

NFL

CONCUSSION SETTLEMENT

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

RULES GOVERNING APPEALS OF CLAIM DETERMINATIONS

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RULES GOVERNING APPEALS OF CLAIM DETERMINATIONS

TITLE I: GENERAL

Rule 1. The Purpose of These Rules. These Rules govern appeals under Section 9.5 of the Settlement Agreement by a Settlement Class Member, Co-Lead Class Counsel or the NFL Parties of the Claims Administrator’s determinations on Monetary Awards and Derivative Claimant Awards under the Settlement Agreement.

Rule 2. Adoption of These Rules. The Special Masters have adopted these Rules in the exercise of their duties pursuant their appointment by the Court in its July 13, 2016 Order (Document 6871). The Special Masters may amend these Rules at any time *sua sponte* or after request by Co-Lead Class Counsel, the NFL Parties or the Claims Administrator and such input from Co-Lead Class Counsel, the NFL Parties and the Claims Administrator as the Special Masters deem appropriate.

Rule 3. Definitions Used in These Rules. All capitalized terms used in these Rules will have the meanings given to them in the Settlement Agreement. In addition:

- (a) “Appeal” means an appeal from an Appealable Notice issued by the Claims Administrator on a Claim. These Rules refer to making or bringing an Appeal as “noting” an Appeal.
- (b) “Appeal Fee” is the \$1,000 fee a Settlement Class Member must pay to the Claims Administrator to note an Appeal, as described in Rule 12.
- (c) “Appeals Form” is the form used to note an Appeal, as described in Rule 11.
- (d) “Appealable Notice” means a notice issued by the Claims Administrator announcing its final determination on a Claim, including an award on an eligible Claim (Notice of Monetary Award Claim Determination or Notice of Derivative Claimant Award Determination) or a denial on an ineligible Claim (Notice of Denial of Monetary Award Claim or Notice of Denial of Derivative Claim).
- (e) “Appellant” means the party noting an Appeal from an Appealable Notice on a Claim. This can be a Settlement Class Member, Co-Lead Class Counsel or the NFL Parties.
- (f) “Appellee” means a Settlement Class Member or the NFL Parties when responding to an Appeal and not acting as the Appellant noting the Appeal. Co-Lead Class Counsel may be an Appellant on an Appeal and is always considered to be a Party to an Appeal, but is not treated in the Settlement Agreement or these Rules as an Appellee.

- (g) “Audit” means the processes of the Claims Administrator for the review of potentially fraudulent Claims under Section 10.3 or Section 10.4 of the Settlement Agreement.
- (h) “Claim” means a Claim Package (or portion of a Claim Package) submitted to the Claims Administrator seeking a Monetary Award or a Supplemental Monetary Award, or a Derivative Claim Package (or portion of a Derivative Claim Package) submitted to the Claims Administrator seeking a Derivative Claimant Award.
- (i) “Court Portal” means the online system created by the Claims Administrator for the exchange of materials and information between the Court and the Claims Administrator relating to the Settlement Program.
- (j) “Filed Appeal Alert” is the notice from the Claims Administrator to alert parties that there has been an Appeal, as described in Rule 13.
- (k) “Objection to Special Master Decision” means an objection to the conclusions of law made by the Special Master in a decision on an Appeal, as described in Rule 32.
- (l) “Party to the Appeal” and “Parties to the Appeal” mean any one of or all of the Settlement Class Member whose Claim is involved in the Appeal, Co-Lead Class Counsel and the NFL Parties.
- (m) “Portal” means the online system created by the Claims Administrator for the exchange of materials and information between Settlement Class Members and the Claims Administrator, or among Co-Lead Class Counsel, the NFL Parties and the Claims Administrator, in the Settlement Program.
- (n) “Record on Appeal” means what may be considered by the Special Master when deciding an Appeal, as described in Rule 23(a).
- (o) “Reply to Statement of Co-Lead Class Counsel” means the reply submitted on an Appeal in reply to a Statement of Co-Lead Class Counsel, as described in Rule 16.
- (p) “Response of Appellee” means what an Appellee submits to set out its position on an Appeal, as described in Rule 14.
- (q) “Settlement Agreement” means the Amended Class Action Settlement Agreement dated as of June 25, 2014, as amended on February 13, 2015 (the “Settlement Agreement”) and approved in the Court’s May 8, 2015 Amended Final Approval Order and Judgment (Document 6534).
- (r) “Settlement Class Member” means a Retired NFL Football Player (or the Representative Claimant of a deceased or incompetent Retired NFL Football Player), or a Derivative Claimant, which also is how this term is defined in the Settlement Agreement.

