

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

IN RE: NATIONAL FOOTBALL : MDL  
LEAGUE PLAYERS' CONCUSSION :  
INJURY LITIGATION :  
: :  
: : NO. 2012-2323

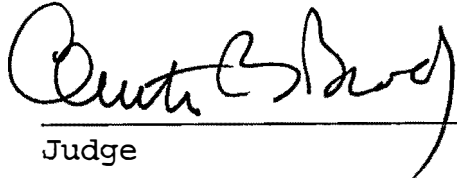
O R D E R

AND NOW, this 16<sup>th</sup> day of May, 2018, it is Ordered that  
the attached hard copy of attorney Christopher Seeger's power-  
point presentation from the 05-15-2018 hearing is made a part of  
the record.

ATTEST:

or BY THE COURT

BY: \_\_\_\_\_  
Deputy Clerk

  
\_\_\_\_\_  
Judge

# **NFL CONCUSSION SETTLEMENT**

*IN RE: NATIONAL FOOTBALL LEAGUE PLAYERS' CONCUSSION INJURY LITIGATION*

No. 2:12-md-02323 (E.D. Pa.)

## **Hearing on Fee Allocation**

**May 15, 2018**

**Co-Lead Class Counsel Christopher A. Seeger**

## **LITIGATION OVERVIEW & BACKGROUND**

### **MDL Formed in 2012**

#### **Unique & Challenging Claims**

- **Complex & Evolving Science**
- **Significant Legal Issues – Preemption**
- **Substantial Alternative Causation & Other Trial Defenses**
- **Statute of Limitations Issues**

#### **Novel Litigation Course**

- **Early Stay on Discovery**
- **Litigation of Motions to Dismiss**
- **Circumstances Dictated Consideration of Early Resolution**

## **SETTLEMENT**

### **Extensive Negotiations**

**Months of Pre-Term Sheet Negotiations – Mediator Driven & Private**

**Term Sheet – August 29, 2013**

**Two Rounds of Settlement Negotiations after Initial Term Sheet**

**Preliminary Approval – July 7, 2014**

**Final Approval – April 22, 2015**

**Third Circuit Affirms Approval – April 18, 2016**

**United States Supreme Court Denies Cert Petitions – December 19, 2016**

## **INNOVATIVE SETTLEMENT FRAMEWORK**

### **Faced the Challenges of *Amchem* and *Ortiz* for Classwide Settlement of Personal Injury Claims**

- Uncapped Fund Addresses Major *Amchem* Concern
- Monetary Awards Keyed to Seasons (proxy for exposure) and Age at Diagnosis (tied to background rates)

### **The BAP Program Is More than a Medical Monitoring Program**

- Created Our Own HMO for the Concussion Settlement
- Extensive Neuropsychiatric Assessment Designed by Experts in the Field
- Catches Impairment Early - Healthcare Professionals Can Act to Slow Degeneration
- Source of Information for Future Medical Research

### **65-Year MAF Program**

- Substantial Monetary Awards
- Provides Significant “Insurance” for Younger Retired Players

### **Lien Resolution with Substantial Discounts**

## **ASSEMBLED A TEAM OF EXPERIENCED CLASS ACTION ATTORNEYS**

### **Prof. Samuel Issacharoff**

- Bonnie and Richard Reiss Professor of Constitutional Law, NYU
- Nationally Renowned Expert on Class Actions - *VW Clean Diesel*, *BP Oil Spill*
- Argued Before 3<sup>rd</sup> Circuit – *DB Investments*, *Diet Drugs*, and *Avandia*

### **Arnold Levin (Sub-Class One Counsel)**

- Lead Counsel in the *Diet Drugs Litigation* and *Chinese-Manufactured Drywall*
- Leadership in *In re CertainTeed (Shingles)*, *In re TMI*, and *Asbestos School Litig.*

### **Dianne Nast (Sub-Class Two Counsel)**

- Lead Counsel in *Generic Pharm. Pricing*, *Augmentin Antitr.*, and *Paxil Antitr.*
- Leadership in the *Diet Drugs Litigation*, *Lipitor Antitr.*, and *Skelaxin Antitr.*

## INNOVATIVE SETTLEMENT FRAMEWORK

“The performance of Class Counsel regarding this complex Settlement Agreement has been extraordinary. . . . Perhaps the strongest factor weighing in favor of the acceptance of Class Counsel’s fee request is the final factor that takes into account ***the innovative terms*** of this Settlement Agreement. ... Without ***these innovative terms***, a settlement might not have been possible under current Supreme Court precedent. This factor weighs heavily in Class Counsel’s favor.”

2018 WL 1635648, at \* 7, 8 (E.D. Pa. April 5, 2018)

“This settlement will provide nearly \$1 billion in value to the class of retired players. It is a testament to the players, researchers, and advocates who have worked to expose the true human costs of a sport so many love.”

