

IN RE: NATIONAL FOOTBALL
LEAGUE PLAYERS' CONCUSSION
INJURY LITIGATION

MDL No. 2323

THIS DOCUMENT RELATES TO:
LIEN ASSERTED BY SONG
WHIDDON V. SPID 100004588

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BACKGROUND

Six law firms have represented the Player in matters related to this Settlement.

The Player first hired Podhurst Orseck in 2012 to represent him in a claim relating to injuries sustained while playing in the NFL. Doc. 373968. By February 2015, the Player switched to Rose Law Group for that purpose. Doc. 32107 at 9. This representation included in its scope advising the Player regarding the then-proposed Settlement Agreement. *Id.* at 4.

In December 2016, the Player discharged Rose Law Group. *Id.* at 14.

On February 7, 2017, the Player registered in the Settlement Program with Locks Law Firm as his counsel. Doc. 6924 at 5. Three days later, the Player terminated his agreement with Locks Law Firm, stating that he did not feel the firm had his “best interests in mind.” Doc. 30410.

The Player next retained the firm Top NFL Lawyers. Doc. 60087. But this relationship also deteriorated, and, in August 2020, the Player requested that the Claims Administrator change his status to reflect representation by Song Whiddon. Doc. 227600.

The representation agreement between the Player and Song Whiddon specified that in the event of any recovery, the Player would assign to Song Whiddon 17% of the Award. Doc. 391703 at 6. The agreement also stated that, should Song Whiddon find it necessary to terminate representation, the Player would grant Song Whiddon a lien for costs. *Id.* at 6-7.

In October 2020, Song Whiddon scheduled the Player for an appointment with a Qualified neuropsychologist. Doc. 399144 at 2. Song Whiddon advanced payment for this appointment and, eventually, rescoring of the resulting neuropsychological test results. *Id.* at 1. In briefing before me, Song Whiddon asserted that, in the course of representation, it scheduled for the Player appointments with Neurologist A, who allegedly then rendered a Qualifying Diagnosis. Doc. 404743 at 3. Again according to Song Whiddon, it subsequently filed a Claim based on this Diagnosis. *Id.* I will discuss the limited evidence supporting this claim below.

In November 2022, the Player, dissatisfied with Song Whiddon’s representation, retained LCHB. Doc. 273717.

LCHB acted with appropriate care in pursuing a Claim for benefits. In August 2024, after a visit arranged by LCHB, Neurologist A issued a report finding that the Player suffered from Alzheimer’s disease. Doc. 362580. LCHB filed a Claim for benefits based on that Diagnosis on November 4, 2024. Doc. 365654. In February 2025, LCHB organized the Player’s response to the Claims Administrator’s inquiries about that Claim. Doc. 378067 at 2. On April 14, 2025—less than six months after filing—the Claims Administrator approved the Player’s Claim for benefits. Doc. 387505.

All firms, other than Top NFL Lawyers, filed charging liens against the Award, but Locks Law Firm and Podhurst Orseck ultimately withdrew their claims.⁴ Rose Law Group and LCHB reached an agreement—Rose Law Group accepted \$8,498.50 in fees, and around \$25 in costs, out of the total award LCHB stands to receive. Doc. 412011 at 2.

Song Whiddon did not settle. LCHB and the Player oppose its lien with respect to fees, and consent to Song Whiddon’s costs only in the amount of \$3,711.60. *Id.*

PENNSYLVANIA LAW GOVERNS THIS DISPUTE

I apply state law in resolving liens.⁵ In some cases, this standard will generate a dispute about which state’s lien law should apply. Here, the parties agree that Pennsylvania law should govern this dispute. Docs. 404743 at 2; 408236 at 2.

In Pennsylvania, the “seminal case on the issue” of attorney charging liens is *Recht v. Urban Redevelopment Authority*.⁶ The *Recht* test entails a five-part threshold inquiry:

Before a charging lien will be recognized and applied, it must appear (1) that there is a fund in court or otherwise applicable for distribution on equitable principles, (2) that the services of the attorney operated substantially or primarily to secure the fund out of which he seeks to be paid, (3) that it was agreed that counsel look to the fund rather than the client for his compensation, (4) that the lien claimed is limited to costs, fees or other disbursements incurred in the litigation by which the fund was raised and (5) that there are equitable considerations which necessitate the recognition and application of the charging lien.⁷

As I noted in *Goldberg v. Wyatt*, “[a]ll of the attorney lien cases that will present themselves in the Settlement Program are likely to easily meet *Recht* factors (1), (3), and (4).”⁸ Here, the fund exists in the form of the Player’s Award, the retainer between the Player and Song Whiddon establishes the no-other-recourse contingency fee agreement, and Song Whiddon’s lien is limited to costs, fees, and other expenses specific to its work for the Player.

I will address factors (2) and (5) in turn.

⁴ Locks Law Firm’s Notice of Lien can be found at Doc. 203115, and Podhurst Orseck’s can be found at Doc. 135017.