- (s) “Settlement Program” means the program for benefits for Settlement Class Members established under the Settlement Agreement.
- (t) “Special Master” means any one of the two Special Masters appointed by the Court in its July 13, 2016 Order (Document 6871) or appointed in any subsequent Order of the Court.
- (u) “Special Master Portal” means the online system created by the Claims Administrator for the exchange of materials and information between a Special Master and the Claims Administrator relating to the Settlement Program.
- (v) “Statement of Co-Lead Class Counsel” means the statement submitted by Co-Lead Class Counsel under Rule 15.
- (w) “Summary of Review” is what the Claims Administrator will submit in an Appeal, if directed to do so by the Special Master, to explain what it did on the Claim being appealed, as described in Rule 17.

Rule 4. Claims Appeals Will Be Handled by the Special Masters. The Court has referred to the Special Masters all Appeals on Claims, to be determined in accordance with these Rules.

Rule 5. How Things are Submitted and Served Under These Rules.

- (a) General Rule: All submissions, notices and decisions under these Rules will be made and served through a Portal or, for anyone not using a Portal, through hard copy by mail or delivery. If a party is represented by a lawyer, service will be made on that lawyer only.
- (b) Party Using a Portal: When submitting any item under these Rules, anyone who uses a Portal will upload the item to the Portal, which will cause it to be served on all other Parties to the Appeal who use a Portal, and the uploader will mail or deliver the item to any other Party to the Appeal who does not use a Portal. At the beginning of an Appeal, the Claims Administrator will identify to the Parties to the Appeal anyone involved who does not use a Portal.
- (c) Party Not Using a Portal: When submitting any item under these Rules, anyone who does not use a Portal will mail or deliver the item to the Claims Administrator, which will upload the item to the Portals of other Parties to the Appeal, and the uploader will mail or deliver it to any other Party to the Appeal who does not use a Portal. To safeguard their confidentiality, materials may not be submitted by email.
- (d) Special Master: The Special Master will access all Appeals and enter orders and decisions on them using the Special Master Portal. No party may send any material directly to the Special Master. Instead, all materials must be submitted to the Claims Administrator.

- (e) No Filings on the Court's Docket: The Court will access all Objections to Special Master Decisions and enter rulings on them using the Court Portal. Proceedings under these Rules will not be filed on the Court's docket. No submissions under these Rules may be filed on the Court's docket.
- (f) References in these Rules to a page limit on a submission mean double-spaced pages without counting exhibits. Single-spaced submissions cannot exceed one half the number of permitted double-spaced pages. While handwritten submissions are discouraged, the page limit means that number of handwritten pages.

Rule 6. How to Count Time Periods and the Date Something is Submitted in an Appeal and Extensions of Time.

- (a) How to Count Time Periods: Any time period set by these Rules will be computed as follows, which is based on Rule 6 of the Federal Rules of Civil Procedure:
 - (1) Do not count the day that starts the running of any period of time. The first day of the period is the day after this trigger day.
 - (2) Count every day, including Saturdays, Sundays and legal holidays.
 - (3) Count the last day of the period, but if the last day is a Saturday, Sunday, or legal holiday, the period continues to run until the end of the next day that is not a Saturday, Sunday, or legal holiday.
 - (4) Legal holidays are New Year's Day, Martin Luther King, Jr.'s Birthday, Washington's Birthday, Memorial Day, Independence Day, Labor Day, Columbus Day, Veterans' Day, Thanksgiving Day, Christmas Day, and any other day declared a holiday by the President of the United States or the United States Congress.
 - (5) An additional three days will be added to any time period specified by these Rules for an action or submission where the acting or responding party was served by mail with the Notice or submission requiring action or response rather than by service on a Portal or delivery.
- (b) How to Mark the Date Something is Submitted: A document or any material submitted or served under these Rules will be considered submitted on these dates:
 - (1) Online: The date uploaded as of the local time of the sender.
 - (2) By Mail: The postmark date showing the date it was mailed. If there is no postmark date on the item or the date printed is illegible, the date of receipt by the party to whom it was mailed controls.
 - (3) Overnight Delivery: The date the sender placed the item in the hands of the overnight carrier.
 - (4) Hand Delivery by Courier: The date the item is received by the party to whom it is delivered.
- (c) Extensions of Time: Any deadline imposed by these Rules may be extended (1) by the Special Master in his or her discretion or (2) by the agreement of the Parties to

