

NFL

CONCUSSION SETTLEMENT

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

**RULES GOVERNING
APPEALS OF PLAYER CHALLENGES TO
DERIVATIVE CLAIMANTS**

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RULES GOVERNING APPEALS OF PLAYER CHALLENGES TO DERIVATIVE CLAIMANTS

TITLE I: GENERAL

Rule 1. The Purpose of These Rules. These Rules govern the appeal to the Special Master by a Derivative Claimant, a Retired NFL Football Player (or the Representative Claimant of a deceased, incapacitated, or incompetent Retired NFL Football Player) from the Claims Administrator's determinations on Challenges by a Retired NFL Football Player (or Representative Claimant) to a Derivative Claimant. As explained in Rule 3(b), a "Challenge" occurs when a Retired NFL Football Player (or Representative Claimant) contends that a Derivative Claimant has no right to share in any Monetary Award to the Retired NFL Football Player (or Representative Claimant).

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 Class Counsel, the NFL Parties or the Claims Administrator and such input from 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) "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.
- (b) "Challenge" means the Retired NFL Football Player's (or Representative Claimant's) contention that an associated Derivative Claimant does not have a right to share 1% of the Monetary Award of the Retired NFL Football Player (or Representative Claimant).
- (c) "Challenge Appeal" means an appeal under these Rules from a Challenge Determination Notice issued by the Claims Administrator on a Challenge.
- (d) "Challenge Appeal Form" is the form a Derivative Claimant uses to note a Challenge Appeal, as described in Rule 10. In these Rules, making or bringing an appeal is referred to as "noting" an appeal.
- (e) "Challenge Determination Notice" means a notice issued by the Claims Administrator announcing its final determination on a Challenge, either granting or denying the Challenge.
- (f) "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.

- (g) “Form to Appeal Unsuccessful Challenge to Derivative Claimant” is the form a Retired NFL Football Player (or Representative Claimant) uses to note a Challenge Appeal, as described in Rule 11. As described in Rule 3(d) above, in these Rules, making or bringing an appeal is referred to as “noting” an appeal.
- (h) “Objection to Special Master Decision” means an objection to the conclusions of law made by the Special Master in a decision on a Challenge Appeal, as described in Rule 25.
- (i) “Party to the Challenge Appeal” and “Parties to the Challenge Appeal” mean one or both of the Retired NFL Football Player (or Representative Claimant) and the Derivative Claimant involved in the Challenge.
- (j) “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 Class Counsel, the NFL Parties and the Claims Administrator, in the Settlement Program.
- (k) “Record on Challenge Appeal” means what may be considered by the Special Master on the Challenge Appeal, as described in Rule 17(a).
- (l) “Settlement Agreement” means the Amended Class Action Settlement Agreement dated as of June 25, 2014, as amended on February 13, 2015 and approved in the Court’s May 8, 2015 Amended Final Approval Order and Judgment (Document 6534).
- (m) “Settlement Program” means the program for benefits for Settlement Class Members established under the Settlement Agreement.
- (n) “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.
- (o) “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 in the Settlement Program.
- (p) “Summary of Challenge Determination” is what the Claims Administrator will submit if directed by the Special Master to explain what it did on the Challenge being appealed, as described in Rule 13.

Rule 4. Challenge Appeals Will Be Handled by the Special Masters. The Court has referred to the Special Masters all Challenge Appeals, 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) Special Master: The Special Master will access all Challenge 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.
- (c) 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.
- (d) No Service of Documents: For confidentiality reasons and to minimize conflict among the Parties to the Challenge Appeal, the Claims Administrator does not serve the appealing party's documents on the non-appealing party.
- (e) 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 a Challenge 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 Challenge 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 Challenge 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 Challenge 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: CHALLENGE APPEAL PROCESS

Rule 7. Who May Appeal and What May Be Appealed on Challenges. Based on a good faith belief that the determination of the Claims Administrator was incorrect, Challenge Appeals may be noted as follows:

- (a) Successful Challenges Where the Claims Administrator Granted the Challenge (which meant that the Derivative Claimant is not eligible for a Derivative Claimant Award): The Derivative Claimant may appeal: (1) whether the state law used was correctly applied; or (2) whether a different state's law should have been used to review the Challenge.