⁵ Special Master Report and Recommendation on SPID 100010870 – Goldberg Persky & White v. JR Wyatt Law, at 15 (Apr. 28, 2024), https://www.nflconcussionsettlement.com/ViewDoc.aspx?dp=100010870_d.pdf (hereinafter “Goldberg”), adopted by *In re: Nat’l Football League Players Concussion Inj. Litig.*, No. 2:12-md-02323-AB, 2024 WL 4281447 (E.D. Pa. Sep. 5, 2024), aff’d by *In re: Nat’l Football League Players Concussion Inj. Litig.*, No. 24-2839, 2025 WL 2465746 (3d Cir. Aug. 27, 2025).

⁶ *Austin v. Thyssenkrupp Elevator Corp.*, 254 A.3d 760, 764 (Pa. Super. Ct. 2021).

⁷ *Recht v. Urb. Redev. Auth.*, 168 A.2d 134, 138-39 (Pa. 1961).

⁸ *Goldberg*, *supra* note 5, at 21.

**SONG WHIDDON’S SERVICES DID NOT SUBSTANTIALLY OR PRIMARILY OPERATE
TO CAUSE THE PLAYER’S AWARD, AND THUS, IT IS NOT ENTITLED TO A
CHARGING LIEN FOR ITS FEES.**

Factor (2) of the *Recht* test “deals with the causal connection between the attorney’s work and the Monetary Awards determination.”⁹ As applied to claims in the Settlement Program, work that may *substantially or primarily* operate to cause an Award includes:

- Registering the player for the Settlement Program.
- Scheduling the player for a BAP exam.
- Arranging for and advancing costs for a MAF exam.
- Compiling and filing a Claim package.
- Securing rescoring of a player’s neuropsychological testing.
- Communicating with the Claims Administrator with requests for additional information.
- Responding to and navigating the player through an audit of his Claim.
- Filing and arguing an appeal.
- Responding to an appeal by the NFL Parties.¹⁰

Nothing on this list is individually dispositive. To establish substantial or primary responsibility for an award, a law firm must show that it did more than merely “start[] the case on the track.”¹¹ Under *Recht*’s restrictive standard, a firm must demonstrate that its labor formed “the engine of recovery.”¹²

For example, in *Goldberg*, one law firm arranged a pre-Norming Agreement BAP exam where the Player was found to have no impairment.¹³ A few years later, the Player dismissed the first firm and retained new counsel.¹⁴ Since the Norming Agreement was in effect at the time of this new representation, the second law firm arranged for the private rescoring of the BAP exam the first firm had scheduled.¹⁵ When the rescored exam supported a Qualifying Diagnosis, the second law firm swiftly took the steps necessary to submit a Claim.¹⁶ The second law firm then quickly ushered it through the claims process until the Player successfully received benefits.¹⁷

The first law firm filed a lien on the Award.¹⁸ Applying *Recht* factor (2), I found that it was not entitled to a charging lien for fees, reasoning that:

⁹ *Id.* at 22.

¹⁰ *Id.* at 26.

¹¹ *Id.* (quoting *In re Indep. Pier Co.*, 210 B.R. 261, 264 (E.D. Pa. 1997)).

¹² *Id.*

¹³ *Id.* at 4.

¹⁴ *Id.* at 5.

¹⁵ *Id.*

¹⁶ *Id.*

¹⁷ *Id.*

¹⁸ *Id.*

[t]o be sure, [the first law firm’s] work was useful and preservative. But ultimately, its claim for a charging lien rests on having asked the BAP Administrator to schedule an exam . . . the scoring outcome of which was later a necessary but not sufficient part of a Claim file that another counsel assembled and pressed forward.

That advocacy was not “substantially or primarily” the cause of the Award: [it] “started the case on the track” but was not the engine of recovery.¹⁹

Here, the parties dispute the precise role Song Whiddon played—particularly, who introduced the Player to Neurologist A. LCHB contends that Song Whiddon’s representation was long over when the Player first visited Neurologist A. Song Whiddon, for its part, insists it not only made the match but also retained Neurologist A to examine the Player and submitted a Claim based on his Qualifying Diagnosis.

Yet Song Whiddon has offered no evidence confirming its asserted work. In its Statement of Dispute, it referred to an Exhibit A listing its costs. Doc. 404743 at 3. It attached no such exhibit, and twice declined to provide it when requested after filing. Doc. 404743 at 3. Additionally, while Song Whiddon insists that it submitted a Claim on behalf of the Player pursuant to Neurologist A’s first report,²⁰ the Claims Administrator has no record of this Claim’s submission. I directed Song Whiddon to explain the discrepancy; it did not respond. I deem it to have abandoned any argument that it submitted a Claim on the Player’s behalf.

In all events, even in *Goldberg*, it was insufficient that the first law firm had scheduled the examination that later supported the successful Claim; the decisive work was the rescoring and submission undertaken by successor counsel. Song Whiddon appears to argue that but for its 2020–2022 representation, the Player would not have turned to Neurologist A in 2024. Perhaps recognizing the weakness of that argument, Song Whiddon characterizes its work as “part of the broader trajectory” of the Player’s Award, noting that its efforts “played a foundational role” in the claim’s progress.