the Appeal, if approved by the Special Master. Any party seeking an extension of time from the Special Master must:

- (1) Notify the other Parties to the Appeal of the extension requested and determine if they consent or object to the request;
- (2) Make the request to the Claims Administrator, stating: (a) the deadline for which an extension is requested; (b) the duration of the extension requested; (c) the deadline date before any extension and the extended deadline date requested; (d) that the requesting party has conferred with the other Parties to the Appeal and whether they consent or object to the request; and (e) the grounds for the request.

If an extension is granted, further extensions to the same party for the same deadline and/or on the same issue are not likely to be granted. The fact that another party has been granted an extension is not alone sufficient grounds for an extension for other parties.

TITLE II: APPEAL PROCESS

Rule 7. Who May Appeal and What May Be Appealed on Monetary Awards.

Based on a good faith belief that the determination of the Claims Administrator was incorrect, a Retired NFL Football Player (or Representative Claimant), Co-Lead Class Counsel or the NFL Parties may appeal determinations by the Claims Administrator as to: (1) whether the Retired NFL Football Player (or Representative Claimant) is entitled to a Monetary Award; (2) how the Claims Administrator calculated the Monetary Award; and (3) whether the Claim Package is valid without medical records under Section 8.2(ii) of the Settlement Agreement. No other Appeals may be noted on Monetary Awards. As provided in Section 9.6(b) of the Settlement Agreement, to the extent that Co-Lead Class Counsel believe that the NFL Parties are submitting vexatious, frivolous or bad faith Appeals, Co-Lead Class Counsel may petition the Court for appropriate relief. In addition, the Special Master has discretion to direct appropriate relief as to the conduct of any Party to the Appeal or to multiple Appeals concerning Monetary Awards that the Special Master determines to be vexatious, frivolous or in bad faith.

Rule 8. Who May Appeal and What May Be Appealed on Derivative Claimant Awards. Based on a good faith belief that the determination of the Claims Administrator was incorrect, Derivative Claimant Awards may be appealed as follows:

- (a) A Derivative Claimant may appeal determinations by the Claims Administrator as to:
 - (1) whether that Derivative Claimant is entitled to a Derivative Claimant Award; and
 - (2) how a Derivative Claimant Award should be divided up when such Award has been allocated to more than one Derivative Claimant.
- (b) Co-Lead Class Counsel and the NFL Parties may appeal determinations by the Claims Administrator as to: (1) whether a Derivative Claimant is entitled to a Derivative Claimant Award; and (2) how a Derivative Claimant Award should be

divided up when such Award has been allocated to more than one Derivative Claimant.

- (c) No other Appeals may be noted as to Derivative Claimant Awards. A Retired NFL Football Player (or the Representative Claimant of a Retired NFL Football Player) cannot appeal Derivative Claimant Awards.
- (d) The Special Master has discretion to direct appropriate relief as to the conduct of any Party to the Appeal or to multiple Appeals concerning Derivative Claimant Awards that the Special Master determines to be vexatious, frivolous or in bad faith.

Rule 9. No Other Appeals. Unless allowed in other Rules approved by the Special Masters or in orders by the Court, no other determinations by the Claims Administrator are appealable to the Special Master, including those regarding Liens of any kind.

Rule 10. The Deadline to Note an Appeal. Any party wishing to appeal an Appealable Notice must note an Appeal within 30 days after the date of the Appealable Notice.

Rule 11. How an Appellant Notes an Appeal.

