appealed, and the quantity of the many other functions we will perform in this program. We can, however, make reasonably informed projections, based on many assumptions, all of which are subject to change. Based on those assumptions and projections, we estimate $11,925,000 in Claims Administrator costs for the program. This estimate is comprised of projections of three budget categories, based on the draft administrative agreement we are now working to finalize with the Parties:

(a) Task Costs: We estimate $5,805,000 in fees and expenses incurred on functions that are measured by time and not units: (1) $155,000 for our assistance distributing the Settlement Class Notice and Supplemental Notice; (2) $1,750,000 for start-up tasks related to the development of the NFL Concussion Settlement website, credentialed web portals and other software applications; establishing a Communication Center; and tracking, reviewing and reporting on Opt Outs, Objections and Opt Out Revocations; and (3) $3,900,000 for recurring administrative tasks over the 65-year life of the Settlement Program including regular reporting, development of policies, a Frequently Asked Questions Document and operations manual documenting all Claims Administrator policies and procedures; and maintenance of the list of Qualified MAF Physicians eligible to provide Qualifying Diagnoses to Retired NFL Football Players.

(b) Unit Costs: $5,970,000 in unit costs. These costs will depend on volumes, and because our contract will allow for periodic adjustments to these unit costs, they may go up or down, which would affect resulting costs over time. For this Declaration, we

project using starting unit costs, with no adjustments. Our per unit costs projections include: 1) $500,000 for an assumed volume of 20,000 registrants; (2) $3,750,000 for an assumed 5,000 Monetary Award claims; (3) $600,000 for an assumed 2,000 Supplemental Monetary Award claims; (4) $450,000 for an assumed 4,500 Derivative Claimants; (5) $595,000 for an assumed 1,700 claims identified for fraud assessment; and (6) $75,000 for an assumed 2,300 non-medical liens.

(c) **Additional Services:** $150,000 in additional services. Our contract will provide for additional services outside of the scope of our core services and functions as new and unanticipated issues arise. We base this projection on approximately 1% of our total projected administrative costs.

I Orran L. Brown, Sr., declare under penalty of perjury pursuant to 28 U.S.C. § 1746 that the foregoing is true and correct. Executed on this 8th day of February, 2017.

Orran L. Brown, Sr.

NFL CONCUSSION SETTLEMENT

IN RE: NATIONAL FOOTBALL LEAGUE PLAYERS' CONCUSSION INJURY LITIGATION
No. 2:12-md-02323 (E.D. Pa.)

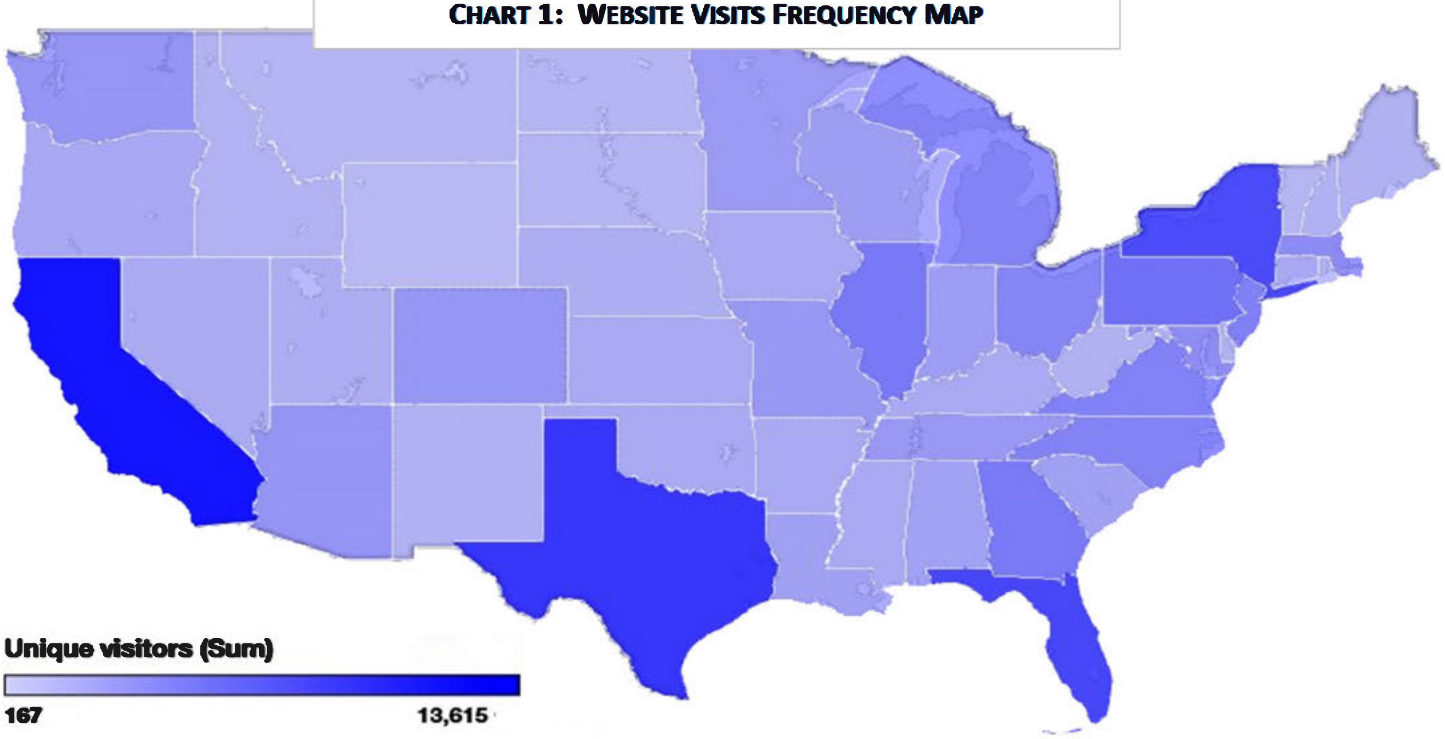
NFL 1002 — **CLAIMS ADMINISTRATOR UPDATE (AS OF 2/6/17)**

TABLE 1 — **WEBSITE VISITORS BY STATE**

	Location	Unique Visitors	Visits	Average Actions[1] Per Visit	Average Time (Minutes)	Bounce Rate[2]
1.	California	13,615	14,528	2	2	68.6%
2.	Texas	10,378	11,700	2	3	63.9%
3.	Florida	8,934	9,624	2	2	66.3%
4.	New York	8,530	9,538	2	2	65.7%
5.	Pennsylvania	5,299	5,589	2	2	70.2%
6.	Illinois	4,801	5,039	2	1	72.7%
7.	Georgia	4,699	5,083	2	2	64.4%
8.	New Jersey	4,176	4,403	2	1	71.4%
9.	Virginia	4,080	4,316	2	2	69.4%
10.	North Carolina	3,890	4,152	2	1	72.5%
11.	Michigan	3,831	4,046	2	1	72.3%
12.	Ohio	3,717	3,877	2	1	72.3%
13.	Unknown	51,911	56,556	3	3	65.8%
14.	Other	53,121	57,286	2	2	71.6%
15.	Totals	180,982	195,737	2	2	68.5%

[1] An action occurs anytime the visitor views a new webpage, follows a link or takes any other action on the website.
[2] The Bounce Rate is the percentage of visitors who leave website after viewing only one page.

CHART 1: WEBSITE VISITS FREQUENCY MAP



NFL CONCUSSION SETTLEMENT

IN RE: NATIONAL FOOTBALL LEAGUE PLAYERS' CONCUSSION INJURY LITIGATION
No. 2:12-md-02323 (E.D. Pa.)

NFL 1002	CLAIMS ADMINISTRATOR UPDATE (AS OF 2/6/17)

TABLE 2	SIGN-UPS FOR FUTURE INFORMATION						
	Sign-Up Method	Retired Player	Authorized Rep	Attorney for Player or Family	Family Member	Other/ Unknown	Total
1.	Website	5,786	440	353	1,594	773	8,946
2.	Call Center	1,310	18	20	778	225	2,351
3.	P.O. Box	40	1	18	12	9	80
4.	CA Inbox	207	11	349	86	167	820
5.	Other	3	0	3	5	14	25
6.	**Totals**	**7,346**	**470**	**743**	**2,475**	**1,188**	**12,222**

CHART 2: MONTHLY INFORMATIONAL SIGN-UPS

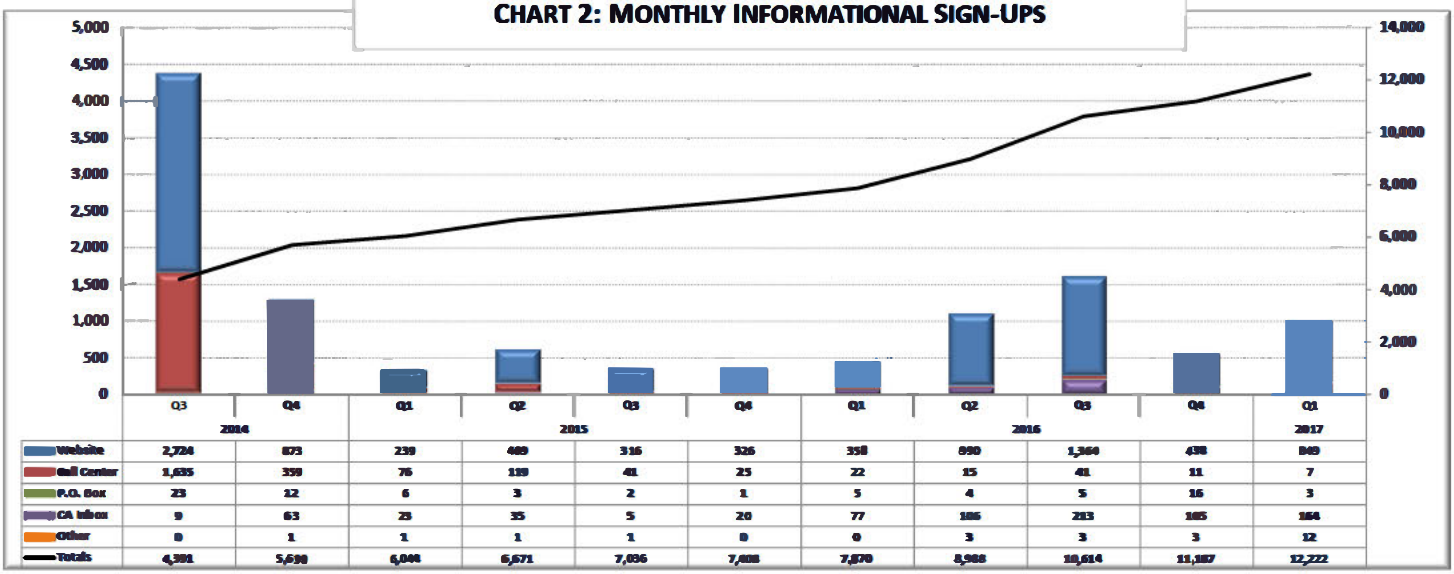


TABLE 3	CLAIMANT CORRESPONDENCE AND CLAIMS ADMINISTRATOR RESPONSES			
	Representation Status	Letters / Emails / Phone Calls / Faxes Received	Responses Sent	Response Not Required
1.	Pro Se or Unknown	638	577	61
2.	Represented	654	586	68
3.	**Totals**	**1,292**	**1,163**	**129**

TABLE 4	OPT-OUT SUMMARY			
	Settlement Class Member Type	Total Received	Revocation Requests Granted	Net Opt-Outs
	A. Timely Opt Out Requests Containing All Information Required by Section 14.2(a) or Otherwise Approved by the Court			
1.	Retired NFL Football Players	184	42	**142**
2.	Relatives of a Retired NFL Football Player	23	4	**19**
3.	**Totals**	**207**	**46**	**161**
	B. Opt Out Requests That Were Untimely and/or Did Not Contain All Information Required by Section 14.2(a)			
4.	Retired NFL Football Players	27		
5.	Relatives of a Retired NFL Football Player	1		
6.	**Totals**	**28**		
7.	**Grand Totals**	**235**	**46**	**161**

EXHIBIT B

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

In Re: National Football League Players' Concussion Injury Litigation	*	**No. 2:12-md-02323-AB**
	*	**MDL NO. 2323**
	*	**HONORABLE ANITA B. BRODY**
	*	**Civ. Action No. 14-00029-AB**

DECLARATION OF MATTHEW L. GARRETSON

I, Matthew L. Garretson, hereby declare as follows:

1. I am an adult over twenty-one years of age and am competent to testify to all matters contained herein. I am the Founder and Chief Executive Officer of The Garretson Resolution Group, Inc. ("GRG") and am an attorney licensed to practice law in the State of Ohio. I have personal knowledge of the facts set forth herein and if called and sworn as a witness, I could and would testify competently thereto.

BACKGROUND

2. On May 8, 2015, this Court entered its Amended Final Order and Judgment in this action. In the order, the Court certified the Settlement Class and Subclasses under Federal Rule of Civil Procedure 23 and approved the Settlement Agreement. (ECF No. 6534 ¶¶ 2, 7.) It also ordered the Parties "to implement each and every obligation set forth in the Settlement Agreement in accordance with the terms and provisions of the Settlement Agreement" (*id.* ¶ 9) and, to further the implementation of the Settlement Agreement, confirmed, among other things, the appointment of GRG as the Lien Resolution Administrator (*id.* ¶ 13).

3. GRG is a pioneer in the development of healthcare lien resolution programs in mass torts and class actions, and its programs have become the model for managing thousands of claims fairly, uniformly, and in a cost-effective fashion. GRG has established relationships with a myriad of federal, state, private, and statutory lien holders and is able to leverage large volumes of claims, standardized procedures, subject matter expertise, and proprietary technology to achieve fair repayment amounts while also meeting statutory obligations and ensuring that class members' future benefits are protected.

4. In recognition of the value GRG's lien resolution programs deliver to settling claimants, GRG has been recommended by settling parties, and has been appointed by federal judges, to serve as Lien Resolution Administrator in numerous personal injury settlements, including, among others, the Vioxx, Avandia, Medtronic, Guidant, and Zyprexa multidistrict litigation settlements. *See, e.g.*, *In re: Vioxx Prod Liab. Litig.*, Case No. 2:05-md-1657, ECF No. 62787 at 2 (E.D. La. Apr. 1, 2011); *In re Avandia Marketing, Sales Prac., and Prod. Liab. Litig*, Case No. 2:07-md-1871, ECF No. 690 (E.D. Pa. June 11, 2010); *In re: Medtronic, Inc. Implantable Defibrillators Prod. Liab. Litig.*, 0:05-md-1726, ECF No. 744 (D. Minn. Feb. 27, 2008); *In re: Guidant Corp. Implantable Defibrillators Prod. Liab. Litig.*, Case No. 0:05-md-1708, ECF No. 2526 (D. Minn. Dec. 17, 2007); *In re Zyprexa Prod. Liab. Litig.*, Case No. 1:04-md-1596, ECF No. 746 (E.D.N.Y Sept. 11, 2006). As Judge Jack B. Weinstein noted of GRG's work in *In re Zyprexa*, "The settlement techniques utilized in the instant litigation may provide a model for handling Medicare and Medicaid in future mass actions on a uniform, national basis." *In re Zyprexa*, Case No. 1:04-md-1596, ECF No. 746 at 12 (Weinstein, J.). GRG is bringing the same techniques and expertise to bear in discharging its responsibility as the Lien Resolution Administrator and in doing so will confer significant benefits upon Settlement Class Members.

HEALTHCARE LIEN RESOLUTION ACTIVITIES

Settlement Class Members' Obligation to Reimburse Their Insurers

5. Ensuring proper verification and resolution of healthcare Liens is a critical component of nearly all personal injury settlements. Depending on the type of insurance the claimant has, the claimant may be obligated under federal or state law or the terms of a private health insurance plan to repay his insurer from his settlement proceeds if the insurer paid for or provided medical treatment related to the injury for which the class member is being compensated. With the complexity and nuances of resolving these obligations growing at an exponential rate, ensuring compliance and achieving favorable results has become increasingly difficult in recent years. Moreover, failing to correctly address healthcare Lien obligations can have serious consequences for the claimant. The claimant could incur interest on his repayment obligation, he could be sued directly by the lienholder, and he could have his future healthcare coverage denied. Properly resolving healthcare Liens is therefore of vital importance.

6. This imperative applies with full force here. The medical treatment commonly associated with the Qualifying Diagnoses is likely to result in substantial Liens and reimbursement claims from healthcare insurers such as Medicare, Medicaid, and other governmental and private insurers. Failing to address these Liens could result in accrued interest and lawsuits that could materially deplete the Monetary Awards and Derivative Claimant Awards of the Settlement Class Members. Furthermore, given the nature of the conditions at issue in this settlement, the Retired NFL Football Players are likely to incur significant future healthcare costs, making it critical that their future healthcare coverage is preserved. Ensuring that the Settlement Class Members' Liens are properly resolved is necessary to prevent these adverse consequences.

7. GRG's work as the Lien Resolution Administrator will do just that. GRG has full scope subject matter expertise, established relationships with federal, state, private, and statutory lienholders, strict audit procedures and information technology systems capable of tracking claims across various Lien types, and medical claims specialists with in-depth billing and coding experience. By leveraging these resources for the Settlement Class Members, GRG will be able to maximize Settlement Class Members' net recovery, accelerate the resolution timeframes, and ensure their future healthcare benefits are preserved.

