

Documents allege lead attorney in NFL concussion deal did not disclose conflict of interest

The co-lead attorney representing players in the NFL concussion settlement steered multiple plaintiffs to a bank that offered interest-charging cash advances on their settlement proceeds without informing them he was a board member of the bank's parent company, sealed court documents obtained by Outside the Lines state.

Christopher Seeger, the chief architect of the NFL concussion settlement, was on the board of directors at Esquire Financial Holdings, the parent company of Esquire Bank, an entity that made loans to NFL players seeking quick financial help.

Since the NFL concussion settlement went into effect in January 2017, retired players or their representatives have submitted more than 2,200 claims for monetary awards based on diagnoses of conditions such as ALS or Parkinson's disease, which qualify them for compensation if the conditions are confirmed. But of claims that have been processed so far, more than 70 percent have been denied, audited and then denied, or held up due to requests for more paperwork. Just nine cases of dementia have resulted in payouts, for example, according to the most recent claims report in the case, dated April 23.

Many players and their families have found it time-consuming and expensive to work their way through the claims process, and hundreds have struck deals with litigation funders, including companies such as Cash4Cases and Top Notch Funding. These businesses offer money up front in exchange for settlement awards, sometimes charging the equivalent of nearly 40 percent annual interest rates.

Seeger investigated these arrangements, which he called "predatory," and last October he drew up a list of 15 firms he wanted the court that is overseeing the settlement to ban from striking deals with the plaintiffs. In December, Judge Anita Brody of the United States District Court for the Eastern District of Pennsylvania, who is presiding over the case, agreed with Seeger's argument. She voided any agreements that assigned monetary claims to a third party; three companies have appealed that decision.

Amid that legal brouhaha, two funding companies filed a memo with the court in November 2017 noting that Seeger served on the board of directors at Esquire Financial Holdings -- a firm he had not included on the list he made for Brody. Seeger responded by noting he had left Esquire's board in May 2016. He said his "prior directorship" had "nothing to do" with his recommendations to the court to bar specific funders from doing business with the players.

But Seeger, who stands to earn more than \$70 million for his law firm, Seeger Weiss LLP, because of his lead role in the settlement, was considerably more active on behalf of Esquire Bank than he has previously stated. He recommended Esquire Bank to attorneys for former NFL players, and he also helped Esquire develop its concussion settlement funding program.

In one example, Seeger asked Craig Mitnick, another lawyer for plaintiffs in the NFL concussion case, to "meet with and assist Esquire in developing a funding program for Retired Players," according to a letter that Mitnick wrote to Brody this month that was obtained by Outside the Lines.

"Craig, I want to introduce you to a very close friend, Ari Kornhaber, who I think can help you out with all kinds of banking needs and who works for a bank with a special relationship to the plaintiffs' bar," Seeger wrote to Mitnick in a Feb. 13, 2015, email about Kornhaber, executive vice president and director of sales at Esquire Bank. Mitnick and Kornhaber each replied later that day, confirming their contact information.

In August 2016, about three months after Seeger left the Esquire board, Kornhaber wrote Mitnick: "I'm reaching out to you again at the suggestion of Chris Seeger."

After that, Mitnick met in his office with two of Esquire's executives "for a substantial period of time and ... assisted them with developing a funding formula for their proposed Concussion funding program," according to the letter Mitnick filed with Brody.

In a statement to Outside the Lines this week, Seeger said: "Several lawyers for former players asked for my recommendations on lending options, and on these occasions I would introduce them to Esquire Bank. ... I had conversations with Esquire Bank explaining the settlement as they were establishing their program and was happy to do so as a way to combat the predatory lending practices that were taking place. ... Esquire would enter loans at commercially reasonable rates, and they are also a federally regulated bank subject to significant oversight."

Seeger further told Outside the Lines he "never reviewed any individual's funding calculations or agreements; this would have been arranged between Esquire Bank and the class member's attorney."

On Sept. 16, 2016, however, Ayal Glezer, then senior vice president and chief credit and lending officer at Esquire, sent an email to Mitnick about providing an advance payment for a former running back suffering from Parkinson's disease. "Craig," he wrote, "I ran the calc by Seeger and [David] Buchanan today. David had a couple of suggestions that I will run by you." Buchanan is a partner at Seeger Weiss. The message also copied Kornhaber and Ave Doyle, retail director at Esquire Bank.

In a court filing last November, Seeger stated: "I was never a Director of Esquire Bank." Yet Esquire Bank is a wholly owned subsidiary of Esquire Financial Holdings, whose most recent annual report states, "Each director of Esquire Financial is also a director of Esquire Bank." In September 2012,

Andrew Sogliocca, president and CEO of both companies, wrote a letter on Esquire Bank letterhead to "My Fellow Shareholders" to "congratulate two of our distinguished Board Members, Russ Herman and Christopher Seeger" for being honored in a ranking of class-action lawyers.