- (a) To note an Appeal, an Appellant must submit to the Claims Administrator an Appeals Form on a Portal or by mail or delivery. The Appeals Form is available on each Portal and is included with an Appealable Notice sent by mail to a Settlement Class Member.
- (b) The Appellant must indicate in the Appeals Form why the Appellant feels the Appealable Notice was wrong, which will be the issue(s) being appealed that the Appellant wishes the Special Master to decide on the Appeal, provided that they are appealable issues under Rule 7 or Rule 8.
- (c) The Appellant may submit with the Appeals Form a statement of up to 10 pages setting forth the arguments of the Appellant on the issue(s) appealed and citations to any evidence before the Claims Administrator the Appellant contends support the Appeal. This statement will become part of the Appellant's Appeals Form. While exhibits to this submission are permitted, the Appellant may not refer to or offer any evidence that was not before the Claims Administrator, subject to Rule 23, which covers new evidence.

Rule 12. Appeal Fee from Settlement Class Members. Pursuant to Section 9.6 of the Settlement Agreement:

- (a) A Settlement Class Member noting an Appeal must pay an Appeal Fee of \$1,000 to the Claims Administrator, using the method made available by the Claims Administrator, before the Appeal will proceed. The Appeal Fee will be refunded if the Appeal is successful. If the Appeal is unsuccessful, the Appeal Fee will be paid to the Settlement Trust for transfer by the Trustee into the Monetary Award Fund.

- (b) A Settlement Class Member may make a hardship request to the Claims Administrator and ask that the Appeal Fee be waived in its entirety for good cause. The Claims Administrator will require that the Settlement Class Member provide such financial information as may be necessary to decide the request to waive the Appeal Fee, which request will be approved or denied in the Claims Administrator's sole discretion.

Rule 13. Filed Appeal Alert from the Claims Administrator. If the Claims Administrator receives a timely Appeals Form and on an Appeal by a Settlement Class Member has received the Appeal Fee, the Claims Administrator will provide a Filed Appeal Alert to the other Parties to the Appeal through a Portal or by mail to a Party to the Appeal who does not use a Portal. The Filed Appeal Alert will include the Appeals Form (and any statement and exhibits submitted with the Appeals Form) of the Appellant.

Rule 14. Response of Appellee. Each Appellee may submit a Response of Appellee of up to 10 pages setting out its position and arguments on the Appeal, within 30 days after the date of the Filed Appeal Alert. The lack of opposition to an Appeal will not be considered an admission regarding the merits of the Appeal. While exhibits to this submission are permitted, an Appellee may not refer to or offer any evidence that was not before the Claims Administrator, subject to Rule 23, which covers new evidence.

Rule 15. Statement of Co-Lead Class Counsel. In an Appeal where Co-Lead Class Counsel is not the Appellant, within 15 days after the later of the date of the Filed Appeal Alert or the date of the Response of Appellee, Co-Lead Class Counsel may submit a Statement of Co-Lead Class Counsel up to 10 pages in support of or in opposition to the Appeal. The lack of opposition by Co-Lead Class Counsel to an Appeal will not be considered an admission regarding the merits of the Appeal. While exhibits to this submission are permitted, Co-Lead Class Counsel may not refer to or offer any evidence that was not before the Claims Administrator, subject to Rule 23, which covers new evidence.

Rule 16. Reply to Statement of Co-Lead Class Counsel. The other Parties to the Appeal may submit a Reply to Statement of Co-Lead Class Counsel of up to four pages, within 15 days after the date of the Statement of Co-Lead Class Counsel. While exhibits to this submission are permitted, no party may refer to or offer any evidence that was not before the Claims Administrator, subject to Rule 23, which covers new evidence.

Rule 17. Summary of Review by the Claims Administrator. The Special Master may at any time direct the Claims Administrator to submit a Summary of Review to explain what occurred in the processing of the Claim on Appeal.

Rule 18. Additional Material Required by the Special Master. The Special Master may at any time direct any Party to the Appeal to submit additional memoranda or material if the Special Master determines that such additional submissions would aid in the consideration of the Appeal. No other memoranda or materials may be submitted unless permitted or directed by the Special Master.