GRG's Responsibilities as the Lien Resolution Administrator

8. The Settlement Agreement charges GRG, as the Lien Resolution Administrator, with the following responsibilities, among others:

a. "administer[ing] the process for the identification and satisfaction of all applicable Liens, as set forth in Section 11.3" (ECF No. 6481-1, Settlement Agreement § 11.1(b)), which includes:

i. fulfilling all state and federal reporting obligations (*id.* § 11.3(c)(iii)),

ii. "[s]atisfy[ing] Lien amounts owed to a Governmental Payor or, to the extent identified by the Class Member pursuant to Section 11.3(a), Medicare Part C or Part D Program sponsor for medical items, services, and/or prescription drugs" (*id.* § 11.3(c)(iv)), and

iii. "[t]ransmit[ting] all information received from any Governmental Payor or Medicare Part C or Part D Program sponsor pursuant to such authorizations (i) to the NFL Parties, Claims Administrator, and/or Special Master solely for purposes of verifying compliance with the MSP Laws or other similar reporting obligations and for verifying satisfaction and full discharge of all such Liens" (*id.* § 11.3(c)(v)).

9. As set forth below, GRG has made significant progress in fulfilling its duties and responsibilities under the Settlement Agreement for the benefit of Settlement Class Members. GRG has already reached agreements with CMS that establish defined parameters for satisfying

and discharging CMS' Medicare Part A and/or Part B fee-for-service Medicare Secondary Payer ("MSP") recovery claims, protect Retired NFL Football Players' future Medicare benefits, and ensure equitable repayment amounts. In addition, GRG is making great strides in establishing uniform and efficient processes to identify and resolve healthcare Liens and reimbursement claims that may be associated with a Settlement Class Member's settlement award through coordination with other entities, such as the individual state Medicaid agencies and other healthcare payors and providers. As explained in more detail below, GRG anticipates that its efforts will result in meaningful reductions in the amounts the Settlement Class Members will have to pay to satisfy the Liens these entities may assert against the Settlement Class Members' Monetary Awards and Derivative Claimant Awards.

Medicare Part A & Part B Resolution

10. With respect to Medicare Part A and Part B, the Settlement Agreement provides, among other things, that the Lien Resolution Administrator shall undertake to obtain an agreement in writing with CMS that "[e]stablishes a global repayment amount per Qualifying Diagnosis and/or for all or certain Qualifying Diagnoses for Settlement Class Members who are or were beneficiaries of the Medicare Program, or, alternatively, otherwise sets forth a conditional payment resolution process." (*Id.* § 11.3(c)(ii)(1).) To this end, GRG has obtained CMS' agreement to globally resolve its Medicare Part A and/or Part B fee-for-service MSP recovery claims for some Qualifying Diagnoses, to individually resolve those claims for the rest of the Qualifying Diagnoses, and to not assert a recovery claim against the BAP Fund or the Education Fund.

11. More specifically, CMS has agreed to a global resolution methodology and associated fixed global repayment values to satisfy Medicare's Part A and/or Part B fee-for-

service MSP recovery claims associated with Medicare-entitled Settlement Class Members who receive Monetary Awards for a Qualifying Diagnosis of Level 1.5 Neurocognitive Impairment and/or Level 2 Neurocognitive Impairment, which are expected to be the most frequent Qualifying Diagnoses. The global repayment values are based on the clinical guidelines for the routine standard of care associated with the applicable Qualifying Diagnosis. Global resolution programs are proven to deliver numerous practical benefits to Settlement Class Members. These benefits include, among others, (1) ensuring similarly situated Settlement Class Members achieve similar outcomes and fair repayment amounts, (2) ensuring compliance with federal Medicare statutes and regulations, (3) avoiding disbursement delays normally associated with pulling and auditing Medicare's conditional payments on a case-by-case basis, and (4) ensuring that Medicare will not deny Settlement Class Members coverage for any future medical expenses they might incur in connection with the relevant Qualifying Diagnoses.

12. With respect to Medicare-entitled Settlement Class Members who receive a Monetary Award in connection with a Qualifying Diagnosis of Alzheimer's Disease, Parkinson's disease, Death with Chronic Traumatic Encephalopathy, or Amyotrophic Lateral Sclerosis (also known as Lou Gehrig's Disease), CMS has agreed to resolve its MSP recovery claims through an individual expenditure-based process. Under this process, GRG will secure claims from the Medicare Program on an individual basis to identify the exact amounts the Medicare Program has paid on behalf of a Settlement Class Member. GRG will then audit each claim to ensure that only medical expenses related to the compensable injury from the date of injury through the date of settlement are included in the repayment obligation. In an effort to optimize the outcome for Settlement Class Members whose Medicare reimbursement obligations GRG will resolve through this expenditure-based process, GRG has established procedures designed to reduce time

delays to the extent possible and to ensure a detailed review of all cases to achieve reductions where appropriate.

13. Finally, GRG has secured CMS' agreement to not assert an MSP recovery claim in connection with Monetary Awards of Retired NFL Football Players where the Retired NFL Football Player's last Eligible Season ended prior to December 5, 1980.[1] CMS has further agreed to not separately assert an MSP recovery claim against Medicare-entitled Derivative Claimants who receive a Derivative Claimant Award as long as the amount of the Derivative Claimant Award is still included in the gross Monetary Award amount for purposes of resolving CMS' MSP recovery claim for the associated Retired NFL Football Player.

Medicaid Resolution

14. With respect to state Medicaid reimbursement obligations, GRG has reached standard protocol agreements with forty-five of the fifty-two state Medicaid agencies to resolve their Medicaid recovery claims through an expenditure-based review process with terms designed to deliver significant advantages to Settlement Class Members that will maximize Settlement Class Members' net recovery. GRG's standard protocol agreements include a term providing that the amount of each Medicaid agency's recovery claim against a Settlement Class Member will not exceed a specified percentage of the Settlement Class Member's gross settlement award (the "Holdback Amount"). In addition, GRG's protocol agreements include a term providing that each Medicaid agency will automatically reduce the agency's final recovery claim by a specified percentage (the "Offset").

15. Pursuant to its protocol agreement, GRG will first verify whether a Settlement Class Member was a beneficiary of the Medicaid Program in a given state. If the Settlement Class Member was not a beneficiary of that state's Medicaid Program, GRG will inform the

[1] This determination was made in consideration of CMS' August 19, 2014 policy memo.

Claims Administrator that no amount needs to be withheld from the Settlement Class Member's gross settlement award to satisfy a reimbursement obligation to that state's Medicaid agency. If the Settlement Class Member was a beneficiary, then GRG will ask the Claims Administrator to withhold the Holdback Amount. Since the Holdback Amount is the maximum amount a Medicaid agency can recover, funds in excess of the Holdback Amount can be disbursed to the Settlement Class Member (subject to holdback amounts established for other Lien types, if applicable to the Settlement Class Member) before the Medicaid lien resolution process is finished, allowing the Settlement Class Member to receive his or her funds earlier than he or she would if GRG's protocol agreement were not in place.

16. For those Settlement Class Members who received Medicaid benefits, the Medicaid agency will provide GRG with the itemized claims for which the Medicaid agency is seeking repayment. GRG will then conduct an audit of those claims to ensure that only medical expenses related to the applicable Qualifying Diagnosis or Qualifying Diagnoses are included in the Medicaid agency's recovery claim. Once a final claim amount is established, GRG will apply the Offset to that amount and will compare the result with the Holdback Amount. A Settlement Class Member's final reimbursement amount will be the lesser of the Holdback Amount or the final claim amount after applying the Offset. GRG will facilitate the satisfaction of the Medicaid agency's interest by ensuring that payment of the final reimbursement amount for the Settlement Class Member is made from the Settlement Class Member's gross settlement award.

17. Finally, GRG is pursuing agreements from each of the state Medicaid agencies to not assert a recovery claim against Derivative Claimant Awards. GRG has secured an agreement with some states and is continuing its discussions with the others.

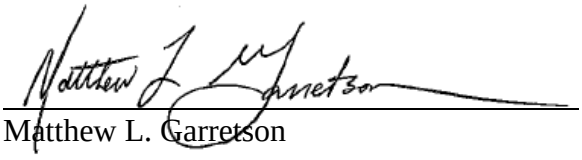
Allocation of Lien Resolution Administrator's Fees

18. As an additional benefit to Settlement Class Members in the current matter, the Lien Resolution Administrator's per-claimant fee for verifying which Settlement Class Members are or were entitled to benefits under the Medicare Program and/or Medicaid Program will be paid by the NFL Parties out of the Monetary Award Fund rather than by the Settlement Class Members out of their Monetary Awards and Derivative Claimant Awards. For these verification services to the Settlement Class, the Lien Resolution Administrator will be paid $100.00 from the Monetary Award Fund for each Settlement Class Member, with a maximum payment of $300,000 over the life of the Settlement.

THE DECLARANT SAYS NOTHING FURTHER.

I, Matthew L. Garretson, declare under penalty of perjury pursuant to 28 U.S.C. § 1746 that the foregoing is true and correct.

Executed on this 25th day of January, 2017.



Matthew L. Garretson

EXHIBIT C

UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

IN RE: NATIONAL FOOTBALL LEAGUE PLAYERS' CONCUSSION INJURY LITIGATION	No. 2:12-md-02323-AB MDL No. 2323 **Hon. Anita B. Brody**
Kevin Turner and Shawn Wooden, *on behalf of themselves and others similarly situated*, Plaintiffs, v. National Football League and NFL Properties LLC, successor-in-interest to NFL Properties, Inc., Defendants.	Civ. Action No. 14-00029-AB
THIS DOCUMENT RELATES TO: ALL ACTIONS	

DECLARATION OF LEVIN SEDRAN & BERMAN IN SUPPORT OF CO-LEAD CLASS COUNSEL'S PETITION FOR AN AWARD OF ATTORNEY'S FEES AND REIMBURSEMENT OF COSTS AND EXPENSES

Arnold Levin declares as follows pursuant to 28 U.S.C. § 1746:

1. I am a Senior Partner of the law firm of Levin Sedran & Berman ("LSB").[1] I was appointed by the Court to serve on the Plaintiffs' Steering Committee ("PSC") and as Subclass Counsel for Subclass 1 class members. I submit this declaration in support of Co-Lead Class Counsel's Petition for an Award of Attorney's Fees and Reimbursement of Costs and Expenses in connection with and for services rendered and expenses incurred for the common benefit of

[1] On December 19, 2016, the law firm of Levin, Fishbein, Sedran & Berman changed its name to Levin Sedran & Berman.

the Settlement Class in the above-captioned multidistrict litigation ("Action") from the inception of the litigation through July 15, 2016, as well as for the payment of expenses incurred therewith. I have personal knowledge of the matters set forth in this declaration and, if called upon, I could and would testify competently thereto.

2. Our firm's role and services in the common benefit litigation against Defendants National Football League and NFL Properties LLC (together "the NFL Parties"), as directed by Plaintiffs' Co-Lead Counsel, include the following:

a. At the inception of the litigation in February 2012, I met with Co-Lead Counsel Chris Seeger and other Plaintiffs' leadership counsel regarding the organization of the Action and jurisdictional issues. I participated in all PSC meetings and several Plaintiffs' Executive Committee meetings, as requested by Mr. Seeger.

b. Our firm's attorneys conducted initial research on a number of topics including medical monitoring (50 state survey), tolling, preemption, and fraudulent concealment. LSB prepared a master class action complaint, medical monitoring complaint and tolling agreement, and we worked on preemption briefing.

c. Beginning in June 2012, at the request of Co-Lead Counsel Chris Seeger, my former partner Michael D. Fishbein[2] met with medical experts regarding brain injuries, a medical monitoring program, and potential settlement.

d. Beginning in or about March 2013, my partner Frederick S. Longer and I worked with Plaintiffs' Co-Lead Counsel to prepare for oral argument on the NFL Parties' preemption motion. I also analyzed the collective bargaining benefits of the NFL players.

e. Beginning in April 2013, at the request of Mr. Seeger, I began working on a structure for a potential settlement with the NFL Parties. I reviewed and analyzed relevant

[2] Mr. Fishbein resigned from our firm as of June 30, 2016, due to health reasons.

medical literature and studies and analyzed medical monitoring programs based on my extensive experience as Co-Lead and Class Counsel in the *Diet Drugs* Litigation. I travelled numerous times to New York and Washington, D.C. with my partner Mr. Fishbein to participate in preliminary settlement meetings with Plaintiffs' Co-Lead Counsel and counsel for the NFL Parties. We also met with Co-Lead Counsel in Philadelphia to work on settlement issues and a draft Term Sheet, including class and subclass definitions, an injury grid, baseline testing protocols and a baseline assessment program, reduction factors, injury definitions and criteria, medical experts, actuarial calculations, settlement funding, fraud prevention mechanisms, settlement administrators, and lien administrators.

f. Beginning in July 2013, Mr. Seeger invited me to participate in settlement negotiations with the NFL Parties as counsel for a proposed subclass ("Subclass 1") of retired players who were not diagnosed with injuries associated with concussive and sub-concussive head trauma but were at increased risk of developing a range of neuromuscular and neurocognitive diseases associated with mild traumatic brain injuries.

g. Pursuant to Co-Lead Counsel's direction, my partner Sandra L. Duggan and I assisted with the negotiations of a Settlement Term Sheet. Ms. Duggan and I participated in numerous in-person negotiation sessions in New York with counsel for the NFL Parties, which were mediated by Ret. Judge Layn R. Phillips, and we worked virtually full-time, sometimes around the clock, on the settlement. We worked closely with Mr. Seeger and other attorneys at Seeger Weiss, including David Buchanan, TerriAnne Benedetto, Scott George, and Chris Van de Kieft. We also coordinated with Dianne Nast, the proposed Subclass Counsel for Subclass 2 class members. After the Term Sheet was signed by all parties at the end of August 2013, Ms. Duggan and I continued to work with Mr. Seeger and his firm virtually full-time to

draft a settlement agreement. We met with Co-Lead Counsel and counsel for the NFL Parties in New York many times and also participated in negotiation sessions over the telephone. We were involved in meetings with various proposed settlement administrators and class notice specialists.

h. After the principal terms of the settlement were reached, LSB partners Arnold Levin, Sandra Duggan, and Fred Longer, along with additional attorneys from our firm, assisted Seeger Weiss with preparation of preliminary settlement approval and class certification papers, a new class complaint, a proposed short-form and long-form class notice, a notice plan, a list of Frequently Asked Questions, and a settlement website. We also conducted research on assumption of risk, statutes of limitation, prescription defenses, statutory employer defense, proximate causation, and subclassing issues.

i. LSB assisted Mr. Seeger and his firm with extensive briefing in opposition to objections to the settlement, motions to intervene, and motions to remand.

j. After the Court appointed Special Master Perry Golkin to assess certain financial aspects of the settlement, Ms. Duggan and I met with him over the phone and she met with him in New York at his office in December 2013, at Co-Lead Counsel's direction.

k. Through the spring and early summer of 2014, Ms. Duggan and I worked with Mr. Seeger, Mr. Buchanan, and other attorneys from Seeger Weiss to renegotiate a number of settlement provisions, including an uncapped settlement fund, injury criteria, security, and proofs of claim. We worked on revised preliminary settlement approval and class certification papers, publication class notices, a media plan, a chart of settlement required tasks, and we also helped with briefing in response to settlement objections, motions to lift stays, motions to intervene, and motions for settlement discovery.

l. In July 2014, LSB assisted Co-Lead Counsel with opposing a Rule 23(f) appeal to the Third Circuit Court of Appeals. We also met with Co-Lead Counsel and Professor Sam Issacharoff in New York and Philadelphia to assist in preparations for oral argument in September 2014.

m. After the Rule 23(f) appeal was unsuccessful, LSB helped Mr. Seeger and his firm prepare papers for final approval of the settlement, including declarations of Mr. Seeger as Plaintiffs' Co-Lead Counsel and Counsel for Subclass 1 and Subclass 2, and a declaration of Ret. Judge Layn Phillips. We also assisted Co-Lead Counsel with preparations for the Fairness Hearing in November 2014 and with additional briefing related to settlement objections and motions to extend the opt-out period. Following the Fairness Hearing, Ms. Duggan and I assisted Seeger Weiss with preparation of joint proposed Findings of Fact and Conclusions of Law and an Executive Summary of the settlement. We also helped with post-Hearing briefing in support of approval of the settlement and certification of the settlement class and subclasses.

n. Following final approval of the settlement by the District Court in April 2015, LSB assisted Seeger Weiss with research, briefing and oral argument in opposition to appeals to the Third Circuit from objectors to the settlement.

o. Following the Third Circuit's affirmance of the District Court's approval of the settlement, LSB provided comments on the brief in opposition to certain objectors' petitions for writs of certiorari.

p. As an integral part of my representation of Subclass 1 members, I met with proposed Subclass 1 representative Retired NFL Football Player Corey J. Swinson. Sadly, Mr. Swinson passed away suddenly and unexpectedly on September 10, 2013. During the negotiations of settlement terms in the summer of 2013, Co-Lead Class Counsel Chris Seeger

and I conferred with Mr. Swinson concerning the terms of the proposed Settlement. Prior to his death, I met with Mr. Swinson.

q. Following Mr. Swinson's death, Plaintiff Shawn Wooden became the proposed and eventually appointed Subclass 1 representative. I met with Mr. Wooden in my office in Philadelphia regarding his representation of Subclass 1 Class Members in the proposed class action. My partner Daniel Levin attended the meeting as well. I determined that Mr. Wooden had standing to assert the rights of Subclass 1 members and he was an adequate representative for the undiagnosed players who are at increased risk for developing a Qualifying Diagnosis during their lifetime.

r. After the Court appointed me as Subclass Counsel for Subclass 1 members, from time to time my office received inquiries from Subclass 1 class members seeking information about the settlement. My partners Mr. Longer and Ms. Duggan fielded those questions. These were not clients of the firm and, for that reason, the services we provided should be considered for the common benefit.