821 F.3d 410, 447-48 (3d Cir. 2016)

## **SETTLEMENT PARTICIPATION**

### **Substantial Efforts to Ensure Broad Participation**

- Town-Hall Meetings at NFL and Alumni Events
- Ongoing Television and Radio Interviews
- Conference Calls with Hundreds of Players
- Targeting of Key Media Markets in Advance of Registration

### **The Result: Unprecedented Class Member Participation**

**20,497 Total Registrations**

- 15,982 Retired NFL Football Players
- 3,285 Representative Claimants

### **Extremely High Participation Rates**



## **THE SETTLEMENT: FIRST YEAR RESULTS**

### **Monetary Awards**

- **411 MAF Notices Totaling Over \$423 million**
- **Awards Exceed Projected Claim Value for the First 10 years**

### **BAP Examinations**

- **12,755 Retired NFL Football Players Are Eligible for BAP Exams**
- **4,077 Retired NFL Football Players Currently Scheduled or Scheduling**
- **2,422 Retired NFL Football Players with Reports from At Least One Examination**
- **The Examinations Have Identified Qualifying Diagnoses in Several Men**
  - ❖ **18 Level 1 Neurocognitive Impairment**
  - ❖ **28 Level 1.5 Neurocognitive Impairment**
  - ❖ **16 Level 2 Neurocognitive Impairment**

## **THE SETTLEMENT: FIRST YEAR RESULTS**

### **Protection of Settlement Class From Predatory Practices**

- Stopping Misrepresentations
- Litigation Funding Abuses

### **Advocacy for Favorable Interpretations and Procedures**

- Unrepresented Players Can Navigate Registration and Claims
- Definition of “Generally Consistent”
- Definition of “Eligible Season”
- “Downgrading of Claims”
- 88 Plan

### **Support of Players and their Counsel**

- Engagement with Hundreds of Players and their Counsel
- Support at Every Stage – From Registration to Monetary Awards

## **COMMON BENEFIT FEES & COSTS**

### **Seeger Weiss Collected Common Benefit Time and Expenses**

- Solicited Time from All Firms Appearing in MDL
- Review and Audit of Time and Expenses Submitted
- CMO-5 Common Benefit Considerations

### **Time and Expenses Submitted for 24 Firms**

- Declarations from Each Firm Presented with the Fee Petition
- Total Submitted Lodestar: \$40,559,978.60 (51,068 hours)
- Total Submitted Expenses: \$5,682,779.38

### **Court-Approved Fee Petition**

- \$112.5 million for fees, costs, and incentive awards
- Decision on the 5% Holdback Reserved

## **ALLOCATION OF ATTORNEYS FEES AMONG COUNSEL**

### **Court Directed Recommendations**

- Co-Lead Class Counsel Directed All Common Benefit Work
- Knew Firsthand the Value of Each Firm's Contributions
- Request for Proposal from Lead Counsel is Common. *In re: IPO*

### **Co-Lead Class Counsel Reviewed Time Submissions and Declarations from Each Firm**

### **Considered Three Key Criteria:**

1. Appointed Role in Litigation
2. Value of Engagement in the Litigation
3. Contributions to the Settlement

## **ALLOCATION OF ATTORNEYS' FEES AMONG COUNSEL**

### **Proposed Multipliers Range from .75 to 3.885**

**Brian Fitzpatrick:** “The net result of the adjustment made by lead class counsel in this case left the original lodestars of the firms here with adjustments over a range of multipliers from 0.75 to 3.885. This is a spread of 1:5.2. Not only is this spread reasonable, but it is more equitable than the spreads in other cases of which I am aware.”

***In re: TFT-LCD*** – Range of .1 to 5.45 for Spread of 1:54.5

***In re: Vitamins Antitr.*** – Range of 2.25 to 26 for a Spread of 1:11.6

## **ALLOCATION OF ATTORNEYS' FEES AMONG COUNSEL: FOUR PROPOSED TIERS**

### **High Tier – More than a Multiplier of Two**

- Leaders That Devoted Substantial Efforts to Securing and Defending the Settlement

### **Mid Tier - Over Lodestar, But a Multiplier Less than Two**

- Notable Contributions to the MDL
- Typically with Leadership Appointment

### **Straight Lodestar**

### **Negative Multiplier**

## **AVAILABLE FUNDS (as of May 10, 2018)**

<b>Original QSF Balance:</b>	<b>\$112,500,000.00</b>
• Interest Earned:	<b>\$1,261,652.94</b>
• Fees and Taxes:	<b>(\$495,933.14)</b>
• Court Approved Expenses:	<b>(\$5,682,779.38)</b>
• Incentive Awards:	<b>(\$300,000.00)</b>
• Dennis Suplee (to April):	<b>(\$208,290.50)</b>
• Available Balance:	<b>\$107,074,649.92</b>
<b>Escrow Funds:</b>	<b>\$1,368,050.20</b>
<b>Total Available Funds:</b>	<b>\$108,442,700.12</b>