Rule 19. When There are Multiple Appeals on the Same Claim. If a Settlement Class Member, Co-Lead Class Counsel and/or the NFL Parties timely note an Appeal on the same Claim, the Claims Administrator will consolidate the Appeals into one Appeal for the Special Master to determine all issues raised on the Appeals. In a consolidated Appeal, each Party to the Appeal will retain the classification as Appellant on the issues on which that Party noted an Appeal and as Appellee on any issues appealed by another Party to the Appeal.

Rule 20. No Discovery. No requests for production, interrogatories, requests for admission, depositions or other discovery is allowed by or on behalf of any Party to an Appeal.

Rule 21. Oral Argument. Within his or her sole discretion, the Special Master may require oral argument, or permit such argument if requested by a Party to the Appeal, in such time and place and in such manner as the Special Master directs. There will be no testimony, cross-examination or other evidentiary hearing on an Appeal. Any oral argument may be preserved in an audio recording, but will not be transcribed by a court reporter unless directed by the Special Master. No new evidence not in the Record on Appeal may be introduced or referred to in any oral argument.

Rule 22. Assistance to the Special Master on Medical Issues. The Special Master may be assisted in any Appeal, in his or her discretion, by any member of the Appeals Advisory Panel and/or an Appeals Advisory Panel Consultant.

Rule 23. The Record and Evidence Considered on Appeal.

(a) The Record on Appeal in an Appeal consists of:

- (1) The Settlement Agreement;
- (2) The Claim Package or Derivative Claim Package on the Claim involved in the Appeal, including any actions by the Claims Administrator on the Claim;
- (3) The Appeals Form (and any statement and exhibits);
- (4) Responses of Appellees (and any exhibits);
- (5) Statement of Co-Lead Class Counsel (and any exhibits);
- (6) Replies to the Statement of Co-Lead Class Counsel (and any exhibits);
- (7) Summary of Review from the Claims Administrator;
- (8) Oral argument permitted by the Special Master;
- (9) Any other exhibits, memoranda and submissions directed or permitted by the Special Master; and
- (10) Any input received by the Special Master from a member of the Appeals Advisory Panel and/or an Appeals Advisory Panel Consultant.

(b) A Party to the Appeal may not introduce or refer to any evidence that was not submitted to the Claims Administrator before the Claims Administrator issued the Appealable Notice being appealed, subject to the following subsection (c) of this Rule.

(c) If any Party to the Appeal has new evidence not submitted to the Claims Administrator before the Claims Administrator issued the Notice being appealed that it wishes considered on the Appeal, it must identify such evidence and submit it to the

Claims Administrator along with the submission by that party in which it wishes to use the new evidence. The Special Master will determine whether to permit the party to introduce the new evidence. If the Special Master determines not to allow introduction of the new evidence, the Appeal will proceed without it and no Party to the Appeal may refer to or rely upon it. If the Special Master determines to allow introduction of the new evidence, the Special Master will remand the Claim to the Claims Administrator under Rule 24 for re-review using the new evidence.

Rule 24. Remand to the Claims Administrator.

- (a) Under Rule 23 and at any time the Special Master determines it necessary to do so, the Special Master may remand any Claim subject to an Appeal to the Claims Administrator for further processing.
- (b) The Parties to the Appeal may agree to remand the Claim to the Claims Administrator for further processing at any time.
- (c) If a Claim is remanded to the Claims Administrator, the Appeal on that Claim will terminate and any Appeal Fee paid by the Settlement Class Member will be refunded to the Settlement Class Member, unless the Special Master directs otherwise. The Claims Administrator will resume processing the Claim and issue appropriate Notices on the Claim resulting from such processing, which may be subject to a new Appeal if they are Appealable Notices under these Rules.

Rule 25. No Cross-Appeals. Because a Settlement Class Member, Co-Lead Class Counsel and the NFL Parties have independent rights to note an Appeal, no Party to the Appeal may cross-appeal in a Response of Appellee or any other submission on any issue not raised by that party in an independent Appeal timely noted by that party.

Rule 26. Standard of Review on Appeal. The Special Master will decide an issue on Appeal based upon a showing by the Appellant of clear and convincing evidence. Under this standard, the Appellant must convince the Special Master that there is a high degree of probability that the determination of the Claims Administrator being appealed was wrong.