3. The schedule attached hereto as Exhibit 1 is a detailed summary indicating the amount of common benefit time spent by the attorneys and professional support staff of my firm who were involved in, and billed fifty or more hours to, this Action, and the lodestar calculation for those individuals based on my firm's current billing rates. For personnel who are no longer employed by my firm, the lodestar calculation is based on the billing rates of such personnel in their final year of employment by my firm. The schedule was prepared from contemporaneous daily time records regularly prepared and maintained by my firm. Time expended in preparing this application for attorney's fees and expenses has been excluded.

4. The hourly rates for the attorneys and professional support staff of my firm included in Exhibit 1 are the same as the regular rates charged for their services in other contingent matters and have been accepted by other federal courts in other class action cases prosecuted by my firm.

5. The total number of hours expended on the common benefit of this Action by my firm during the time period is 5021.25 hours. The total lodestar for my firm for those hours is $6,031,806.25, consisting of $6,002,331.25 for attorneys' time and $29,475.00 for professional support staff time.

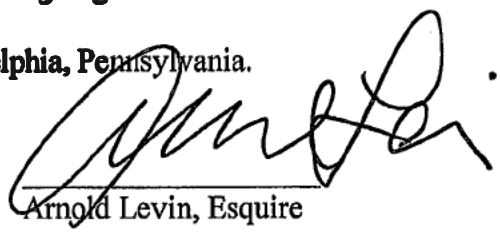
6. My firm's lodestar figures are based solely upon my firm's billing rates, which rates do not include charges for expense items. Expense items are billed separately and such charges are not duplicated in my firm's billing rates.

7. As detailed in Exhibit 2 hereto, my firm is seeking reimbursement of a total of $519,893.97 in common benefit expenses incurred in connection with the prosecution of this Action. These expenses are reflected on the books and records of my firm. These books and records are prepared from expense vouchers, check records, and other source material, and are an accurate record of the expenses incurred.

8. With respect to the standing of my firm to share in an award of fees, costs, and expenses, attached hereto as Exhibit 3 is a biography of my firm, including the attorneys in my firm who were principally involved in this Action.

I declare under penalty of perjury that the foregoing is true and correct.

Executed on December 28, 2016 at Philadelphia, Pennsylvania.



Arnold Levin, Esquire

EXHIBIT 1

IN RE: NATIONAL FOOTBALL LEAGUE PLAYERS' CONCUSSION INJURY LITIGATION

No. 12-md-2323-AB

LEVIN SEDRAN & BERMAN

LODESTAR REPORT

Inception through July 15, 2016

NAME	HOURS	HOURLY RATE	AMOUNT
PARTNERS:			
Arnold Levin	1444.75	$1350	$1,950,412.50
Michael D. Fishbein	180.25	$1250	$225,312.50
Laurence S. Berman	20.50	$1200	$24,600.00
Fred S. Longer	694.75	$1200	$833,700.00
Sandra Duggan	2053.50	$1200	$2,464,200.00
Daniel C. Levin	402.00	$975	$391,950.00
Charles E. Schaffer	19.75	$975	$19,256.25
PARTNER TOTAL	**4815.50**		**$5,909,431.25**
ASSOCIATES:			
Matthew Gaughan	38.00	$850	$32,300.00
Brian Fox	87.50	$525	$45,937.50
ASSOCIATES TOTAL	**125.50**		**$78,237.50**
CONTRACT ATTORNEY TOTAL			
David P. McLafferty	17.25	$850	$14,662.50
CONTRACT ATTORNEY	**17.25**		**$14,662.50**
PARALEGALS:			
Thomas Shrack	45.00	$475	$21,375.00
Marion Hutson	9.00	$450	$4,050.00
Monica Lord	9.00	$450	$4,050.00
PARALEGAL TOTAL	**63.00**		**$29,475.00**
TOTALS:	**5021.25**		**$6,031,806.25**

EXHIBIT 2

IN RE: NATIONAL FOOTBALL LEAGUE PLAYERS' CONCUSSION INJURY LITIGATION

No. 12-md-2323-AB

LEVIN SEDRAN & BERMAN

COST AND EXPENSE REPORT

Inception through July 15, 2016

NUMBER	CATEGORY	AMOUNT
1	Assessments	$425,000.00
2	Commercial Copies	$520.45
3	Computerized Research	$33,372.31
4	Court Reporters/Transcripts	$0.00
5	Expert Services	$0.00
6	Facsimile	$236.00
7	Filing & Service Fees	$700.00
8	In-House Copies	$11,584.60
9	Long Distance Telephone	$374.05
10	Postage/Express Delivery	$364.09
11	Travel/Meals/Lodging	$47,617.23
12	Miscellaneous - supplies	$125.24
TOTAL EXPENSES		**$519,893.97**

EXHIBIT 3

LEVIN SEDRAN & BERMAN

FIRM BIOGRAPHY

The law firm of Levin Sedran & Berman (formerly known as Levin, Fishbein, Sedran & Berman, and before that, Levin & Fishbein) was established on August 17, 1981. Earlier, the founding partners of Levin, Fishbein, Sedran & Berman, Messrs. Arnold Levin and Michael D. Fishbein, were with the law firm of Adler, Barish, Levin & Creskoff, a Philadelphia firm specializing in litigation. Arnold Levin was a senior partner in that firm and Michael D. Fishbein was an associate. Laurence S. Berman was also an associate in that firm.

The curricula vitae of the attorneys are as follows:

(a) **ARNOLD LEVIN**, a member of the firm, graduated from Temple University, B.S., in 1961, with Honors and Temple Law School, LLB, in 1964. He was Articles Editor of the Temple Law Quarterly. He served as a Captain in the United States Army (MPC). He is a member of the Philadelphia, Pennsylvania, American and International Bar Associations. He is a member of the Philadelphia Trial Lawyers Association, Pennsylvania Trial Lawyers Association and the Association of Trial Lawyers of America. He is admitted to the Supreme Court of Pennsylvania, United States District Court for the Eastern District of Pennsylvania, United States District Court for the Middle District of Pennsylvania, the Third, Fourth, Fifth, Sixth, Seventh, Tenth and Eleventh Circuit Courts of Appeals and the United States Supreme Court. He has appeared pro hac vice in various federal and state courts throughout the United States. He has lectured on class actions, environmental, antitrust and tort litigation for the Pennsylvania Bar Institute, the Philadelphia Trial Lawyers Association, the Pennsylvania Trial Lawyers Association, The Association of Trial Lawyers of America, The Belli Seminars, the Philadelphia Bar Association, American Bar Association, the New York Law Journal Press, and the ABA-ALI London Presentations.

Mr. Levin is a past Chairman of the Commercial Litigation Section of the Association of Trial Lawyers of America, and is co-chairman of the Antitrust Section of the Pennsylvania Trial Lawyers Association. He is a member of the Pennsylvania Trial Lawyers Consultation Committee, Class Action Section, a fellow of the Roscoe Pound Foundation and past Vice-Chairman of the Maritime Insurance Law Committee of the American Bar Association. He is also a fellow of the International Society of Barristers,

and chosen by his peers to be listed in Best Lawyers of America. He has been recognized as one of 500 leading lawyers in America by Lawdragon and The Legal 500 USA. U.S. News and World Report has designated Levin, Fishbein, Sedran & Berman as one of the top 22 national plaintiffs' firms in mass torts and complex litigation In addition, he has been further recognized as one of the top 100 trial lawyers by The National Trial Lawyers Association. He was also named to the National Law Journal's Inaugural List of America's Elite Trial Lawyers. He also has an "av" rating in Martindale-Hubbell and is listed in Martindale-Hubbell's Register of Preeminent Lawyers.

Mr. Levin was on the Executive Committee as well as various other committees and Lead Trial Counsel in the case of *In re Asbestos School Litigation*, Master File No. 83-0268 (E.D. Pa.), which was certified as a nationwide class action on behalf of all school districts. Mr. Levin was also on the Plaintiffs' Steering Committee in *In re Copley Pharmaceutical, Inc., "Albuterol" Products Liability Litigation*, MDL 1013 (D. Wyoming); *In re Norplant Contraceptive Products Liability Litigation*, MDL 1038 (E.D. Tex.); and *In re Telectronics Pacing Systems, Inc., Accufix Atrial "J" Lead Products Liability Litigation*, MDL 1057 (S.D. Ohio).

Mr. Levin was appointed by the Honorable Sam J. Pointer as a member of the Plaintiffs' Steering Committee in the *Silicone Gel Breast Implants Products Liability Litigation*, Master File No. CV-92-P-10000-S, MDL 926 (N.D. Ala.). The Honorable Louis L. Bechtle appointed Mr. Levin as Co-Lead Counsel of the Plaintiffs' Legal Committee and Liaison Counsel in *In re Orthopedic Bone Screw Products Liability Litigation*, MDL 1014 (E.D. Pa.). Mr. Levin also served as Co-Chair of the Plaintiffs' Management Committee, Liaison Counsel, and Class Counsel in *In re Diet Drugs Litigation*, MDL 1203 (E.D. Pa.). He was also a member of a four lawyer Executive Committee in *In re Rezulin Products Liability Litigation,* MDL No. 1348 (S.D.N.Y.) and is a member of a seven person Steering Committee in *In re Propulsid Products Liability Litigation,* MDL No. 1355 (E.D. La.). He was Chair of the State Liaison Committee in *In re Phenylpropanolamine (PPA) Products Liability Litigation*, MDL 1407 (W.D. Wash.); and is a member of the Plaintiffs' Steering Committee and Plaintiffs' Negotiating Committee in *In re Vioxx Products Liability Litigation*, MDL No. 1657 (E.D. La.) and the Court approved Medical Monitoring Committee in *In re Human Tissue Products Liability Litigation*, MDL No. 1763 (D.N.J.).

He is currently Plaintiffs' Lead Counsel, Class Counsel and Co-Chair of the Fee Committee in *In re Chinese-Manufactured Drywall Product Liability Litigation,* MDL No. 2047 (E.D. La.). He was Plaintiffs' Liaison Counsel in *In re CertainTeed Corp. Roofing Shingles Products Liability Litigation*, MDL No. 1817 (E.D. Pa.). He is a member of the Plaintiffs' Steering Committee in *In re National Football League Players' Concussion Litigation*, MDL No. 2323 (E.D. Pa.) and was appointed as Subclass Counsel for Subclass 1 in the NFL Concussion Class Action Settlement. Mr. Levin is a member of the Plaintiffs' Steering Committee in *In re Pool Products Distribution Market Antitrust Litigation*, MDL 2328); *In re Testosterone Replacement Therapy Products Liability Litigation*, MDL 2545 (N.D. Ill.); *In re Zoloft (Sertraline Hydrochloride) Products Liability Litigation*, MDL 2342 (E.D. Pa.); and *In re Yasmin and Yaz Marketing, Sales Practices and Relevant Products Liability Litigation*, MDL 2100 (S.D. Ill.). He is a member of Plaintiffs' Executive Committee in *In re Fresenius Granuflo/ Naturalyte Dialysate Products Liability Litigation*, MDL 2428 (D. Mass). Mr. Levin was appointed by the Honorable Carl J. Barbier to serve as Special Counsel to the Plaintiffs' Fee and Cost Committee in the BP Oil Spill Litigation, *In re Oil Spill by the Oil Rig "Deepwater Horizon" in the Gulf of Mexico, on April 20, 2010*, MDL 2179 (E.D. La.).

Mr. Levin was also a member of the Trial and Discovery Committees in the *Exxon Valdez Oil Spill Litigation*, No. 89-095 (D. Alaska) In addition, Mr. Levin was Lead Counsel in the prosecution of individual fishing permit holders, native corporations, native villages, native claims and business claims.

(b) **MICHAEL D. FISHBEIN**, a retired member of the firm as of June 30, 2016, is a graduate of Brown University (B.A., 1974). He graduated from Villanova University Law School with Honors, receiving a degree of Juris Doctor in 1977. Mr. Fishbein was a member of the Villanova Law Review and is a member of the Villanova University Law School Chapter of the Order of Coif. He is admitted to practice before the Pennsylvania Supreme Court, the United States District Court for the Eastern District of Pennsylvania, and the Third Circuit Court of Appeals. Mr. Fishbein was extensively involved in the prosecution of a variety of commercial class actions. He was Class Counsel in *In re Diet Drugs Litigation*, MDL 1203, and the principal architect of the seminal National Diet Drugs Settlement Agreement. He was also a member of the Plaintiffs' Steering Committee in *In re Phenylpropanolamine*

(PPA) Products Liability Litigation, MDL 1407 (W.D. Wash.).

(c) **HOWARD J. SEDRAN**, a member of the firm, graduated cum laude from the University of Miami School of Law in 1976. He was a law clerk to United States District Court Judge, C. Clyde Atkins, of the Southern District of Florida from 1976-1977. He is a member of the Florida, District of Columbia and Pennsylvania bars and is admitted to practice in various federal district and appellate courts. From 1977 to 1981, he was an associate at the Washington, D.C. firm of Howrey & Simon which specializes in antitrust and complex litigation. During that period he worked on the following antitrust class actions: *In re Uranium Antitrust Litigation*; *In re Fine Paper Antitrust Litigation*; *Bogosian v. Gulf Oil Corporation*; *FTC v. Exxon, et al.*; and *In re Petroleum Products Antitrust Litigation*.

In 1982, Mr. Sedran joined the firm and has continued to practice in the areas of environmental, securities, antitrust and other complex litigation. Mr. Sedran also has extensive trial experience. In the area of environmental law, Mr. Sedran was responsible for the first certified "Superfund" class action.

As a result of his work in an environmental case in Missouri, Mr. Sedran was nominated to receive the Missouri Bar Foundation's outstanding young trial lawyer's award, the Lon Hocker Award.

Mr. Sedran has also actively participated in the following actions: *In re Dun & Bradstreet Credit Services Customer Litigation*, Civil Action Nos. C-1-89-026, C-1-89-051, 89-2245, 89-3994, 89-408 (S.D. Ohio); *Raymond F. Wehner, et al. v. Syntex Corporation and Syntex (U.S.A.) Inc.*, No. C-85-20383(SW) (N.D. Cal.); *Harold A. Andre, et al. v. Syntex Agribusiness, Inc., et al.*, Cause No. 832-05432 (Cir. Ct. of St. Louis, Mo.); *In re Petro-Lewis Securities Litigation*, No. 84-C-326 (D. Colo.); *In re North Atlantic Air Travel Antitrust Litigation*, No. 84-1013 (D.D.C.); *Jaroslawicz v. Engelhard Corp.*, No. 84-3641 (D. N.J.); *Gentry v. C & D Oil Co.*, 102 F.R.D. 490 (W.D. Ark. 1984); *In re EPIC Limited Partnership Securities Litigation*, Nos. 85-5036, 85-5059 (E.D. Pa.); *Rowther v. Merrill Lynch, et al.*, No. 85-Civ-3146 (S.D.N.Y.); *In re Hops Antitrust Litigation*, No. 84-4112 (E.D. Pa.); *In re Rope Antitrust Litigation*, No. 85-0218 (M.D. Pa.); *In re Asbestos School Litigation*, No. 83-0268 (E.D. Pa.); *In re Catfish Antitrust Litigation*, MDL 928 (Plaintiffs' Executive Committee); *In re Carbon Dioxide Antitrust Litigation*, MDL 940 (N.D. Miss.) (Plaintiffs' Executive Committee); *In re Alcolac, Inc. Litigation*, No. CV490-261 (Marshall, Mo.); *In re Clozapine Antitrust Litigation*,

MDL 874 (N.D. Ill.) (Co-Lead Counsel); *In re Infant Formula Antitrust Litigation*, MDL 878 (N.D. Fla.); *Cumberland Farms, Inc. v. Browning-Ferris Industries, Inc.*, Civil Action No. 87-3713 (E.D. Pa.); *In re Airlines Antitrust Litigation*, MDL 861 (N.D. Ga.); *Lazy Oil, Inc. et al. v. Witco Corporation, et al.*, C.A. No. 94-110E (W.D. Pa.) (Plaintiffs' Co-Lead Counsel); *In re Nasdaq Market-Makers Antitrust Litigation*, MDL 1023 (S.D.N.Y.) (Co-Chair Discovery); and *In re Travel Agency Commission Antitrust Litigation*, Master File No. 4-95-107 (D. Minn.) (Co-Chair Discovery); *Erie Forge and Steel, Inc. v. Cyprus Minerals Co.*, C.A. No. 94-0404 (W.D. Pa.) (Plaintiffs' Executive Committee); *In re Commercial Explosives Antitrust Litigation*, MDL 1093 (Plaintiffs' Co-Lead Counsel); *In re Brand Name Prescription Drug Antitrust Litigation*, MDL 997; *In re High Fructose Corn Syrup Antitrust Litigation*, MDL 1087; *In re Carpet Antitrust Litigation*, MDL 1075; *In re Graphite Electrodes Antitrust Litigation*, C.A. No 97-CV-4182 (E.D. Pa.) (Plaintiffs' Co-Lead Counsel); *In re Flat Glass Antitrust Litigation*, MDL 1200 (Discovery Co-Chair); *In re Commercial Tissue Products Antitrust Litigation*, MDL 1189; *In re Thermal Fax Antitrust Litigation*, C.A. No. 96-C-0959 (E.D. Wisc.); *In re Lysine Indirect Purchaser Antitrust Litigation*, (D. Minn.); *In re Citric Acid Indirect Purchaser Antitrust Litigation*, C.A. No. 96-CV-009729 (Cir. Ct. Wisc.). Most recently, Mr. Sedran serves as one of the court-appointed Co-Lead Counsel in *In re Air Cargo Shipping Services Antitrust Litigation*, MDL No. 1775 (E.D. N.Y.).