- (b) Unsuccessful Challenges Where the Claims Administrator Denied the Challenge (which meant that the Derivative Claimant is eligible for a Derivative Claimant Award): The Retired NFL Football Player (or Representative Claimant) may appeal: (1) whether the state law used was correctly applied; or (2) whether a different state's law should have been used to review the Challenge, but only when a successful Challenge Appeal would result in no Derivative Claimant Award being deducted from the Monetary Award of the Retired NFL Football Player (or Representative Claimant). As a result, if there are any eligible Derivative Claimants not subject to a Challenge by the Retired NFL Football Player (or Representative Claimant), no Challenge Appeal may be noted by the Retired NFL Football Player (or Representative Claimant) as to any Derivative Claimant.

Rule 8. 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 with respect to Challenges are appealable to the Special Master.

Rule 9. The Deadline to Note a Challenge Appeal. A Retired NFL Football Player (or Representative Claimant) or Derivative Claimant wishing to appeal a Challenge Determination Notice must note a Challenge Appeal within 30 days after the date of the Challenge Determination Notice from the Claims Administrator.

Rule 10. How a Derivative Claimant Notes a Challenge Appeal.

- (a) To note a Challenge Appeal, a Derivative Claimant must submit to the Claims Administrator a Challenge Appeal Form on a Portal or by mail or delivery. The Challenge Appeal Form is available on each Portal and is included with a Challenge Determination Notice sent by mail to a Derivative Claimant.
- (b) The Derivative Claimant must indicate in the Challenge Appeal Form why he or she feels the Challenge Determination Notice was wrong, which will be the issue(s) being appealed that the Special Master will decide on the Challenge Appeal, provided that they are appealable issues under Rule 7.
- (c) The Derivative Claimant may submit with the Challenge Appeal Form a statement of up to 10 pages setting forth the arguments of the Derivative Claimant on the issue(s) being appealed and citations to any evidence before the Claims Administrator the Derivative Claimant contends supports the Challenge Appeal. This statement will become part of the Derivative Claimant's Challenge Appeal Form. While exhibits to this submission are permitted, the Derivative Claimant may not refer to or offer any evidence that was not before the Claims Administrator, subject to Rule 17, which covers new evidence.

Rule 11. How a Retired NFL Football Player or Representative Claimant Notes a Challenge Appeal.

- (a) To note a Challenge Appeal, a Retired NFL Football Player (or Representative Claimant) must submit to the Claims Administrator a Form to Appeal Unsuccessful

Challenge to Derivative Claimant on a Portal or by mail or delivery. The Form to Appeal Unsuccessful Challenge to Derivative Claimant is available on each Portal and is included with a Challenge Determination Notice sent by mail to a Retired NFL Football Player (or Representative Claimant).

- (b) The Retired NFL Football Player (or Representative Claimant) must indicate in the Form to Appeal Unsuccessful Challenge to Derivative Claimant why he or she feels the Challenge Determination Notice was wrong, which will be the issue(s) being appealed that the Special Master will decide on the Challenge Appeal, provided that they are appealable issues under Rule 7.
- (c) The Retired NFL Football Player (or Representative Claimant) may submit with the Form to Appeal Unsuccessful Challenge to Derivative Claimant a statement of up to 10 pages setting forth the arguments of the Retired NFL Football Player (or Representative Claimant) on the issue(s) being appealed and citations to any evidence before the Claims Administrator the Retired NFL Football Player (or Representative Claimant) contends supports the Challenge Appeal. This statement will become part of the Retired NFL Football Player (or Representative Claimant)'s Challenge Appeal Form. While exhibits to this submission are permitted, the Retired NFL Football Player (or Representative Claimant) may not refer to or offer any evidence that was not before the Claims Administrator, subject to Rule 17, which covers new evidence.

Rule 12. No Appeal Fee. No fee is required for a Challenge Appeal.

Rule 13. Summary of Challenge Determination by the Claims Administrator. The Special Master may at any time direct the Claims Administrator to submit a Summary of Challenge Determination to explain what occurred in its processing of a Challenge.

Rule 14. Additional Material Required by the Special Master. The Special Master may at any time direct a Party to the Challenge Appeal to submit additional memoranda or material if the Special Master determines that such submissions would aid in the consideration of the Challenge Appeal. No other memoranda or materials may be submitted in a Challenge Appeal unless permitted by the Special Master.

Rule 15. No Discovery. No requests for production, interrogatories, requests for admission, depositions or other discovery is allowed by or on behalf of any Party to the Challenge Appeal.

Rule 16. 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 Challenge 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 a Challenge 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 Challenge Appeal may be introduced or referred to in any oral argument.

Rule 17. The Record and Evidence Considered on a Challenge Appeal.