Rule 27. Multiple Claims Presenting Common Issues and Preclusive Effect of Decisions. The Special Master has discretion to consolidate for purposes of briefing and/or decision the proceedings on any Claims that involve common issues of law and/or fact, as well as where the Special Master determines that a collective resolution of an issue will best serve the efficient and equitable administration of the Settlement Agreement. In any Appeal, including any instance in which the Special Master has consolidated matters involving common questions of law and/or fact or issues requiring collective resolution, the Special Master may direct that the findings and rulings on such questions and issues have preclusive effect and may not be re-litigated in any other Appeal.

Rule 28. Decision by the Special Master. The Special Master will issue to the Claims Administrator a decision on an Appeal within 60 days after the later of the date of the last submission by the Parties to the Appeal or the Claims Administrator or the date of any oral

argument, unless the Special Master determines that additional time is required for consideration of the Appeal. In such decision, the Special Master may affirm or reverse the determination of the Claims Administrator and direct such other and further relief as the Special Master deems appropriate, and will make such explanation of the grounds of the decision as the Special Master deems necessary under the circumstances.

Rule 29. Notice of Special Master Decision. Within five days after the date of a decision by the Special Master on an Appeal, the Claims Administrator will serve the decision on the Parties to the Appeal by Portal or mail.

Rule 30. Withdrawal of Appeal. An Appellant may withdraw an Appeal of right by notice to the Claims Administrator at any time until 20 days after the date of the last submission on the Appeal permitted by these Rules or directed by the Special Master. After that time, an Appellant may withdraw an Appeal only as permitted by the Special Master. The Appeal Fee will not be refunded to a Settlement Class Member withdrawing an Appeal, unless the Special Master directs otherwise. If an Appeal is withdrawn, the determination of the Claims Administrator subject to the Appeal will be considered final as of the date of the withdrawal.

Rule 31. Finality of the Special Master's Decision. The Special Master's decision on an Appeal is final and binding on the Settlement Class Member(s), the Parties to the Appeal and the Claims Administrator and is not subject to appeal or review by the Court, except that pursuant to Fed. R. Civ. P. 53(f)(4) and the Court's July 13, 2016 Order appointing the Special Masters, the Court will review *de novo* (that is, anew) any objection to the Special Master's conclusions of law. The Special Master will identify in each decision any issue the Special Master determines to be a conclusion of law to which a Party to the Appeal may object and have reviewed by the Court.

Rule 32. Objections to a Conclusion of Law in a Decision by the Special Master.

- (a) A Party to the Appeal wishing to object to a conclusion of law by the Special Master will present such objection in an Objection to Special Master Decision of up to 10 pages submitted to the Claims Administrator on a Portal or in hard copy within 20 days after the date of notice of the Special Master's decision under Rule 29, setting forth the arguments in support of the Objection.
- (b) The other Parties to the Appeal may respond with up to 10 pages to the Objection to Special Master Decision, submitted to the Claims Administrator on a Portal or in hard copy within 20 days after the date of the Objection, setting out the arguments in response to the Objection.
- (c) Exhibits to these submissions are permitted, but no party may refer to or attach any evidence that was not in the Record on Appeal before the Special Master. When submitting an Objection or response to an Objection, the submitting party must mail or deliver the submission to any Party to the Appeal not using a Portal.
- (d) The Court will review *de novo* (that is, anew) an Objection to Special Master Decision and may affirm, modify or reverse the Special Master's decision and order such other and further relief as the Court deems appropriate. The Claims

Administrator will serve the Court's decision on the Parties to the Appeal. The Court's decision is final and not subject to further review by appeal or otherwise

Rule 33. Publishing the Decisions by the Special Master and Court on Appeals.

The Special Master and the Court will designate in a decision on an Appeal whether the decision is to be published or unpublished. The Claims Administrator will post in an aggregated set de-identified copies of each published decision on the official website of the Settlement Program and on the Portal of each Portal user. In addition to their preclusive effect under Rule 27, published decisions of the Special Master and the Court will have precedential value in the Settlement Program on the issues and principles determined in the decision, which means they will serve as guidance for the consideration of the same or similar issues and principles in subsequent Appeals.

Rule 34. Claim in Audit. If the Claims Administrator places a Claim in Audit at any time, the processes on Appeal and any time periods in these Rules applicable to the Appeal will be suspended until the conclusion of the Audit.