In *Lazy Oil Co. v. Witco Corp., et. al.*, *supra*, the District Court made the following comments concerning the work of Co-Lead Counsel:

> [t]he Court notes that the class was represented by very competent attorneys of national repute as specialists in the area of complex litigation. As such Class Counsel brought considerable resources to the Plaintiffs' cause. The Court has had the opportunity to observe Class counsel first-hand during the course of this litigation and finds that these attorneys provided excellent representation to the Class. The Court specifically notes that, at every phase of this litigation, Class Counsel demonstrated professionalism, preparedness and diligence in pursuing their cause.

(d) **LAURENCE S. BERMAN**, a member of the firm, was born in Philadelphia, Pennsylvania on January 17, 1953. He was admitted to the bar in 1977. He is admitted to practice before the U.S. Courts of Appeals for the Third, Fourth and Seventh Circuits; the U.S. District Court, Eastern District of Pennsylvania; and the Bar of Pennsylvania. He is a graduate of Temple University (B.B.A., magna cum laude, 1974, J.D. 1977). He is a member of the Beta Gamma Sigma Honor Society. Mr. Berman was the law clerk to the Honorable Charles R. Weiner, U.S. District Court for the Eastern District of Pennsylvania 1978-1980. Member: Philadelphia, Pennsylvania and American Bar Associations. In 1982, Mr. Berman joined the law firm of Levin & Fishbein as an associate and became a partner in 1985 when the firm name was changed to Levin, Fishbein, Sedran & Berman.

Mr. Berman has had extensive experience in litigating and managing complex litigation. In the early 1980's he became a member of the discovery, law and trial committees of *In re: Asbestos School Litigation,* Master File No. 83-0268 (E.D. Pa.). As a member of those committees, he drafted discovery and legal briefs that lead to the successful resolution of the case on behalf of a nationwide class of schools seeking recovery of damages for the costs and expenses they were required to expend to assess the presence of asbestos in school buildings and to remediate under newly enacted rules and regulations of the Environmental Protection Agency, promulgated in the 1970's. In connection with that litigation, he was one of the architects of approaching class certification issues for a nationwide class by the use of a "50" state analysis of the law, in order to demonstrate the similarity of laws and therefore the manageability of a nationwide class action. The "50" state approach has been followed in other cases.

During the early stages of his career, he litigated numerous environmental class/mass tort cases to successful conclusions. He successfully litigated a lead contamination case for the residents of a community in the Port Richmond area of Philadelphia, where he drafted the legal briefs and presented the oral argument to obtain class certification of a property damage and medical monitoring class against NL Industries and Anzon. That litigation produced a multi-million-dollar recovery for the residents in the class area. *Ursula Stiglich Wagner, et al. v. Anzon, Inc., et al.*, No. 4420, June Term, 1987 (C.C.P. Phila. Cty.)

Similarly, he represented homeowners located near Ashland, Kentucky for environmental pollution

damage. This case involved representing approximately 700 individual clients for personal injury and medical monitoring relief that also resulted in a multi-million-dollar recovery for his clients.

Beginning in the 1990's Mr. Berman began his representation of victims of the Three Mile Island accident. The firm represented approximately 2,000 plaintiffs in that matter, and Mr. Berman was responsible for the legal briefing and experts in the case, along with addressing *Daubert* issues. The presiding Court (Middle District of Pennsylvania) determined to conduct extensive *Daubert* hearings in Three Mile Island, resulting in approximately ten full weeks of in court live hearings, and thousands of pages of legal briefing. Ultimately the trial court determined that several of the expert witnesses offered by the plaintiffs did not meet the *Daubert* requirements, and an appeal was taken to the Third Circuit Court of Appeals, where Mr. Berman both briefed and argued the issues. The Third Circuit affirmed parts of the decision and remanded for further proceedings by the trial court. His representation of clients in the Three Mile Island litigation spanned well over a decade.

In 1989, Mr. Berman represented approximately 1,000 plaintiffs who suffered damages as a result of the Exxon Valdez oil spill. In that role, he managed the claims of each of his firm's clients and worked in the development of their expert evidence and claim materials. As a subset of that litigation, he handled the claims of the Native Opt-Out Settlement Class. This representation also spanned well over a decade.

Mr. Berman began his role in litigating *In re Diet Drugs*, MDL 1203 (E.D. Pa.) in 1997 at the outset of that litigation. The *Diet Drugs* case is still active to this date. Mr. Berman's firm was appointed as Co-Lead Counsel, Co-Class Counsel and Liaison Counsel. The massive size of the *Diet Drugs* case required the commitment of three of the named partners to the case, Arnold Levin, Michael Fishbein and Mr. Berman, as well as a substantial commitment by partner Fred Longer. While Messrs. Levin and Fishbein were formally named as Co-Class counsel to the case, Mr. Berman had a *de facto* role as Co-Class Counsel and Co-Lead counsel for the case. Mr. Berman briefed many legal issues, argued issues in court, participated in discovery, appeared frequently before the Special Discovery Master, helped negotiate the settlement(s) and helped in the management of the oversight of both the AHP Settlement Trust that was created to oversee the Settlement and the Seventh Amendment Fund Administrator that was created to oversee the Seventh Amendment aspect of the Settlement. He also managed the claims of the

firm's individual clients.

Although the *Diet Drugs* case remains active today, and still occupies some of Mr. Berman's time, over the recent years he became active in various other pharmaceutical cases. In particular, beginning in about 2010, he became active in *In re Yaz/Yasmin/Ocella*, MDL 2100 (S. D. Ill.) where he was appointed as a member of the discovery and legal briefing committees. Mr. Berman worked with his partner Michael Weinkowitz as Co-Liaison Counsel in the parallel state court litigation pending in the Court of Common Pleas of Philadelphia.

As the *Yaz* case began to wind down, Mr. Berman became active in litigation Tylenol cases where he was appointed and remains currently Plaintiffs' Co-Lead and Liaison Counsel. *In re Tylenol*, MDL 2436, (E.D. Pa.). As Plaintiffs' Co-Lead and Liaison Counsel, Mr. Berman has appeared in Court for the Plaintiffs at virtually all of the monthly status conferences, drafted numerous briefs, engaged in discovery, drafted numerous case management orders that were entered by the Court, argued motions and otherwise managed the case on behalf of the Plaintiffs.

Mr. Berman is also a *de facto* member of the executive committee of *In re Granuflo*, MDL MDL2428 (D. Mass.). Mr. Berman's partner Arnold Levin was formally appointed to that case's Executive Committee for the Plaintiffs and Mr. Berman was appointed as a Co-Chair of the law and briefing committee. He has acted as a *de facto* member of the Executive Committee for the firm. In his role on the Law and Briefing Committee, he drafted numerous briefs for the case, including *Daubert* briefs, drafted various case management orders that were entered by the Court, and assisted in the negotiation of the global settlement including the drafting of the settlement documents and the allocation plan.

In *In re Fosamax*, MDL 2243 (D.N.J.), Mr. Berman spearheaded the plaintiffs' position relating to privilege log issues as well as preemption and *in limine* issues raised in the bellwether case. Most recently, Mr. Berman was appointed to the Plaintiffs' Steering Committee by the Honorable Freda L. Wolfson in *In re Johnson & Johnson Talcum Powder Products*, MDL 2738 (D. N.J.).

Mr. Berman has lectured about mass tort matters. He lectured about the Tylenol case at several seminars and is a member of the American Association of Justice (AAJ) litigation group for the case. He is also a member of various other AAJ litigation groups involving pharmaceutical products. Mr. Berman

has been a frequent speaker for the Pennsylvania Bar Institute, Mealy's Publications and Harris Martin. His lectures have been accredited for providing CLE credit to the attendees. Mr. Berman has an A.V. Peer Review rating by Martindale-Hubbell, and is an AAJ National College of Advocacy Advocate. He is also a member of The National Trial Lawyers, as well as a member of the American, Pennsylvania and Philadelphia Bar Associations and has been recognized as a Super Lawyer. His published works include "Class Actions in State and Federal Courts," Pennsylvania Bar Institute (Continuing Legal Education), November, 1997; "New Pennsylvania Rule of Civil Procedure 207.1," Pennsylvania Bar Institute (Continuing Legal Education), November, 2001, and membership on the Board of Editors, "Fen-Phen Litigation Strategist," Leader Publications, (1998).

(e) **FREDERICK S. LONGER**, specializes in representing individuals who have been harmed by dangerous drugs, medical devices, other defective products and antitrust violations. Mr. Longer has extensive experience in prosecuting individual, complex and class action litigations in both state and federal courts across the country. Mr. Longer has been involved in the resolution of several of the largest settlements involving personal injuries including the $6.75 billion settlement involving Diet Drugs and the $4.85 billion settlement involving Vioxx. Mr. Longer was a member of the negotiating counsel responsible for the settlements in the *Chinese Drywall* litigation involving various suppliers and manufacturers of Chinese Drywall valued in excess of $1 billion. Mr. Longer has a wealth of experience in mass torts and has frequently been the chairman or member of the Law and Briefing Committee in numerous multi-district litigations in *In re Propulsid Products Liability Litigation*, MDL No. 1355 (E.D. La.); *In re Rezulin Products Liability Litigation*, MDL No. 1348 (S.D.N.Y.); *In re Vioxx Products Liability Litigation*, MDL 1657 (E.D. La.); *In re Orthopedic Bone Screw Products Liability Litigation*, MDL 1014 (E.D. Pa.); and *In re Diet Drug Litigation*, MDL 1203 (E.D. Pa.). He is a court-appointed member of the Plaintiffs' Steering Committee in *In re Mirena Products Liability Litigation*, MDL 2434 (S.D.N.Y.) and *In re Xarelto Products Liability Litigation*, MDL No. 2592 (E.D. La.). Mr. Longer also assisted Co-Lead Counsel and Subclass Counsel with negotiating the class settlement in *In re National Football League Players' Concussion Litigation*, MDL No. 2323 (E.D. Pa.).

Mr. Longer has substantial trial experience and is one of the few counsel in the country to have a

client's claim involving Baycol tried to verdict in Philadelphia County Court of Common Pleas.

Mr. Longer, originally from Philadelphia, Pennsylvania, completed his undergraduate work at Carnegie Mellon University. He then attended the University Pittsburgh School of Law and was a Notes and Comments Editor for the University of Pittsburgh Law Review. Mr. Longer practiced for 3 years in Allegheny County with the law firm of Berger, Kapatan, Malakoff & Myers on complex litigation and civil rights matters, including *Kelly v. County of Allegheny*, No. 6D 84-17962 (C.P. Allegheny County, PA). Thereafter, Mr. Longer joined the firm and is now a member in the firm.

Mr. Longer is a frequent lecturer and has presented numerous seminars on various legal topics for professional groups. Some of Mr. Longer's speaking engagements include: *Plaintiff Only Consumer Warranty Class Action Litigation Seminar*, American Association for Justice Education and the National Association of Consumer Advocate (June 3-4, 2014)*; "No Injury" and "Overbroad" Class Actions After Comcast, Glazer and Butler: Implications for Certification-Navigating Complex Issues of Overbreadth and Damages in Consumer Product Cases*, Strafford Webinar (April 1, 2014); *Service of Process in China*, ABA Annual Conference (April 18-20, 2012); Chinese Drywall Litigation Conference, Harris Martin (October 20-21, 2011); *Current Issues in Multi-district Litigation Practice*, Harris Martin (September 26, 2011); *FDA Preemption: Is this the end?*, Mass Torts Made Perfect (May 2008). He has authored several articles including, *The Federal Judiciary's Super Magnet,* TRIAL (July 2009). He also contributed to Herbert J. Stern & Stephen A. Saltzburg, TRYING CASES TO WIN: ANATOMY OF A TRIAL (Aspen 1999).

Mr. Longer is a member of the American Bar Association, American Association for Justice, Pennsylvania and Philadelphia Association for Justice, the Pennsylvania Bar Association and the Philadelphia Bar Association. He is an active member of the Historical Society for the Eastern District of Pennsylvania. He is admitted to practice before the Supreme Court of Pennsylvania and the Supreme Court of New Jersey, the United States Supreme Court; the United States Courts of Appeals for the Second, Third, Fourth, Fifth, Seventh and Ninth Circuits, and the United States District Courts for the Western and Eastern Districts of Pennsylvania, United States District Court Northern District of New York; United States District Court for the Western District of New York; United States District Court of

New Jersey; United States District Court for District of Arizona; and the United States District Court District of Nebraska.

Mr. Longer has received Martindale-Hubbell's highest rating (AV) as a pre-eminent lawyer for his legal ability and ethical standards. He has also been recognized by his peers as a Super Lawyer since 2008.

(f) **SANDRA L. DUGGAN**, is Of-Counsel to the firm. She received her J.D. degree in 1985 from Columbia Law School and a B.A. from Washington University in St. Louis, where she was Phi Beta Kappa. Since 1989, Ms. Duggan has focused her practice on class action and multidistrict litigation. She was a named partner in the firm of Kronfeld Newberg & Duggan prior to joining Levin Sedran & Berman. She has served as a member of the Plaintiffs' Executive Committee in the national asbestos property damage class action, *Prince George Center, Inc. v. U.S. Gypsum, et al.* (C.C.P. Phila.), and she is counsel for class plaintiffs in the Title IX discrimination suit, *Cohen v. Brown University, et al.*, (D.R.I.). Ms. Duggan's former firm was Co-Lead Counsel in *In re School Asbestos Litigation*, (E.D. Pa.) and she participated in the Asbestos Claimants Committees in Celotex and National Gypsum Chapter 11 bankruptcies. She has also worked on the *In re EXXON VALDEZ* litigation and other securities fraud, shareholder and property damage class actions in federal and state courts. Ms. Duggan has worked with Levin Sedran & Berman extensively in *In re Orthopedic Bone Screw Products Liability Litigation*, MDL 1014 (E.D. Pa.); *In re Diet Drugs Litigation*, MDL 1203 (E.D. Pa.); *In re Chinese-Manufactured Drywall Products Liability Litigation,* MDL 2047 (E.D. La.); *In re VIOXX Products Liability Litigation*, MDL 1657 (E.D. La.), and she assisted Co-Lead Counsel and Subclass Counsel with negotiating the class settlement in *In re National Football League Players' Concussion Litigation*, MDL No. 2323 (E.D. Pa.). In July 2015, Ms. Duggan and Mr. Levin were appointed by the Honorable Carl J. Barbier to serve as Special Counsel to the Plaintiffs' Fee and Cost Committee in the BP Oil Spill Litigation, *In re Oil Spill by the Oil Rig "Deepwater Horizon" in the Gulf of Mexico, on April 20, 2010*, MDL 2179 (E.D. La.).

Ms. Duggan served as a class action expert in *In re "Non-Filing" Insurance Fee Litigation*, MDL 1130 (M.D. Ala.). She was a contributing author and editor of the Third Edition of Herbert

Newberg, Newberg On Class Actions, (3d ed. 1992) and she earned a Public Justice Achievement Award in July, 1999 from Public Justice for her work on the Brown University Title IX Litigation.

(g) **DANIEL C. LEVIN**, a member of the firm, was born in Philadelphia, Pennsylvania. He received his undergraduate degree from the University of Pittsburgh (B.A. 1994) and his law degree from Oklahoma City University (J.D. 1997). He is a member of Phi Delta Phi. He serves on the Board of Directors for the Philadelphia Trial Lawyers Association. He is also member of the Pennsylvania Bar Association; Pennsylvania Trial Lawyers Association, and the Association of Trial Attorneys of America. He is admitted to practice before the Supreme Court of Pennsylvania; the United States District Court for The Eastern District of Pennsylvania, and the United States Court of Appeals for the Second and Third Circuits. Mr. Levin has been part of the litigation team in *In re Orthopedic Bone Screw Products Liability Litigation*, MDL 1014 (E.D. Pa.); *In re Diet Drugs Litigation*, MDL 1203 (E.D. Pa.); *Galanti v. The Goodyear Tire and Rubber Co.*, Civil Action No: 03-209; *Muscara v. Nationwide,* October Term 2000, Civil Action No. 001557, Philadelphia County; and *Wong v. First Union*, May Term 2003, Civil Action No. 001173, Philadelphia County, *Harry Delandro, et al v. County of Allegheny, et al*, Civil Action No. 2:06-CV-927; *Nakisha Boone, et al v. City of Philadelphia, et al*, Civil Action No. 05-CV-1851; *Mary Gwiazdowski v. County of Chester*, No. 08-4463 (E.D.Pa.); *Helmer, et al. v. the Goodyear Tire & Rubber Co.,* D. Co. Civil Action No. 1:12-00685-RBJ*; Cobb v. BSH Home Appliance Corporation, et al*, C.D. Cal. Case No. SACV10-711 DOC (ANx) and *In Re Human Tissue Products Liability Litigation*, MDL 1763 (D.N.J.).

Mr. Levin was lead counsel in *Joseph Meneghin v. Exxon Mobil Corporation, et al.*, Superior Court of New Jersey, Docket No. OCN-L-002696-07; *Johnson, et al. v. Walsh, et al*, PCCP April Term, 2008, No. 2012; *Kowa, et al. v. The Auto Club Group*, N.D.Ill. Case No. 1:11-cv-07476. Mr. Levin is currently lead counsel in *Ortiz v. Complete Healthcare Resources, Inc., et al,* Montgomery CCP No. 12-12609; *Gordon v. Maxim Healthcare Services, Inc.*, E.D. Pa. Civil Action No. 2:13-cv-07175 and *Shafir v. Continuum Health Partners, Inc.*

Daniel Levin is recognized by his peers as a Super Lawyer.