- (a) The Record on Challenge Appeal in a Challenge Appeal consists of:
- (1) The Settlement Agreement;
 - (2) The Derivative Claim Package at issue in the Challenge Appeal, including any actions by the Claims Administrator on the Challenge;
 - (3) Any documents submitted by the Retired NFL Football Player (or Representative Claimant) and Derivative Claimant to the Claims Administrator regarding the Challenge;
 - (4) The Challenge Appeal Form or Form to Appeal Unsuccessful Challenge to Derivative Claimant (and any exhibits);
 - (5) Summary of Challenge Determination from the Claims Administrator;
 - (6) Oral argument permitted by the Special Master; and
 - (7) Any other exhibits, memoranda and submissions directed or permitted by the Special Master.
- (b) A Party to the Challenge Appeal may not introduce or refer to any evidence that had not been submitted to the Claims Administrator before the Claims Administrator issued the Challenge Determination Notice being appealed, subject to the following subsection (c) of this Rule.
- (c) If any Party to the Challenge Appeal has new evidence not submitted to the Claims Administrator before the Claims Administrator issued the Challenge Determination Notice being appealed that it wishes considered on the Challenge 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 Challenge Appeal will proceed without it and no Party to the Challenge 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 Challenge Appeal to the Claims Administrator under Rule 18 for re-review using the new evidence.

Rule 18. Remand to the Claims Administrator.

- (a) Under Rule 17 and at any time the Special Master determines it necessary to do so, the Special Master may remand any Challenge Appeal to the Claims Administrator for further processing.
- (b) The Parties to the Challenge Appeal may agree to remand the Challenge Appeal to the Claims Administrator at any time.
- (c) If a Challenge Appeal is remanded to the Claims Administrator, the Challenge Appeal before the Special Master will terminate. The Claims Administrator will re-review the Challenge and issue a new Challenge Determination Notice, which may be subject to a new Challenge Appeal.

Rule 19. Standard of Review on a Challenge Appeal. The Special Master will decide an issue on a Challenge Appeal based upon a showing by the appealing party of clear and convincing evidence. Under this standard, the appealing party 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 20. Multiple Challenge Appeals Presenting Common Issues and Preclusive Effect of Decisions. The Special Master has discretion to consolidate for purposes of decision the proceedings on any Challenge Appeals 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 Challenge 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 Challenge Appeal.

Rule 21. Decision by the Special Master. The Special Master will issue to the Claims Administrator a written decision on a Challenge Appeal within 60 days after the later of the date of the last submission by the appealing Settlement Class Member 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 Challenge Appeal. In such decision, the Special Master may affirm or reverse the determination of the Claims Administrator and may direct such other and further relief as the Special Master deems appropriate. The Special Master will make such explanation on the grounds of the decision as he or she deems necessary under the circumstances.

Rule 22. Notice of Special Master Decision. Within five days after the date of a decision by the Special Master on a Challenge Appeal, the Claims Administrator will notify the Parties to the Challenge Appeal of such decision through the Portal or mail.

Rule 23. Withdrawal of Challenge Appeal. The party who brought the Challenge Appeal may withdraw the Challenge Appeal by notice to the Claims Administrator at any time while the Challenge Appeal is pending or as otherwise permitted by the Special Master. If a Challenge Appeal is withdrawn, the determination of the Claims Administrator subject to the Challenge Appeal will be considered final as of the date of the withdrawal.

Rule 24. Finality of the Special Master's Decision. The Special Master's decision on a Challenge Appeal is final and binding on the Parties to the Challenge 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 the conclusion(s) of law to which a Settlement Class Member may object and have reviewed by the Court.

Rule 25. Objections to a Conclusion of Law in a Decision by the Special Master.

- (a) A Party to the Challenge Appeal wishing to object to a conclusion of law by the Special Master will present such objection of up to 10 pages in an 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 Notice of Special Master Decision under Rule 22, setting forth the arguments in support of the Objection.
- (b) Exhibits to this submission are permitted, but no party may refer to or attach any evidence that was not in the Record on Challenge Appeal before the Special Master.
- (c) For the same reasons stated in Rule 5(d), the Claims Administrator does not serve the objecting party's documents on the non-objecting party.
- (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 Challenge Appeal. The Court's decision is final and not subject to further review by appeal or otherwise.

Rule 26. Publishing the Decisions by the Special Master and Court on Challenge Appeals. The Special Master and the Court will designate in a decision on a Challenge 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 20, 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 Challenge Appeals.

Rule 27. Effect of Audit. If the Claims Administrator places a Settlement Class Member in Audit at any time, the processes on Challenge Appeal and any time periods in these Rules applicable to the Challenge Appeal will be suspended until the conclusion of the Audit.