

Podhurst Hits Back In Row With NFL Player Estate Over Fees

By **Alex Wolf**

Law360, New York (January 13, 2017, 7:22 PM EST) -- [Podhurst Orseck PA](#) has urged a Pennsylvania federal court not to invalidate its retainer agreement with the estate of a class representative in the NFL concussion settlement that claims the firm is seeking an unfair recovery, saying it worked for both the class and the individual and deserves its contract-based fees.

The law firm pushed back Wednesday against a motion filed in December by the estate of Kevin Turner, a former [National Football League](#) player who agreed to serve as a class representative in landmark head injury litigation against the league before his death.

The estate argued that the firm, which is entitled to a “sizable share of the \$112.5 million attorney fee award” as part of a class settlement, should not be able to also collect from Turner’s \$5 million class recovery because the firm’s contingency fee agreement with Turner was superseded by the certification of a national settlement class.

However, in opposing the estate’s motion to resolve the attorneys’ fees dispute, Podhurst said that district courts, including the one handling the instant multidistrict litigation, “routinely hold that attorneys are permitted to receive contract-based compensation for representing individual class members who receive monetary awards through such settlements.”

The firm said that it originally agreed to a contingency fee of up to 45 percent, now pegged at 25 percent, of any recovery, and that nothing in the agreement was conditioned on Turner’s recovery through an individual settlement, as opposed to a class action settlement.

The Podhurst attorneys performed a “substantial amount of work” for Turner, incurring the risk that their time and resources would be lost if he did not obtain a recovery on his claims, the firm said, adding that the common benefit fees it was ultimately awarded are “completely irrelevant” to the contract-based fees it receives for representing individual clients.

“But for the work Podhurst performed and risk it incurred for Kevin, it will seek reasonable compensation based on the retainer agreement from the Turner estate’s monetary award,” the firm said in its response

to the estate's motion. "In no way is Podhurst seeking to 'double-dip' or receive double payment for the same work, as the Turner estate charges."

Turner estate attorney Robert Penza told Law360 on Friday that his firm "is confident that the court will handle this issue appropriately."

The instant dispute over attorneys' fees comes just months after the Third Circuit **approved an uncapped settlement** between the NFL and several former players over head injuries, denying a challenge from objectors who argued the deal was lacking for those who suffered from the degenerative brain condition known as chronic traumatic encephalopathy and finding that the uncapped settlement is fair for the class of retired players.

Under the concussion settlement, former players diagnosed with Parkinson's disease or Alzheimer's disease could receive as much as \$3.5 million each, while players with amyotrophic lateral sclerosis could receive as much as \$5 million each. However, while former players who already have died of CTE will receive \$4 million each, the deal excludes those who pass away after a cutoff date, leaving those with no other qualifying conditions nothing.

The Third Circuit said that though some will be dissatisfied with the result, that is the nature of such settlement appeals, noting that the deal will likely provide over \$1 billion to the class of over 20,000 retired players.

The settling plaintiffs are represented by **Seeger Weiss LLP**, **Anapol Schwartz Weiss Cohan Feldman & Smalley PC**, and Podhurst Orseck PA.

The estate is represented by R. Montgomery Donaldson, Robert A. Penza and P. John Brady of **Polsinelli PC**.

The MDL is In re: National Football League Players' Concussion Injury Litigation, case number **2:12-md-02323**, in the U.S. District Court for the Eastern District of Pennsylvania.

--Additional reporting by Zachary Zagger. Editing by Breda Lund.