(h) **CHARLES E. SCHAFFER**, a member of the firm, born in Philadelphia, Pennsylvania, is a graduate of Villanova University, (B.S., *Magna Cum Laude*, 1989) and Widener University School of Law (J.D. 1995) and Temple University School of Law (LL.M. in Trial Advocacy, 1998). He is admitted to practice before the Supreme Court of Pennsylvania, the Supreme Court of New Jersey, the United States District Court for the Eastern District of Pennsylvania, the United States District Court for the Western District of Pennsylvania and the Third Circuit Court of Appeals. He is also a member of the American Bar Association, Association of Trial Attorneys of America, Pennsylvania Association for Justice, Philadelphia Trial Lawyers Association, and the National Trial Lawyers Association.

Mr. Schaffer has participated in, *inter alia*, the following actions: *Davis v. SOH Distribution Company, Inc.*, Case No. 09-CV-237 (M.D. Pa.) (Plaintiffs' Co-Lead Counsel); *In re CertainTeed Corporation Roofing Shingles Products Liability Litigation,* MDL No. 1817 (E.D. Pa.) (Plaintiffs' Discovery and Settlement Committees); *Gwaizdowski v. County of Chester*, Civil Action No. 08-CV-4463 (E.D. Pa. 2012); *Meneghin, v. The Exxon Mobile Corporation, et al.,* Civil Action No. OCN-002697-07 (Superior Court, Ocean County, NJ 2012) (Plaintiffs' Co-lead Counsel); *Gulbankian et. al. v. MW Manufacturers, Inc.,* Case No. 1:10-cv-10392-RWZ (D.C. Mass.) (Plaintiffs' Discovery and Settlement Committees); *Eliason, et al. v. Gentek Building Products, Inc., et al.*, Case No. 1:10-cv-2093 (N.D. Ohio) (Plaintiffs' Executive Committee); *Smith, et al. v. Volkswagon Group of America, Inc.*, Case No. 3:13-cv-00370-SMY-PMF (S.D. Ill.) (Plaintiffs' Discovery and Settlement Committees); *Melillo, et al. v. Building Products of Canada Corp.*, Civil Action No. 1:12-CV-00016-JGM (D. Vt. Dec. 2012); *Vought, et al., v. Bank of America, et al*., Civil Action No. 10-CV-2052 (C.D. Ill. 2013) (Plaintiffs' Discovery and Settlement Committees); *In re Navistar Diesel Engine Products Liability Litigation*, MDL No. 2223 (N.D. Ill.) (Plaintiffs' Steering Committee); *United Desert Charities, et al. v. Sloan Valve, et al.*, Case No. 12-cv-06878 (C.D. Ca.) (Plaintiffs' Executive Committee); *Kowa, et. el. v. The Auto Club Group AKA AAA* Chicago, Case No. 1:11-cv-07476 (N.D. Ill.); *In re Chinese-Manufactured Drywall Product Liability Litigation,* MDL 2047 (E.D. La.); *In re Vioxx Products Liability Litigation*, MDL 1657 (E.D. La.); *In re Orthopedic Bone Screw Products Liability Litigation*, MDL 1014 (E.D. Pa.); *In re Diet Drugs Litigation*, MDL 1203 (E.D. Pa.); *In re: CertainTeed Fiber*

Cement Siding Litigation, MDL 2270 (E.D. Pa. 2014) (Plaintiffs' Discovery and Settlement Committees) and *In re JP Mortgage Modification Litigation,* MDL 2290 (D. Mass.) (Plaintiffs' Co-Lead Counsel).

Currently, Mr. Schaffer is serving as lead counsel in *In re IKO Roofing Products Liability Litigation*, MDL 2104 (C.D. Ill.), a member of Plaintiffs' Steering Committee in *In re Pella Corporation Architect And Designer Series Windows Marketing Sales Practices and Product Liablility Litigation*, MDL 2514 (D.S.C.); a member of the Plaintiffs' Executive Committee in *In re Azek Decking Sales Practices Litigation*, Civil Action No. 12-6627 (KM)(MCA)(D.NJ.), a member of the Plaintiffs' Executive Committee in *In re Citimortgage, Inc. Home Affordable Modification ("HAMP")*, MDL 2274 (C.D. Cal.); a member of the Plaintiffs' Executive Committee in *In re Carrier IQ Consumer Privacy Litigation*, MDL 2330 (N.D. Cal*.);* a member of the Plaintiffs' Executive Committee *In re Dial Complete Marketing and Sales Practices Litigation*; MDL 2263 (D.N.H.); a member of Plaintiffs' Executive Committee in *In re Emerson Electric Co. Wet/Dry Vac Marketing and Sales Litigation,* MDL 2382 (E.D. Miss.); a member of the Plaintiffs' Executive Committee *In re Colgate Palmolive Soft Soap Antibacterial Hand Soap Marketing and Sales Practice Litigation*, (D.N.H.); a member of the Plaintiffs' Executive Committee *In re HardiePlank Fiber Cement Siding* Litigation, MDL 2359 (D. Minn.) and is actively participating in a number of other class actions and mass tort actions across the United States in leadership positions.

In recognition of his accomplishments, Mr. Schaffer has achieved and maintained an AV Martindale-Hubbell rating. Mr. Schaffer speaks nationally on a multitude of topics relating to class actions and complex litigation.

(i) **AUSTIN B. COHEN**, a member of the firm, is a graduate of the University of Pennsylvania (B.A., 1990) and a graduate of the University of Pittsburgh School of Law (J.D., cum laude, 1996) where he served on the Journal of Law and Commerce as an assistant and executive editor. He has authored an article titled "Why Subsequent Remedial Modifications Should Be Inadmissible in Pennsylvania Products Liability Actions," which was published in the Pennsylvania Bar Association Quarterly. He is a member of the Pennsylvania and New Jersey bars, and is a member of the Pennsylvania and American Bar Associations.

(j) **MICHAEL M. WEINKOWITZ**, a member of the firm, born Wilmington, Delaware, June 11, 1969; admitted to bar 1995, Pennsylvania and New Jersey, U.S. District Courts, Eastern District of Pennsylvania, District of New Jersey; U.S. Court of Appeals, Third Circuit. Education: West Virginia University (B.A., magna cum laude, 1991); Temple University (J.D., cum laude, 1995); Member, Temple International & Comparative Law Journal, 1994-95; American Jurisprudence Award for Legal Writing.

(k) **MATTHEW C. GAUGHAN,** born in Boston, Massachusetts, is a graduate of the University of Massachusetts at Amherst, (B.B.A., 2000) and Villanova University School of Law (J.D., *Cum Laude*, 2003). He is admitted to practice in the States of New Jersey, New York and Pennsylvania. He is also admitted to practice before the United States District Court for the Eastern District of Pennsylvania and the United States District Court for the District of New Jersey. Mr. Gaughan has extensive involvement in products liability and commercial litigation cases.

(l) **KEITH J. VERRIER,** is a graduate of Temple University School of Law (J.D., magna cum laude, 2000), where he was a member of the Law Review, and the University of Rhode Island (B.S., 1992). After law school, he was a law clerk for the Honorable Herbert J. Hutton in the United States District Court for the Eastern District of Pennsylvania. Mr. Verrier has experience litigating a wide range of commercial disputes with an emphasis on litigating and counseling clients on antitrust matters. He currently spends the majority of his time litigating antitrust class actions, predominantly those seeking overcharge damages on behalf of direct purchasers of products under both Section 1 and Section 2 of the Sherman Act. He is admitted to practice in the Commonwealth of Pennsylvania and the State of New Jersey as well as in the United States Court of Appeals for the Third Circuit, the United States District Court for the Eastern District of Pennsylvania and the United States District Court for the District of New Jersey. He is a member of the American Bar Association.

(m) **LUKE T. PEPPER**, is a graduate of King's College (B.A. 1997) and the Temple University School of Law (J.D. 2000). While in law school, Mr. Pepper served as an intern for United States Magistrate Judge Peter Scuderi. He is admitted to the Pennsylvania Supreme Court, and the U.S. District Court for the Eastern District of Pennsylvania, U.S. Court of Appeals, Third Circuit, and United States Court of Appeals for the Armed Forces. He is a member of the Pennsylvania and American Association

of Justice. He served as claimant and attorney liaison for Class Counsel MDL 1203 *In re Diet Drugs*, (E.D. Pa.). His responsibilities included assisting claimants with the adjudication of their claims and resolution of settlement issues. In addition, Mr. Pepper is part of the litigation teams *In re Pradaxa (Dabigatran Etexilate) Products Liability Litigation*, MDL 2385 (S.D. Ill.), *In re: Yasmin and YAZ (Drospirenone) Marketing, Sales Practices and Products Liability Litigation*, MDL 2100 (S.D. Ill.); *Municipal Derivatives* MDL 1950 (S.D.N.Y.); *Tylenol (Acetaminophen) Marketing, Sales Practices and Products Liability Litigation* MDL 2436 (E.D. Pa.); *Pool Products Distribution Market Antitrust Litigation*, MDL 2328 (E.D. La.).

(n) **NICOLA F. SERIANNI**, is a graduate of The Johns Hopkins University (B.A. International Relations, 2000) and Widener University School of Law (J.D., 2006). While in law school, Ms. Serianni served as an intern for Pennsylvania Superior Court Judge Susan Peikes Gantman, and upon graduation continued to work in the Superior Court of Pennsylvania for Judges Richard B. Klein (Ret.) and Anne E. Lazarus. Ms. Serianni is admitted to practice in the Commonwealth of Pennsylvania, the State of New Jersey as well as in the United States District Court for the Eastern District of Pennsylvania. Ms. Serianni works extensively on products liability and class action litigation cases.

SUCCESSFULLY LITIGATED CLASS CASES

Levin Sedran & Berman's extensive class action practice includes many areas of law, including: Securities, ERISA, Antitrust, Environmental and Consumer Protection. The firm also maintains a practice in personal injury, products liability, and admiralty cases.

The firm has successfully litigated the following class action cases: *James J. and Linda J. Holmes, et al. v. Penn Security Bank and Trust Co., et al.*, U.S.D.C., Middle District of Pennsylvania Civil Action No. 80-0747; *In re Glassine & Greaseproof Antitrust Litigation*, MDL 475, U.S.D.C., Eastern District of Pennsylvania; *In re First Pennsylvania Securities Litigation*, Master File No. 80-1643, U.S.D.C., Eastern District of Pennsylvania; *In re Caesars World Shareholder Litigation*, Master File No. MDL 496 (J.P. MDL); *In re Standard Screws Antitrust Litigation*, Master File No. MDL 443, U.S.D.C., Eastern District of Pennsylvania; *In re Electric Weld Steel Tubing Antitrust Litigation - II*,

Master File No. 83-0163, U.S.D.C., Eastern District of Pennsylvania; *Leroy G. Meshel, et al. v. Nutri-Systems, Inc., et al.*, U.S.D.C., Eastern District of Pennsylvania, Civil Action No. 83-1440; *In re Corrugated Container Antitrust Litigation*, U.S.D.C., Southern District of Texas, Houston Division, MDL 310; *In re Three Mile Island Litigation*, U.S.D.C., Middle District of Pennsylvania, Civil Action No. 79-0432; *Township of Susquehanna, et al. v. GPU, et al.*, U.S.D.C., Middle District of Pennsylvania, Civil Action No. 81-0437 (a Three Mile Island case); *Donald A. Stibitz, et al. v. General Public Utilities Corporation, et al.*, No. 654 S 1985 (C.P. Dauphin County, Pa.) (a Three Mile Island case); *Raymond F. Wehner, et al. v. Syntex Corporation and Syntex (U.S.A.) Inc.*, No. C-85-20383(SW) (N.D. Cal.) (first Superfund Class Action ever certified); *In re Dun & Bradstreet Credit Services Customer Litigation*, U.S.D.C., Southern District of Ohio, Civil Action Nos. C-1-89-026, 89-051, 89-2245, 89-3994, 89-408; *Malcolm Weiss v. York Hospital, et al.*, U.S.D.C., Middle District of Pennsylvania, Civil Action No. 80-0134; *In re Ramada Inns Securities Litigation*, U.S.D.C., District of Delaware, Master File No. 81-456; *In re Playboy Securities Litigation*, Court of Chancery, State of Delaware, New Castle County, Civil Action No. 6806 and 6872; *In re Oak Industries Securities Litigation*, U.S.D.C., Southern District of California, Master File No. 83-0537-G(M); *Dixie Brewing Co., Inc., et al. v. John Barth, et al.*, U.S.D.C., Eastern District of Pennsylvania, Civil Action No. 84-4112; *In re Warner Communications Securities Litigation*, U.S.D.C., Southern District of New York, Civil Action No. 82-CV-8288; *In re Baldwin United Corporation Litigation*, U.S.D.C., Southern District of New York, MDL No. 581; *Zucker Associates, Inc., et al. v. William C. Tallman, et al. and Public Service Company of New Hampshire*, U.S.D.C., District of New Hampshire, Civil Action No. C86-52-D; *In re Shopping Carts Antitrust Litigation*, MDL 451, Southern District of New York; *Charal v. Andes, et al.*, C.A. No. 77-1725; *Hubner v. Andes, et al.*, C.A. No. 78-1610 U.S.D.C., Eastern District of Pennsylvania; *In re Petro-Lewis Securities Litigation*, 84-C-326, U.S.D.C., District of Colorado; *Gentry v. C & D Oil Co.*, 102 F.R.D. 490 (W.D. Ark. 1984); *In re Hops Antitrust Litigation*, C.A. No. 84-4112, U.S.D.C., Eastern District of Pennsylvania; *In re North Atlantic Air Travel Antitrust Litigation*, No. 84-1013, U.S.D.C., District of Columbia; *Continental/Midlantic Securities Litigation*, No. 86-6872, U.S.D.C., Eastern District of Pennsylvania; *In re Fiddler's Woods*

Bondholders Litigation, Civil Action No. 83-2340 (E.D. Pa.) (Newcomer, J.); *Fisher Brothers v. Cambridge-Lee Industries, Inc , et al.*, Civil Action No. 82-4941, U.S.D.C., Eastern District of Pennsylvania; *Silver Diversified Ventures Limited Money Purchase Pension Plan v. Barrow, et al.*, C.A. No. B-86-1520-CA (E.D. Tex.) (*Gulf States Utilities Securities Litigation*); *In re First Jersey Securities Litigation*, C.A. No. 85-6059 (E.D. Pa.); *In re Crocker Shareholder Litigation*, Cons. C.A. No. 7405, Court of Chancery, State of Delaware, New Castle County; *Mario Zacharjasz, et al. v. The Lomas and Nettleton Co.*, Civil Action No. 87-4303, U.S.D.C., Eastern District of Pennsylvania; *In re People Express Securities Litigation*, Civil Action No. 86-2497, U.S.D.C., District of New Jersey; *In re Duquesne Light Shareholder Litigation*, Master File No. 86-1046 U.S.D.C., Western District of Pennsylvania (Ziegler, J.); *In re Western Union Securities Litigation*, Master File No. 84-5092 (JFG), U.S.D.C., District of New Jersey; *In re TSO Financial Litigation*, Civil Action No. 87-7903, U.S.D.C., Eastern District of Pennsylvania; *Kallus v. General Host*, Civil Action No. B-87-160, U.S.D.C., District of Connecticut; *Staub, et al. v. Outdoor World Corp.*, C.P. Lancaster County, No. 2872-1984; *Jaroslawicz, et al. v. Englehard Corp.*, U.S.D.C., District of New Jersey, Civil Action No. 84-3641F; *In re Boardwalk Marketplace Securities Litigation*, U.S.D.C., District of Connecticut, MDL 712 (WWE); *In re Goldome Securities Litigation*, U.S.D.C., Southern District of New York, Civil Action No. 88-Civ-4765; *In re Ashland Oil Spill Litigation*, U.S.D.C., Western District of Pennsylvania, Master File No. M-14670; *Rosenfeld, et al. v. Collins & Aikman Corp.*, U.S.D.C., Eastern District of Pennsylvania, Civil Action No. 87-2529; *Gross, et al. v. The Hertz Corporation*, U.S.D.C., Eastern District of Pennsylvania, Master File, No. 88-661; *In re Collision Near Chase, Maryland on January 4, 1987 Litigation*, U.S.D.C., District of Maryland, MDL 728; *In re Texas International Securities Litigation*, U.S.D.C., Western District of Oklahoma, MDL No. 604, 84 Civ. 366-R; *In re Chain Link Fence Antitrust Litigation*, U.S.D.C., District of Maryland, Master File No. CLF-1; *In re Winchell's Donut House, L.P. Securities Litigation*, Court of Chancery of the State of Delaware, New Castle County, Consolidated Civil Action No. 9478; *Bruce D. Desfor, et al. v. National Housing Ministries, et al.*, U.S.D.C., Eastern District of Pennsylvania, Civil Action No. 84-1562; *Cumberland Farms, Inc., et al. v. Browning-Ferris Industries, Inc., et al.*, U.S.D.C., Eastern District of Pennsylvania, Master File