In his statement to Outside the Lines, Seeger said, "I had no vote or governance authority on any Esquire Bank matter."

Mitnick told Outside the Lines that Seeger "encouraged my clients to do business with Esquire Bank, where he was a director. I believe he thought he was doing the best thing for players getting funded by referring them to a bank so they wouldn't be subject to predatory lenders. But a reasonable person would disclose anything that could potentially be a conflict of interest."

Seeger, co-founder of Seeger Weiss, did not answer a question from Outside the Lines about whether he ever disclosed his Esquire ties to the players' attorneys.



Christopher Seeger, left, is the co-lead players' attorney in the NFL concussion settlement. *AP Photo/Matt Rourke*

In the documents obtained by Outside the Lines, Mitnick also wrote that he was misled about a key component of any cash advance: whether a borrower has to surrender his legal right to all or part of any eventual settlement payout. Such language is termed an "assignment clause," and its precise definition is at the heart of whether Esquire operates any differently than the

funders that Brody has prevented from working with players.

In the November court filing defending his work with Esquire, Seeger insisted that its agreements were "loans secured by the monetary awards, as opposed to 'assignments' of portions of those awards." Mitnick wrote to Brody that he "assisted Esquire at Mr. Seeger's suggestion while never being advised that any eventual funding Agreement would contain an 'Assignment' clause."

But the post-settlement loan note and security agreement for one of Mitnick's clients, a former defensive end who took a \$77,310 advance from Esquire in 2017, names the full amount of the player's NFL settlement award (\$656,000) and states: "ASSIGNMENT OF LITIGATION PROCEEDS AND OTHER PROPERTY: As collateral security for my loan, I assign to the Bank my entire right, title and interest to all funds that I am entitled to receive under, in connection with or as a result of the Litigation." Esquire also sent Mitnick a lien notice calling this client the "Assignor" and demanded repayment from his settlement "prior to any Proceeds being released to Claimant."

"I helped Esquire develop their funding calculator, but I didn't see the assignment language in the loan agreements until Esquire sent me the final documents, signed by my clients," Mitnick told Outside the Lines. "You can't separate Esquire from other funders if assignment language is in their agreements."

In his statement to Outside the Lines, Seeger said that if the special masters assisting Brody in the case "determine that Esquire has entered into an improper assignment with a class member, these should be voided per the court's order."

This isn't the first time plaintiffs' attorneys have questioned whether Seeger has operated fully in the best interests of the players he represents. In 2013, Outside the Lines reported that Seeger tried to arrange taking a 10 percent cut of any money awarded to a 79-year-old former NFL player. Sam Franklin,

the player's lawyer, called the proposal "most troubling" and charged that Seeger was trying to extract money from his client on top of what Seeger Weiss would receive from the settlement's common fund for legal fees.

"It's double-dipping, getting paid by the defendant and getting an additional 10 percent by each client you sign up," Franklin said. "I've never seen anything like this."

Seeger backed off, writing Franklin: "Although we absolutely reject your suggestions and assumptions of anything inappropriate, we will not be executing a retainer with your client."

Relations between Seeger and the plaintiffs he's leading have deteriorated sharply over the past year.

One turning point came last October, when Seeger infuriated many of the leading attorneys in the concussion case by recommending the settlement pay his firm \$70.4 million of the \$108 million available for legal fees. And as payouts to former players and families have bogged down, Seeger has outraged some plaintiffs by echoing the NFL's assurances that the program is actually working well.

In a motion filed last month, the Locks Law Firm, which is based in Philadelphia and represents more than 1,000 players, asserted that "the Settlement Agreement is in danger of failing" and asked for authority to help Seeger administer the deal. Nineteen plaintiffs' firms joined the Locks motion; even Anapol Weiss, whose attorneys are Seeger's co-lead counsel, agreed there should be a hearing. More than 180 retired players and family members wrote to Brody, too, supporting the motion.

Brody has the authority to decide whether any of Seeger's practices in the case have been improper. But the judge has moved quickly past such questions. On April 2, for instance, she announced that once Seeger answered the Locks motion, she would accept no further replies. Seeger responded on

April 13, including in his declaration a series of attacks on other plaintiffs' attorneys, including Mitnick, for allegedly mishandling claims and soliciting funding agreements. Four days later, Mitnick filed his letter to Brody about the Esquire Bank dealings. Almost immediately, Brody put Mitnick's documents under seal.

"The judge knows what's in the documents I sent, because I followed proper procedure and filed them electronically with the court, and she's the one who put them under seal," Mitnick told Outside the Lines. "I would have been happy to redact anything where she had privacy concerns. Instead, she buried it all."

On April 18, Brody denied the Locks motion. She wrote that in reaching her decision, she had considered material from the NFL, Seeger, the administrators of the settlement's claims and baseline testing, and the special masters in the case.

Brody added that she has had "the chance to witness the fine job Seeger Weiss has done in protecting all the Members of the Class."