But this justification resembles the “but-for” causation that *Recht* has rejected. *Recht* asks whether a law firm’s services “substantially, primarily, largely, to a substantial extent, if not exclusively or entirely”²¹ did the work of procuring an Award. The standard demands a tighter connection than “broader trajectory” or “foundational” work. Song Whiddon moved the Claim along, but only marginally. Its early work, including any introduction of the Player to Neurologist A, does not meet the *Recht* standard.

The Award resulted from LCHB’s work—scheduling the examination, preparing and submitting the Claim, and supporting the Player in his responses to the Claims Administrator.

¹⁹ *Id.* at 26 (breaks added, citations omitted).

²⁰ See Doc. 404743 at 3 (“[Neurologist A] also performed his own CDR examination. Song Whiddon paid [Neurologist A] to write and submit a report indicating his diagnosis. Additionally, the firm submitted [the Player’s] claim for the preceding diagnosis.”).

²¹ *In re Indep. Pier Co.*, 210 B.R. at 264.

Because Song Whiddon's services did not substantially or primarily cause the Award, it is not entitled to fees.

**SONG WHIDDON IS ENTITLED TO A LIMITED CHARGING LIEN FOR ITS COSTS
BECAUSE LCHB DOES NOT OBJECT.**

Having found that Song Whiddon's services did not substantially or primarily cause the Player's Award, I turn to factor (5), which concerns equitable considerations.²² In *Goldberg*, I found that these considerations, as applied in the Settlement, counsel toward routinely awarding costs because:

it would undermine the Settlement goals to [preclude charging liens for costs], as current attorneys would hesitate before advancing costs for MAF exams for players if they were uncertain of recovering those costs in the event of termination.

Developing medical records in these Settlement cases is a necessary (and expensive) investment towards an eventual Award. Doctors certifying Awards often rely upon evidence of decline or impairment established by comparing current with past records. Developing a medical file through investment over time marks IRPA practice in this Program, involving shepherding of their clients through the claims process of the Settlement Agreement.

If the Settlement Program did not award at least costs to predecessor attorneys, successor attorneys and Players would be unjustly enriched by that prior expenditure. I do not think Pennsylvania courts would countenance that outcome.²³

Asserted costs must, of course, be reasonable and supported, as determined by the Claims Administrator. In this case, Song Whiddon has submitted itemized costs related to the October 2020 neuropsychologist appointment it arranged. The Claims Administrator's team of audit specialists carefully reviewed these asserted costs and supporting documents and found them reasonable.

In its brief, Song Whiddon alludes to additional costs, referencing an alleged pre-2022 exam by Neurologist A. The brief also promises—but does not include—an Exhibit A enumerating total costs, suggesting that the earlier submission forms an incomplete record.

As discussed, I asked Song Whiddon to clarify its position by providing the missing exhibit and explaining the discrepancy between its asserted history with Neurologist A and the dearth of records supporting these contentions. Song Whiddon did not respond. It has forfeited any claim to additional costs.

²² *Recht*, 168 A.2d at 139.

²³ *Goldberg*, *supra* note 5, at 28 (breaks added, citations omitted).

Accordingly, applying Recht factor (5) and based on LCHB's and the Player's consent to \$3,711.60 in costs, I recommend that Song Whiddon be entitled to a limited charging lien in that amount.

RECOMMENDATION

I recommend that the Court permit the distribution of fees and costs as follows:

- (1) Under Pennsylvania's charging-lien doctrine, the Claims Administrator shall distribute fees as follows:
 - a. LCHB should be remitted its 18% fee, less the 1% holdback, and less \$8,498.50 for Rose Law Group's fees and \$25.56 for its expenses (which the Claims Administrator shall pay to Rose Law Group directly). This results in a fee of \$700,071.30 to LCHB.
 - b. Song Whiddon's charging lien for fees should be dismissed as it did not substantially or primarily contribute to the Player's Award.
- (2) Song Whiddon may recover reasonably incurred costs in the amount of \$3,711.60.
- (3) LCHB may recover its reasonably incurred costs of \$8,712.

The parties may file objections to this Report and Recommendation.²⁴

Date: November 10, 2025



David A. Hoffman, Special Master

²⁴ See ECF No. 12348-1, at Rule 7.

**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

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.

THIS DOCUMENT RELATES TO:

Attorney Lien Asserted by Song Whiddon

v.

SPID No. 100004588 (D.E.)

ORDER

AND NOW, this 11th day of December, 2025, upon consideration of the Attorney Lien identified above and the Report and Recommendation of Special Master David A. Hoffman dated November 10, 2025 (Doc. ID No. 415930), to which no objection has been filed, it is **ORDERED** that:

1. The Report and Recommendation is **ADOPTED**; and

2. The Claims Administrator is **AUTHORIZED** to distribute fees and costs as set forth in the Special Master's Recommendation. See R&R at 7.

s/ANITA B. BRODY, J.

ANITA B. BRODY, J.