No. 87-3717; *In re SmithKline Beckman Corp. Securities Litigation*, U.S.D.C., Eastern District of Pennsylvania, Master File No. 88-7474; *In re SmithKline Beecham Shareholders Litigation*, Court of Common Pleas, Phila. County, Master File No. 2303; *In re First Fidelity Bancorporation Securities Litigation*, U.S.D.C., District of New Jersey, Civil Action No. 88-5297 (HLS); *In re Qintex Securities Litigation*, U.S.D.C., Central District of California, Master File No. CV-89-6182; *In re Sunrise Securities Litigation*, U.S.D.C., Eastern District of Pennsylvania, MDL 655; *David Stein, et al. v. James C. Marshall, et al.*, U.S.D.C., District of Arizona, No. Civ. 89-66 (PHX-CAM); *Residential Resources Securities Litigation*, Case No. 89-0066 (D. Ariz.); *In re Home Shopping Network Securities Litigation -- Action I (Consolidated Actions)*, Case No. 87-428-CIV-T-13A (M.D. Fla.); *In re Kay Jewelers Securities Litigation*, Civ. Action Nos. 90-1663-A through 90-1667-A (E.D. Va.); *In re Rohm & Haas Litigation*, Master File Civil Action No. 89-2724 (Coordinated) (E.D. Pa.); *In re O'Brien Energy Securities Litigation*, Master File No. 89-8089 (E.D. Pa.); *In re Richard J. Dennis & Co. Litigation*, Master File No. 88-Civ-8928 (MP) (S.D. N.Y.); *In re Mack Trucks Securities Litigation*, Consolidated Master File No. 90-4467 (E.D. Pa.); *In re Digital Sound Corp., Securities Litigation*, Master File No. 90-3533-MRP (BX) (C.D. Cal.); *In re Philips N.V. Securities Litigation*, Master File No. 90-Civ.-3044 (RPP) (S.D.N.Y.); *In re Frank B. Hall & Co., Inc. Securities Litigation*, Master File No. 86-Civ.-2698 (CLB) (S.D.N.Y.); *In re Genentech, Inc. Securities Litigation*, Master File No. C-88-4038-DLJ (N.D. Cal.); *Richard Friedman, et al. v. Northville Industries Corp.*, Supreme Court of New York, Suffolk County, No. 88-2085; *Benjamin Fishbein, et al. v. Resorts International, Inc., et al.*, No. 89 Civ.6043(MGC) (S.D.N.Y.); *In re Avon Products, Inc. Securities Litigation*, No. 89 Civ. 6216 (MEL) (S.D.N.Y.); *In re Chase Manhattan Securities Litigation*, Master File No. 90 Civ. 6092 (LJF) (S.D.N.Y.); *In re FPL Group Consolidated Litigation*; Case No. 90-8461 Civ. Nesbitt (S.D. Fla.); *Daniel Hwang, et al v. Smith Corona Corp., et al*, Consolidated No. B89-450 (TFGD) (D. Ct.); *In re Lomas Financial Corp. Securities Litigation*, C.A. No. CA-3-89-1962-G (N.D. Tex.); *In re Tonka Corp. Securities Litigation*, Consolidated Civil Action No. 4-90-2 (D. Minnesota); *In re Unisys Securities Litigation*, Master File No. 89-1179 (E.D. Pa.); *In re Alcolac Inc. Litigation*, Master File No. CV490-261 (Cir. Ct. Saline Cty. Marshall, Missouri); *In re Clozapine Antitrust Litigation*,

Case No. MDL874 (N.D. Ill.); *In re Jiffy Lube Securities Litigation*, C.A. No. JHY-89-1939 (D. Md.); *In re Beverly Enterprises Securities Litigation*, Master File No. CV-88-01189 RSWL (Tex.) [Central District CA]; *In re Kenbee Limited Partnerships Litigation*, CV-91-2174 (GEB) (D.N.J.); *Greentree v. Procter & Gamble Co.*, C.A. No. 6309, April Term 1991 (C.C.P. Phila. Cty.); *Moise Katz, et al v. Donald A. Pels, et al and Lin Broadcasting Corp.*, No. 90 Civ. 7787 (KTD) (S.D.N.Y.); *In re Airlines Antitrust Litigation*, MDL No. 861 (N.D. GA.); *Fulton, Mehring & Hauser Co., Inc., et al. v. The Stanley Works, et al.*, No. 90-0987-C(5) (E.D. Mo.); *In re Mortgage Realty Trust Securities Litigation*, Master File No. 90-1848 (E.D. Pa.); *Benjamin and Colby, et al. v. Bankeast Corp., et al.*, C.A. No. C-90-38-D (D.N.H.); *In re Royce Laboratories, Inc. Securities Litigation*, Master File Case No. 92-0923-Civ-Moore (S.D. Fla.); *In re United Telecommunications, Inc. Securities Litigation*, Case No. 90-2251-0 (D. Kan.); *In re U.S. Bioscience Securities Litigation*, C.A. No. 92-678 (E.D. Pa.); *In re Bolar Pharmaceutical Co., Inc. Securities Litigation*, C.A. No. 89 Civ. 17 (E.D. N.Y.); *In re PNC Securities Litigation*, C.A. No. 90-592 (W.D. Pa.); *Raymond Snyder, et al. v. Oneok, Inc., et al.*, C.A. No. 88-C-1500-E (N.D. Okla.); *In re Public Service Company of New Mexico*, Case No. 91-0536M (S.D. Cal.); *In re First Republicbank Securities Litigation*, C.A. No. CA3-88-0641-H (N.D. Tex, Dallas Division); and *In re First Executive Corp. Securities Litigation*, Master File No. CV-89-7135 DT (C.D. Calif.).

* * *

Several courts have favorably commented on the quality of work performed by Arnold Levin, Levin, Fishbein, Sedran & Berman, and Mr. Levin's former firm, Adler, Barish, Levin & Creskoff.

Judge Rambo of the United States District Court for the Middle District of Pennsylvania has favorably acknowledged the quality of work of the law firm in her opinion in *In re Three Mile Island Litigation*, 557 F. Supp. 96 (M.D. Pa. 1982). In that case, the firm was a member of the Executive Committee charged with overall responsibility for the management of the litigation. Notably, the relief obtained included the establishment of a medical monitoring fund for the class. *See also*, *Township of Susquehanna, et al. v. GPU, et al.*, U.S.D.C., Middle District of Pennsylvania, Civil Action No. 81-0437.

In certifying the class in *Weiss v. York Hospital*, Judge Muir found that "plaintiff's counsel are experienced in the conduct of complex litigation, class actions, and the prosecution of antitrust matters." *Weiss v. York Hospital*, No. 80-0134, Opinion and Order of May 28, 1981 at 4 (M.D. Pa. Mar. 1981). *See also*, *Weiss v. York Hospital*, 628 F. Supp. 1392 (M.D. Pa. 1986). Judge Muir, in certifying a class for settlement purposes, found plaintiff's attorneys to be adequate representatives in *In re Anthracite Coal Antitrust Litigation*, Nos. 76-1500, 77-699, 77-1049 and found in the decision that "the quality of the work performed by Mr. Levin and by the attorneys from Adler-Barish [a predecessor to Levin, Fishbein, Sedran & Berman] who assisted him -- as exhibited both in the courtroom and in the papers filed -- has been at a high level." *In re Anthracite Coal Antitrust Litigation*, (M.D. Pa., Jan. 1979). Judge Muir also approved of class counsel in the certification decision of *Holmes, et al. v. Penn Security and Trust Co., et al.*, No. 80-0747. Chief Judge Nealon found plaintiffs' counsel to satisfy the requirement of adequate representation in certifying a class in *Beck v. The Athens Building & Loan Assn.*, No. 73-605 at 2 (D. Pa. Mar. 22, 1979). Judge Nealon's opinion relied exclusively on the Court's Opinion in *Sommers v. Abraham Lincoln Savings & Loan Assn.*, 66 F.R.D. 581, 589 (E.D. Pa. 1975), which found that "there is no question that plaintiffs' counsel is experienced in the conduct of a class action...."

Judge Bechtle in the *Consumer Bags Antitrust Litigation*, Civil Action No. 77-1516 (E.D. Pa.), wherein Arnold Levin was lead counsel for the consumer class, stated with respect to petitioner:

> Each of the firms and the individual lawyers in this case have extensive experience in large, complex antitrust and securities litigation.
>
> Furthermore, the Court notes that the quality of the legal services rendered was of the highest caliber.

In *Gentry v. C&D Oil Company*, 102 F.R.D. 490 (W.D. Ark. 1984), the Court described counsel as "experienced and clearly able to conduct the litigation."

In *Jaroslawicz v. Engelhard Corp.*, No. 84-3641 (D.N.J.), in which this firm played a major role, the Court praised plaintiffs' counsel for their excellent work and the result achieved.

In *In re Orthopedic Bone Screw Products Liability Litigation,* 2000 WL 1622741, *7 (E.D. Pa. 2000), the Court lauded Levin, Fishbein, Sedran & Berman counsel as follows: "The court also finds

that the standing and expertise of counsel for [plaintiffs] is noteworthy. First, class counsel is of high caliber and most PLC members have extensive national experience in similar class action litigation."

In *In re Diet Drugs (Phentermine, Fenfluramine, Dexfenfluramine) Products Liability Litigation*, MDL 1203, the Court commented on Levin, Fishbein, Sedran & Berman's efforts regarding the creation of the largest nationwide personal injury settlement to date as a "remarkable contribution". PTO No. 2622 (E.D. Pa. Oct. 3, 2002).

The firm has played a major role in most pharmaceutical litigation in the last 20 years. The firm is listed by Martindale-Hubbell in the Bar Register of Preeminent Lawyers.

EXHIBIT D

UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

IN RE: NATIONAL FOOTBALL LEAGUE PLAYERS' CONCUSSION INJURY LITIGATION	No. 2:12-**md-02323-AB** MDL No. 2323 Hon. Anita B. Brody
Kevin Turner and Shawn Wooden, *on behalf of themselves and others similarly situated,* Plaintiffs, v. National Football League and NFL Properties LLC, successor-in-interest to NFL Properties, Inc., Defendants.	Civ. Action No. 14-00029-AB
THIS DOCUMENT RELATES TO: ALL ACTIONS	

DECLARATION OF GENE LOCKS, ESQUIRE IN SUPPORT OF CO-LEAD CLASS COUNSEL'S PETITION FOR AN AWARD OF ATTORNEY'S FEES AND REIMBURSEMENT OF COSTS AND EXPENSES

I, Gene Locks, Esquire, declare as follows pursuant to 28 U.S.C. § 1746:

1. I am a partner in the law firm known as the Locks Law Firm "(LLF"), located in Philadelphia, Pennsylvania. As one of four Class Counsel, I submit this declaration in support of Co-Lead Class Counsel's Petition for an Award of Attorney's Fees and Reimbursement of Costs and Expenses in connection with and for services rendered and expenses incurred for the common benefit of the Settlement Class in the above-captioned multidistrict litigation ("Action") from the inception of the above-captioned litigation through June 30, 2016, as well as for the

payment of expenses incurred therewith. I have personal knowledge of the matters set forth in this declaration and, if called upon, I could and would testify competently thereto.

2. LLF was involved at the inception of these cases both when the initial complaints were filed on behalf of multiple players.

3. By January 2012, LLF represented approximately 200 retired players, most of whom had filed personal injury complaints against the NFL parties "NFL") in various courts around the country, including this Court. That number expanded through the time-period of 2012 to approximately 1400 players.

4. LLF took a leadership role at the outset in early 2012, attended the first organizational meeting of plaintiffs' counsel and helped organize the Plaintiffs Steering and Executive Committees, which the Court appointed.

5. LLF took a leading role in researching and developing the case on a class-wide basis from both a medical and legal standpoint LLF took the lead in retaining both legal and medical experts: Professor Tobias Barrington Wolff of the University of Pennsylvania Law School, an expert on Rule 23, to advise on all legal issues, and Donald H. Silberberg, M.D., Chair Emeritas of the Department of Neurology of the University of Pennsylvania to advise on all medical issues. Both were instrumental in providing guidance on the substance of the Personal Injury Master Complaint and the Medical Monitoring Class Action Complaint.

6. LLF partner David Langfitt researched and drafted, along with two other Executive Committee members, the Personal Injury Master Complaint, which was filed pursuant to an Order of this Court in early summer 2012. The Medical Monitoring Class Action Complaint was modeled off the Master Personal Injury Complaint.

7. Those Complaints were the foundation of the current case, gained nationwide publicity for the cause, and focused the plaintiffs and defendants on a central pleading.

8. By the time this Court appointed two members of LLF (I, Gene Locks, and David Langfitt) as members of the Plaintiffs Executive Committee in the spring of 2012, LLF represented approximately 1000 retired players, all of whom had filed, or were in the process of filing, personal injury cases against the NFL.

9. LLF was directly involved in the drafting of opposition papers and the hearing related to the NFL's Motion to Dismiss on the grounds of pre-emption.

10. By agreement of Co-Lead Counsel, I, Gene Locks, was appointed within the Executive Committee as Settlement Counsel for settlement discussions ordered by the Court.

11. I directly participated in settlement discussions ordered by the Court while the NFL's Motion to Dismiss was pending. During those discussions, LLF prepared a substantial injury database – primarily involving the clients represented by Class Counsel and particularly clients represented by LLF – that Plaintiffs' counsel used to convey to the NFL the nature of the diseases and injuries sustained by the retired players. The parties used the database to develop a framework for settlement.

12. During those discussions, I substantially relied on the advice and counsel of my partners and, in part, Professor Wolff and Dr. Silberberg, in formulating a term sheet that was legally and scientifically supportable, was based on the best factual evidence of injury and causation that we had at that time, and was consistent with a reasonable compromise.

13. At all times, the compromise and accord was designed to settle the matter efficiently and reasonably, bearing in mind that further risks of litigation were unpredictable and

presented the unwanted possibility of many years, possibly decades, of litigation and appeals while retired players died and families disintegrated.

14. At all times, we within the Plaintiffs settlement leadership, now Class Counsel, understood that the Court desired a reasonable and effective settlement structure, and we strived to provide that.

15. Once the Plaintiffs and NFL reached a term sheet in August of 2013, LLF's role changed and became critical to making sure the vast LLF client base and their retired player friends and families understood the basis of the term sheet, the purpose of the accord and compromise, and the role of the Court in protecting the absent class members.

16. Throughout 2013 and 2014, LLF explained to every class member and family member who inquired (many of whom were not clients of LLF) how the settlement structure effected each player and family, the value of the compromise and accord for the class, together with the long-term risks of further litigation, and the fiduciary role of the Court with respect to the absent class members.

17. Very few retired players with whom LLF communicated either objected or opted-out of the Settlement Agreement. LLF's leadership in that regard created a ripple effect in the retired player community, which overwhelmingly accepted the compromise and accord as reasonable under all of the complex circumstances of this case.

18. LLF also was instrumental in interacting with a very large number of neurologists and neuropsychologists throughout the nation, a collateral benefit of which was their recruitment into and future participation in the BAP and MAF programs for the benefit of the class members (the vast majority of retired players).

19. The schedule attached hereto as Exhibit 1 is a detailed summary indicating the amount of common benefit time spent by LLF attorneys and professional support staff of my firm who were involved in, and billed fifty or more hours to, this Action, and the lodestar calculation for those individuals based on LLF's current billing rates. The schedule was prepared from contemporaneous daily time records regularly prepared and maintained by my firm. Time expended in preparing this application for attorney's fees and expenses has been excluded.

20. The hourly rates for the attorneys and professional support staff of my firm included in Exhibit 1 are the same as the regular rates charged for their services in other legal matters.

21. The total number of hours expended on the common benefit of this Action by my firm during the time period is 4243 hours. The total lodestar for my firm for those hours is $3,084,500, all of which is for attorneys' time.

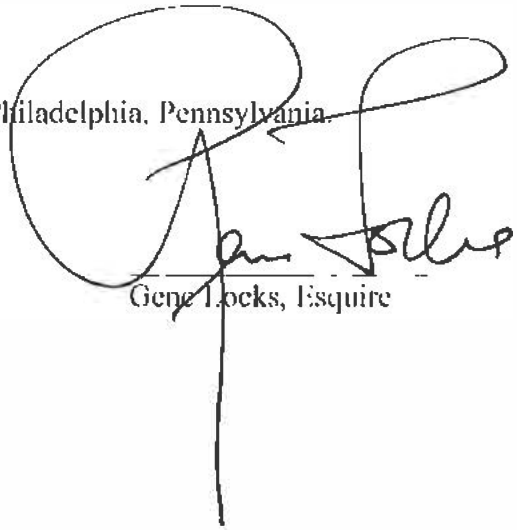
22. My firm's lodestar figures are based solely upon my firm's billing rates, which rates do not include charges for expense items. Expense items are billed separately and such charges are not duplicated in my firm's billing rates.

23. As detailed in Exhibit 2 hereto, my firm is seeking reimbursement of a total of $639,160 in common benefit expenses incurred in connection with the prosecution of this Action. These expenses are reflected on the books and records of my firm. These books and records are prepared from expense vouchers, check records, and other source material, and are an accurate record of the expenses incurred.

24. With respect to the standing of my firm to share in an award of fees, costs, and expenses, attached hereto as Exhibit 3 is a biography of my firm, including the attorneys in my firm who were principally involved in this Action.

I declare under penalty of perjury that the foregoing is true and correct.

Executed on January 10, 2017 in Philadelphia, Pennsylvania.



Gene Locks, Esquire

EXHIBIT 1

IN RE: NATIONAL FOOTBALL LEAGUE PLAYERS' CONCUSSION INJURY LITIGATION

No. 12-md-2323-AB

LOCKS LAW FIRM
610 Walnut Street, Suite 720E
Philadelphia, PA 19106
215-893-3423

LODESTAR REPORT

Inception through July 15, 2016

NAME	HOURS	HOURLY RATE	AMOUNT
PARTNERS:			
Gene Locks	1284	**$900**	**$1,155,000**
David D. Langfitt	2691	**$650**	**$1,749,150**
Michael B. Leh	93	**$700**	**$65,100**
Jonathan Miller	175	**$550**	$96,250
STAFF ATTORNEYS:			
None			
CONTRACT ATTORNEYS:			
None			
PARALEGALS:			
None			
TOTALS:	4243		$3,084,500

EXHIBIT 2

IN RE: NATIONAL FOOTBALL LEAGUE PLAYERS' CONCUSSION INJURY LITIGATION

No. 12-md-2323-AB

LOCKS LAW FIRM
610 Walnut Street, Suite 720E
Philadelphia, PA 19106
215-893-3423

COST AND EXPENSE REPORT

Inception through June 30, 2016

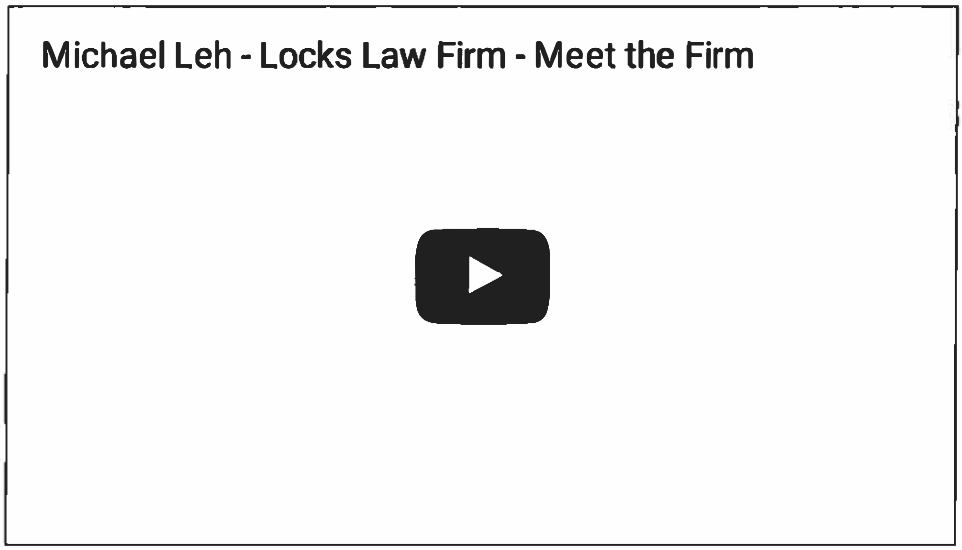
NUMBER	CATEGORY	AMOUNT
1	Assessments	$550,000
2	Commercial Copies	
3	Computerized Research	
4	Court Reporters/Transcripts	
5	Expert Services	$70,150
6	Facsimile	
7	Filing & Service Fees	
8	In-House Copies	
9	Long Distance Telephone	
10	Postage/Express Delivery	
11	Travel/Meals/Lodging	$19,010
12	Miscellaneous	
TOTAL EXPENSES		$639,160

EXHIBIT 3

LOCKS LAW FIRM

(http://www.lockslaw.com/)

About Us



One of the most prominent personal injury law firms in the tri-state region, the Locks Law Firm is steadfastly committed to protecting the rights of seriously injured victims

With a focus on mass tort and complex personal injury cases, our firm has the resources to handle any case--whether simple or complex--while still providing individual attention to each and every client. Our experienced lawyers have the knowledge to guide you throughout the legal process to achieve the best possible resolution of your case.

Who We Are

Founded by Gene Locks, the firm first distinguished itself as a leader in the development of strategies for asbestos litigation (/practice-areas/environmental-and-toxic-torts/asbestos-mesothelioma/mesothelioma-litigation-information/), successfully representing thousands of workplace exposure (/practice-areas/environmental-and-toxic-torts/workplace-exposure/) victims. Today our Pennsylvania, New Jersey, and New York personal injury lawyers are nationally and internationally prominent in numerous fields and are frequently successful in dangerous pharmaceutical (/practice-areas/dangerous-pharmaceuticals/), complex personal injury (/personal-injury/), and consumer class-action litigation (/practice-areas/consumer-class-actions/).

What We Do

At Locks Law Firm (/), our experienced personal injury lawyers are committed to protecting the rights of individuals and families who suffered as a result of the negligent or reckless conduct of another. We assist victims throughout Pennsylvania, New Jersey, and New York and travel to other states as needed. We **do not** represent insurance companies. The goal of our personal injury lawyers (/team/) is to promote the development of a safer society by seeking jury verdicts that take the profit out of negligent conduct and the manufacture of defective products (/practice-areas/defective-products/).

We practice law with the highest professional integrity. We thoroughly investigate and emphasize the merits of each case we handle and present them in the most organized and effective manner to insurance adjustors, opposing attorneys, and jurors. Each of our personal injury lawyers has extensive courtroom experience and our attorneys are assisted by a team of more than one hundred professionals with backgrounds in insurance, law enforcement, engineering, accident reconstruction, economic assessment, and investigation. If you have been injured and are in need of dedicated, trustworthy representation, contact our Philadelphia, New York, and New Jersey personal injury lawyers (/contact/).

LOCKS LAW FIRM

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Gene Locks, Partner

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Suite 720 East
601 Walnut Street

Background and Experience

Gene Locks is married to Sueyun Pyo Locks and the proud father of six daughters. He resides in Philadelphia, Pennsylvania and Fisher Island, Florida.

Gene is the founding and managing partner of Locks Law Firm, a prominent national environmental, litigation, and consumer-oriented law firm formed in 1966, with offices in Philadelphia, New York and New Jersey. He is a graduate of Princeton University, and received his Doctor of Laws degree from Columbia University. He is admitted to practice law in Pennsylvania, New Jersey, New York, as well as many federal courts in the United States.

The Locks Law Firm was founded by Gene Locks, who established the Firm in Philadelphia, New York and New Jersey after more than 40 years of practice. Since then, the firm has grown into a prominent national environmental, personal injury, consumer-oriented, and complex litigation law firm.

Gene was born and raised in the Philadelphia area and is the product of the Philadelphia public school system. He has dedicated his life to representing the people of Philadelphia and beyond, who have been used and abused by the legal system. He obtains justice for the working people of the world and focuses his work exclusively on helping individuals, not corporations, obtain justice through the legal system. He is an innovator, creator, and a pioneer. Gene Locks is a true people's lawyer.

Gene was a pioneer in asbestos personal injury litigation (/practice-areas/environmental-and-toxic-torts/asbestos-mesothelioma/asbestosis/), having handled such cases and obtaining precedential verdicts in decisions in Pennsylvania, New Jersey, New York and Virginia, since 1974. Asbestos litigation has since become the largest mass tort in the United States. Gene and the personal injury attorneys at Locks Law Firm have represented in excess of 16,000 personal injury victims in more than 20 different states. Gene is co-counsel and acts in a pro hac vice capacity in both federal and state courts across the country. Gene has tried hundreds of these complex product liability (/practice-areas/defective-products/) matters. He has participated directly and as amicus in numerous appeals resulting in precedent-setting opinions in many states that have become landmark decisions on a wide spectrum of issues.

Thanks to his litigation experience, negotiating reputation and his ability to persevere and sustain lengthy litigation, Gene was appointed by the Honorable Jack B. Weinstein of the Eastern District of New York to the Management Committee of the Agent Orange Litigation, MDL 381. He directed the liability and medical aspects of the Agent Orange cases and was co-chair of the negotiating committee which, at the time, resulted in the largest class action settlement of a personal injury class of victims.

After negotiating the Agent Orange settlement, Gene became involved in other major toxic tort litigation (/practice-areas/environmental-and-toxic-torts/) primarily involving environmental and occupational exposure to hazardous substances. This led, in the early 1990s, to his being named as lead counsel in the nationally

coordinated asbestos cases. He ultimately became class counsel in a case in which an innovative and creative solution to many major asbestos litigation problems was developed. The principles developed and negotiated have become a model for recent national asbestos resolutions.

Gene served as co-lead counsel in the Asbestos Personal Injury Litigation, MDL 875 in Philadelphia for many years. He became the Chairman and Director of the Board of UNR Industries, Inc. and director of Celotex Corporation and Raytech Corporation, reorganized multi-million dollar former asbestos companies which have paid millions of dollars in benefits to hundreds of thousands of asbestos victims. Gene was chief negotiator representing victims in almost all the 20th century bankruptcy re-organizations. Gene and the attorneys of Locks Law Firm have also represented numerous school districts and other entities across the nation in property damage cases arising from asbestos exposure.

In the late 1990s, Gene and Locks Law Firm attorneys filed class actions in the Diet Drug (Fen-Phen@) Litigation in New York, Pennsylvania and New Jersey. Gene was co-lead negotiator in that litigation which culminated in a 3.75 billion dollar settlement of those claims (in Brown v. American Home Products Corp, MDL 1203).

Gene, a former quarterback in college and high school, is a man who plays to win. He chooses to represent those with just positions who deserve to win against the abuses created by large global companies. Nationally and internationally, he and the firm fight to right the injustices of corporate misbehavior by helping individuals to obtain their fair day in court. A born leader, Gene is known for creating winning teams that bring people justice.

Business Activities

Chairman, UNR Industries, Inc. (NASDAQ), 1991 - 1999
Director, UNR Industries, Inc., 1989 - 2002
Director, Celotex Corporation, 1997 - 2001
Chairman, APEX Teletech Resources, Inc., 1996 - 1997
President, Locks Investments, Ltd., 1990 - Present
Director, Raytech Industries, Inc. (NASDAQ), 2001 - 2009

Personal Activities

Chairman, Board of Managers - The Philadelphia Foundation, one of the largest community foundation in a U.S. city, 1999 – Present,
Board of Managers - The Philadelphia Liberty Medal, 2005
Advisory Board Chairman Fund for Children - 2006
Trustee and Chairman, Asbestos Victims Special Fund Trust, 1988 - 1996
Board Member - Oceanside Five Condominium Association - 2006 - Present

Outside the Office

Gene Locks is married to Sueyun Pyo Locks and the proud father of six daughters. He resides in Philadelphia, Pennsylvania and Fisher Island, Florida. Although his first love is the Princeton Tigers, during baseball season, he can often be found cheering on the St. Louis Cardinals.

Blog Posts

APPEALS DENIED - NFL CONCUSSION SETTLEMENT FINAL (http://www.lockslaw.com/blog/2016/12/12/appeals-denied-nfl-concussion-settlement-final/)

NFL Concussion Appeal Filed with U.S. Supreme Court Means More Delays (http://www.lockslaw.com/blog/2016/09/02/nfl-concussion-appeal-filed-with-u-s-supreme-court-means-more-delays/)

Legendary All-Pro Football Player Bubba Smith the Latest to be Diagnosed with CTE (http://www.lockslaw.com/blog/2016/05/27/legendary-football-player-bubba-smith-the-latest-to-be-diagnosed-with-cte/)

A Message From The Locks Law Firm - Proposed NFL Concussion Litigation Settlement (http://www.lockslaw.com/blog/2013/08/29/a-message-from-the-locks-law-firm-proposed-nfl-concussion-litigation-settlement/)

Practice Areas

Asbestos Exposure (/practice-areas/environmental-and-toxic-torts/asbestos-mesothelioma/)
Toxic Torts (/practice-areas/environmental-and-toxic-torts/)
Dangerous Pharmaceuticals (/practice-areas/dangerous-pharmaceuticals/)
Product Liability (/practice-areas/consumer-class-actions/)
Environmental Litigation (/practice-areas/environmental-and-toxic-torts/)
Professional Negligence

Admitted to Practice

Pennsylvania, New York, New Jersey, District of Columbia as well as many federal courts in the United States

Education

Columbia University School of Law, J.D. 1962
Princeton University, B.A. 1959

Professional Affiliations

American Association for Justice

Board Affiliations and Appointments

Lead counsel in numerous major national litigation matters and either chairman or member of numerous Chapter 11 reorganization committees involving large manufacturing companies and lead or class counsel in major national class action proceedings.

Co-Lead Class Counsel of Brown, et al. v. American Home Products Corporation
Diet Drug Class Action and Civil Action No. 99-20593, 1999-present

Co-Lead Class Counsel of Georgine, et al. v. Amchem Products, et al
Asbestos Victim Class Action and Civil Action No.9.-CV-0215, 1992-1997

Member and Co-Chairman
Agent Orange Plaintiffs' Management Committee and Negotiating and Causation Sub-Committees, 1983-1987

Chairman and/or Lead Negotiator of the following reorganized companies:
Official Creditors Committee of Asbestos-Related Plaintiffs

MANVILLE Chapter 11 Proceeding, a successfully reorganized public company, in New York, New York Bankruptcy Court, 1982 - 1988

UNR INDUSTRIES, INC.
Chapter 11 Proceedings, a successfully reorganized public company, in Chicago, Illinois Bankruptcy Court,1982 - 1989

THE CELOTEX CORPORATION
Chapter 11 Proceeding, a successfully reorganized company, in Tampa, Florida Bankruptcy Court, 1990 - 1997

EAGLE-PICHER INDUSTRIES, INC., a successfully reorganized public company, in Cincinnati, Ohio Bankruptcy Court, 1991 - 1996

RAYTECH INDUSTRIES, INC., a successfully reorganized public company, in Connecticut Bankruptcy Court, 2001.

Numerous Lead Counsel roles in various state court coordinated case management complex litigation matters.

Certifications and Awards

Pennsylvania Association for Justice Stalwart Award
NJ Bar Association William A Dreier Award Winner - 2012

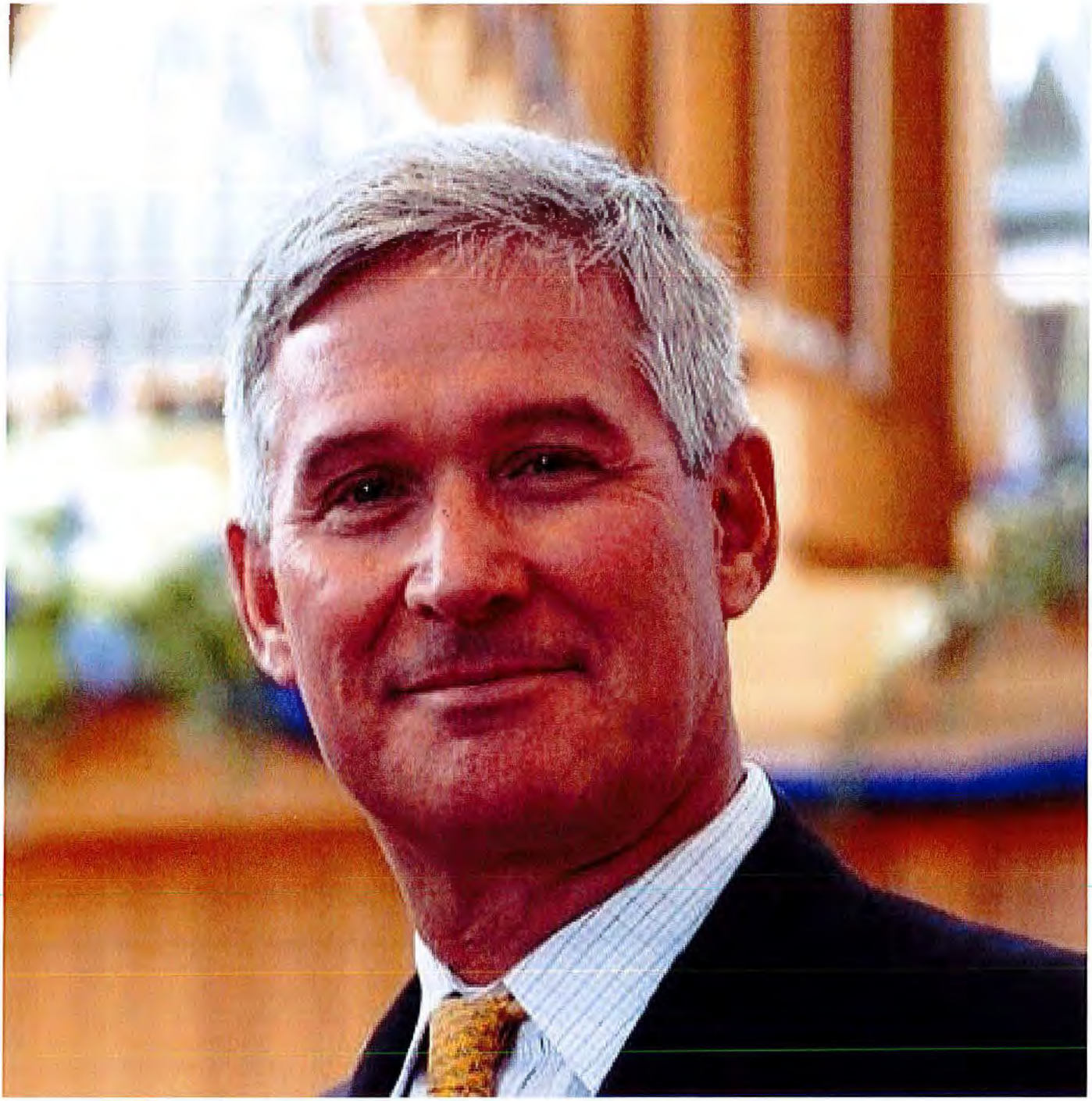
Do I have a case? Free Case Evaluation

(/contact/)

(http://www.facebook.com/pages/Locks-Law-Firm/1[illegible]ogle.com/110627341449105257994?ref=ts)(http://[illegible]lawcom)

LOCKS LAW FIRM

(http://www.lockslaw.com/)



David D. Langfitt, Partner

(215) 893-3423 (tel:+12158933423)

(215) 893-3444

dlangfitt@lockslaw.com (mailto:dlangfitt@lockslaw.com)

The Curtis Center
Suite 720 East
601 Walnut Street

Background and Experience

David Langfitt has practiced complex commercial litigation for more than twenty-three years and specializes in litigation and trials involving numerous parties, claims, and courts, both state and federal. He has litigated a wide variety of complex cases involving mass tort claims, the federal securities laws, professional liability, merger agreements, pre-packaged bankruptcy plans, fraud, breach of fiduciary duty, and infringement of patents and copyrights.

Mr. Langfitt is on the Court-appointed Plaintiffs' Executive Committee in the NFL Concussion Litigation. He is among the leaders of that ongoing litigation in which the Locks Law Firm represents more than 1600 former players against the NFL for latent and existing brain injury. He has also been lead counsel in the Artelon Spacer Litigation, a medical device mass tort in the Philadelphia Court of Common Pleas.

At the same time, he serves as nationwide patent litigation counsel to Q.I. Press Controls, an international technology company based in Holland. He has represented QI in multiple cases in courts throughout the United States that have involved patent infringement disputes and disputes that arose out of patent re-examinations within the U.S. Patent and Trademark office. Representative opinions can be found at *Quad/Tech v. QI Press Controls, et al.*, 701 F. Supp. 2d 644 (E.D. Pa. 2010), *aff'd*, 2011 U.S. App. LEXIS 5729 (Fed. Cir. 2011) and *QI Press Controls v. Lee*, 752 F.3d 1371 (Fed. Cir. 2014).

Prior to joining the Locks Law Firm, Mr. Langfitt was a partner at Montgomery, McCracken, Walker & Rhoads LLP in Philadelphia from 1999 to 2010. During that time period, Mr. Langfitt represented Federal Receiver David H. Marion, appointed at the request of SEC to recover, oversee, and distribute to more than one thousand defrauded investors the assets of a Ponzi Scheme operated through Bentley Financial Services, Inc. of Paoli, PA. The Bentley Scheme was the largest Ponzi Scheme in the United States when it was discovered in 2001. Eleven years of experience includes:

- Recovered approximately $360,000,000 for the benefit of defrauded investors, which is approximately ninety-three percent of the investors' principal.
- Filed and litigated multiple complaints against banks and others for aiding and abetting and conspiring with the Ponzi Scheme.
- Investigated and pursued off-shore assets in Caribbean and South Pacific nations.
- Operated Receivership as business entity that successfully marshaled assets, conducted litigation, distributed recovered assets, and regularly communicated through a public website with more than one thousand defrauded investors regarding claims, distribution, and litigation process.

Mr. Langfitt also has extensive experience litigating in the bankruptcy courts and has represented creditors in *In Re: Bondex* (U.S. District Court, District of Delaware), *In Re: Combustion Engineering* (U.S. District Court, District of Delaware), and *In Re: Nutraquest* (U.S. District Court, District of New Jersey).

Mr. Langfitt also served as lead litigation counsel to Celotex Corporation in (a) 551 wrongful death and personal injury cases brought in connection with 2003 fire at The Station nightclub in West Warwick, Rhode Island; (b) personal injury cases brought in connection with manufacturing plants in multiple states; (c) in negotiations with USEPA regarding environmental regulations, control equipment, and clean air act issues; and (d) contract litigation over the sale of manufacturing plants nationwide.

While an associate at Montgomery McCracken, Mr. Langfitt was *Habeas Corpus* counsel to a former death row inmate and succeeded in overturning the petitioner's conviction for first degree murder in *Smith v. Horn*, 120 F.3d 400 (3d Cir. 1997).

Personal

Trustee, Philadelphia Museum of Art
Trustee, The Episcopal Academy
Board of Directors, Episcopal Community Services
Board of Directors, Lankenau Institute for Medical Research
Former Chair, Philadelphia Mural Arts Program

Outside the Office

Mr. Langfitt is married with three children. Prior to becoming a lawyer, he was professional painter living and working in New York City. Some of his work is owned by the School of American Ballet, The United States Federal Courts, The University of Pennsylvania, and The College of Physicians of Philadelphia.

Blog Posts

Locks Attorney David Langfitt Talks Youth Sports and the Law (http://www.lockslaw.com/blog/2016/05/24/locks-attorney-david-langfitt/)
Buyer Beware: Switching Counsel is at an All-Time High in the NFL Concussion Litigation (http://www.lockslaw.com/blog/2016/02/08/buyer-beware-switching-counsel-is-at-an-all-time-high-in-the-nfl-concussion-litigation-2/)
Legendary N.F.L. Player Ken Stabler Diagnosed with C.T.E. (http://www.lockslaw.com/blog/2016/02/03/legendary-n-f-l-player-ken-stabler-diagnosed-with-c-t-e/)
LLF Attorney David Langfitt Interviewed about Youth Sports (http://www.lockslaw.com/blog/2015/12/14/llf-attorney-david-langfitt-interviewed-about-youth-sports/)
Third Circuit Sets Date for Oral Argument in NFL Concussion case (http://www.lockslaw.com/blog/2015/09/11/third-circuit-sets-date-for-oral-argument-in-nfl-concussion-case/)

Practice Areas

Comercial Litigation
Patent Litigation
Class Actions (/practice-areas/consumer-class-actions/)
Personal Injury
Securities
Concussions and Sports-Related Head Injuries (/practice-areas/sports-injuries/)

Admitted to Practice

Pennsylvania
New Jersey
United States District Court for the District of New Jersey
United States District Courts for the Eastern, Middle, and Western Districts of Pennsylvania
United States District Court Eastern District of Michigan
United States District Court of Rhode Island
Court of Appeals for the Third Circuit
Court of Appeals for the Federal Circuit
Supreme Court of the United States

Education

B.A. University of Pennsylvania in 1979
M.Sc. The London School of Economics in 1980
J.D. New York University School of Law in 1992

LOCKS LAW FIRM

(http://www.lockslaw.com/)

Michael B. Leh, Partner

(215) 893-3410 (tel:+12158933410)

(215) 893-3444

mleh@lockslaw.com (mailto:mleh@lockslaw.com)

The Curtis Center
Suite 720 East
601 Walnut Street

Background and Experience

Michael Leh has been Managing Partner of the Locks Law Firm since 2003 and is a member of the firm's Management Committee. He joined the firm as a law clerk while attending evening division law school in 1983. Mr. Leh specializes in mass torts and other complex litigation. He is a member of the bars of Pennsylvania and New Jersey and has tried cases in state and federal courts throughout the country. His verdicts in Coyne vs. Celotex Corp., et. al. and McCoubry vs. Celotex Corp., et al. were the largest verdicts in the United States in 1988, totaling over $150 million. He has tried over 100 jury and bench trials and has obtained numerous other seven-figure verdicts.

Mr. Leh has represented plaintiffs in asbestos litigation, numerous pharmaceutical and medical device litigations, environmental cases, occupational benzene cases, and other complex litigations, including the NFL Concussion Litigation. He has written and spoken on various topics related to complex personal injury cases and has been featured in a number of national publications.

Outside the Office

When not dealing with his job or his five children and his grandchildren, Michael most enjoys nature, whether hiking, kayaking, or just sitting and silently appreciating his surroundings.

Blog Posts

Justice is Near for South African Gold Miners (http://www.lockslaw.com/blog/2016/06/22/justice-is-near-for-south-african-gold-miners/)
We Will Always Need Lawyers as Victims Will Always Need Justice (http://www.lockslaw.com/blog/2016/05/16/we-will-always-need-lawyers-as-victims-will-always-need-justice/)
Key Asbestos Decision Expected (http://www.lockslaw.com/blog/2016/04/21/1415/)
Amtrak Crash Kills Two, Leaves Dozens Injured (http://www.lockslaw.com/blog/2016/04/04/amtrak-crash-kills-two-leaves-dozens-injured/)
Defending the Right to Class Action Lawsuits (http://www.lockslaw.com/blog/2015/12/11/defending-the-right-to-class-action-lawsuits/)

Practice Areas

Toxic Torts (/practice-areas/environmental-and-toxic-torts/)
Asbestos Exposure (/practice-areas/environmental-and-toxic-torts/asbestos-mesothelioma/)
Dangerous Pharmaceuticals (/practice-areas/dangerous-pharmaceuticals/)
Chemical Exposure (/practice-areas/environmental-and-toxic-torts/chemical-exposure/)
Environmental Litigation (/practice-areas/environmental-and-toxic-torts/)
Complex Personal Injury

Admitted to Practice

Pennsylvania (1985)
New Jersey (1985)
US District Court, Eastern District of Pennsylvania
US District Court, Middle District of Pennsylvania
US District Court, New Jersey
US Court of Appeals, Third Circuit

Education

Bachelor of Arts Temple University, 1979 (cum laude)
Juris Doctor, Temple University School of Law, 1985

Professional Affiliations

American Association for Justice
American Bar Association
Pensylvania Bar Association
Pennsylvania Association for Justice
Philadelphia Association for Justice

Do I have a case? Free Case Evaluation

(/contact/)

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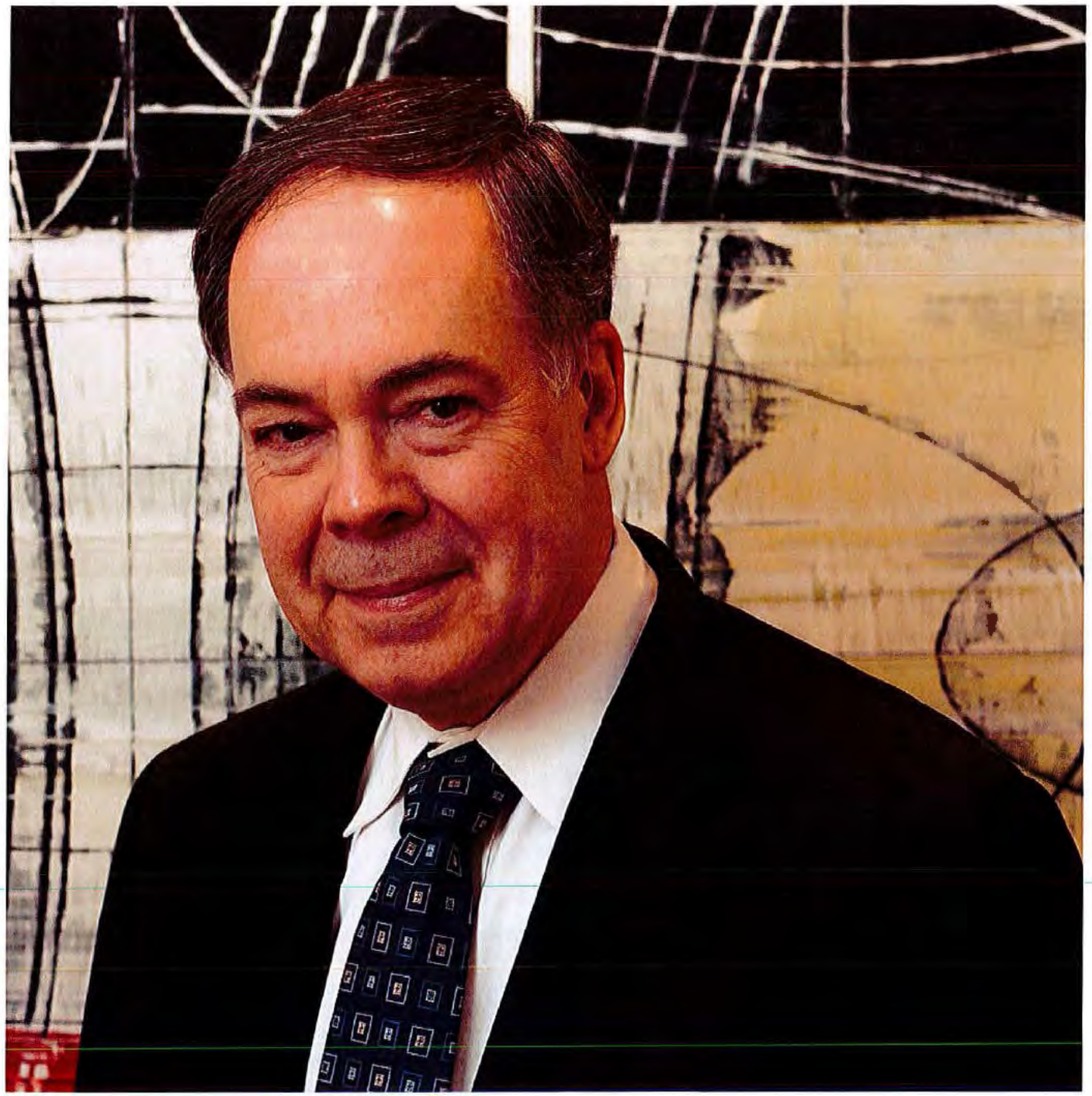

Jonathan W. Miller, Partner

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Background and Experience

Jonathan Miller is a partner who specializes in appellate practice and complex litigation. He has written and argued appellate briefs in the Pennsylvania and New Jersey appellate courts as well as the United States Courts of Appeals for the Third and Ninth Circuits. He has participated in appeals that changed the law. A significant victory was as an amicus curiae on behalf of the New Jersey Association for Justice in Nicastro v. McIntyre Machinery America, Ltd., 201 N.J. 48, 987 A.2d 575 (2010), in which the New Jersey Supreme Court adopted his argument that the realities of globalization should be considered in applying the stream of commerce theory of personal jurisdiction. The Nicastro case subsequently went to the US Supreme Court, where Mr. Miller was the lead author of an amicus brief on behalf of the American Association for Justice.

Another case stopped the retroactive application of law that barred claims of increased risk and fear of asbestos-related cancer. See Cleveland v. Johns-Manville Corp., 547 Pa. 402, 690 A.2d 1146 (1997). Another addressed the novel issue in New Jersey of apportionment of damages for lung cancer between asbestos exposure and cigarette smoking. See Dafler v. Raymark Industries, Inc., 259 N.J. Super. 17, 611 A.2d 136 (App. Div. 1992), affirmed, 132 N.J. 96, 622 A.2d 1305 (1993) (per curiam). He submitted amicus curiae briefs on the issues of set-offs in strict liability verdicts, see Baker v. AC&S, Inc., 562 Pa. 290, 755 A.2d 664 (2000), and of costs on behalf of the Pennsylvania Association for Justice in the landmark Paoli Railroad Yard PCB Litigation cases. See In re: Paoli Railroad Yard PCB Litigation, 221 F.3d 449, 465-66 & n.8 (3rd Cir. 2000). He was in charge of appellate briefing and argument on the issue of forum non conveniens on behalf of all United Kingdom residents who filed suit in New Jersey state court for injuries caused by Vioxx. See In re Vioxx Litigation, 395 N.J. Super. 358, 928 A.2d 935 (App. Div.), certif. denied, 193 N.J. 221, 936 A.2d 968 (2007).

He was Chief of Appeals in the Defender Association of Philadelphia prior to joining Locks Law Firm. As an assistant public defender, one of his cases established Pennsylvania law on the withdrawal of guilty pleas. See Com. v. Forbes, 450 Pa. 185, 299 A.2d 268 (1973). Another won a complicated question of federal-state immunity, see Com. v. Fattizzo, 223 Pa. Super. 378, 299 A.2d 22 (1972).

Complex Litigation

Mr. Miller has extensive experience in complex litigation of all types, including class actions. In Hazleton, PA, service stations leaked gasoline from their underground storage tanks, polluting a residential area, sickening or killing over a dozen of the neighbors and lowering the value of 400 homes. From 2000 to 2010, he was the partner in charge of day to day prosecution of the Hazleton environmental lawsuits involving 1100 neighbors as plaintiffs against four major oil companies and over a dozen additional defendants. He has previously litigated asbestos property damage and personal injury cases in Denver, Chicago, New York and Kentucky, in addition to medical

device and breach of contract cases in Philadelphia. He litigated over a thousand criminal cases as an assistant public defender where, in addition to being Chief of Appeals, he was Chief of Motions and Juvenile and an assistant federal defender. Mr. Miller also litigated a medical negligence case in Wilkes-Barre, PA in 2015.

He has participated in major asbestos bankruptcies. In a rare honor, he was accepted in the Celotex bankruptcy as an expert witness on the subject of asbestos property damage. He has participated in ground-breaking asbestos class action and bankruptcy settlements, including Amchem, Diet Drugs, and Celotex.

Outside the Office

Jonathan served the poor as a Philadelphia public defender for 15 years. He likes to read, listen to classical music and serve his church.

Blog Posts

Recent Positive Developments in Mesothelioma Lawsuits (http://www.lockslaw.com/blog/2016/11/29/good-news-for-mesothelioma-victims/)
Videos show what happened, but can police refuse to produce them? (http://www.lockslaw.com/blog/2016/11/23/videos-show-what-happened-but-can-police-refuse-to-produce-them/)
Tulsa, Oklahoma and the Right to Know Law (http://www.lockslaw.com/blog/2016/09/21/tulsa-oklahoma-and-the-right-to-know-law/)
The Pennsylvania Right to Know Law is a Great Tool (http://www.lockslaw.com/blog/2016/08/24/the-pennsylvania-right-to-know-law-is-a-great-tool/)
Videos Are Powerful, and Police Dash Cam Videos Are Discoverable (http://www.lockslaw.com/blog/2016/07/08/videos-are-powerful-and-police-dash-cam-videos-are-discoverable/)

Practice Areas

Toxic Torts (/practice-areas/environmental-and-toxic-torts/)
Complex Litigation
Class Actions (/practice-areas/consumer-class-actions/)
Trial Practice
Appellate Practice (/practice-areas/other-practice-areas/appeals-appellate-work/)

Admitted to Practice

Pennsylvania (1970);
U.S. District Court, Eastern District of Pennsylvania (1971);
U.S. Court of Appeals, Third Circuit (1972);
U.S. Supreme Court (1986);
U.S. District Court, Middle District of Pennsylvania (1986);
New Jersey (1987);
U.S. District Court, District of New Jersey (1986);
U.S. Court of Appeals, Tenth Circuit (1988);
New York Supreme Court, Third Department (1997);
U.S. Court of Appeals, Ninth Circuit (2011);

U.S. District Court, Southern District of New York (2013)
U.S. District Court, Eastern District of New York (2013).

Education

Yale University, cum laude, 1967
University of Pennsylvania, cum laude, Order of the Coif, and Law Review, 1970

Professional Affiliations

New Jersey Association for Justice
Pennsylvania Association for Justice
American Association for Justice
3rd Circuit Bar Association

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