

NFL

CONCUSSION SETTLEMENT

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

**RULES GOVERNING STATUTE OF
LIMITATIONS PROCEEDINGS**

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RULES GOVERNING STATUTE OF LIMITATIONS PROCEEDINGS

TITLE I: GENERAL

Rule 1. The Purpose of These Rules. These Rules govern the review by the Special Master under Section 6.2(b) of the Settlement Agreement of the eligibility for a Monetary Award of a Representative Claimant of a deceased Retired NFL Football Player who died before January 1, 2006.

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) “Brief of NFL Parties” means the brief submitted by the NFL Parties under Rule 19.
- (b) “Claim” means any Claim Package (or portion of a Claim Package) submitted to the Claims Administrator seeking or relating to a Monetary Award.
- (c) “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.
- (d) “MDL” means the federal multidistrict litigation established in the United States District Court for the Eastern District of Pennsylvania, *In re: National Football League Players’ Concussion Injury Litigation*, MDL No. 2323.
- (e) “Objection to Special Master Decision” means an objection to a decision of the Special Master on a Statute of Limitations Matter, as described in Rule 31.
- (f) “Opening Brief of Representative Claimant” means the brief submitted by the Representative Claimant under Rule 16.
- (g) “Party to the Statute of Limitations Matter” and “Parties to the Statute of Limitations Matter” mean any one or all of Co-Lead Class Counsel, the NFL Parties, Settlement Class Member(s) with a Claim subject to the Statute of Limitations Matter and, where he is assisting an unrepresented Settlement Class Member, the Pro Se Liaison.
- (h) “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.

- (i) “Pro Se Liaison” means the lawyer appointed by the Court to assist Representative Claimants who are not represented in this process by their own personal lawyer, as described in Rule 18(b).
- (j) “Record on a Statute of Limitations Matter” means what may be considered by the Special Master when deciding a Statute of Limitations Matter, as described in Rule 24.
- (k) “Reply of Representative Claimant” means a reply submitted by a Representative Claimant under Rule 21.
- (l) “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).
- (m) “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.
- (n) “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.
- (o) “Statement of Co-Lead Class Counsel” means the statement submitted by Co-Lead Class Counsel under Rule 18.
- (p) “Statute of Limitations Matter” means a Monetary Award claim by a Representative Claimant presenting the determination to be made by the Special Master under Rule 8 and proceeding under these Rules.

Rule 4. Statute of Limitations Matters Will Be Handled by the Special Masters.

The Court has referred to the Special Masters all determinations under Section 6.2(b) of the Settlement Agreement regarding the eligibility for a Monetary Award of a Representative Claimant of a deceased Retired NFL Football Player who died before January 1, 2006, 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. If a Representative Claimant who does not have a personal

lawyer is being assisted by the Pro Se Liaison, service will be made on both the Representative Claimant and the Pro Se Liaison.

- (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 Statute of Limitations Matter who use a Portal, and the uploader will mail or deliver the item to any other Party to the Statute of Limitations Matter who does not use a Portal. At the beginning of a Statute of Limitations Matter, the Claims Administrator will identify to the Parties to the Statute of Limitations Matter 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 Statute of Limitations Matter, and the party will mail or deliver it to any other Party to the Statute of Limitations Matter 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 Statute of Limitations Matters and enter orders and decisions on them using the Special Master Portal. No party may send any material directly to a 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 ECF docket. No submissions under these Rules may be filed on the Court's ECF 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 a Statute of Limitations Matter and Extensions of Time.

- (a) **How to Count Time Periods:** Any time period prescribed 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 Statute of Limitations Matter, 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 Statute of Limitations Matter 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 Statute of Limitations Matter 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: INITIAL PROCESS AND GOVERNING LAW

Rule 7. How Statute of Limitations Matters are Presented to the Special Master.
The Claims Administrator will advise the Special Master of a Statute of Limitations Matter

requiring review and determination under these Rules when the timely Monetary Award Claim Package of the Representative Claimant of a deceased Retired NFL Football Player who died before January 1, 2006, is complete under Section 8.2 of the Settlement Agreement. The Claims Administrator will not present a Statute of Limitations Matter to the Special Master unless such Claim Package was timely submitted to the Claims Administrator and is complete.

Rule 8. The Issue to be Determined in a Statute of Limitations Matter as Described in the Settlement Agreement. Section 6.2(b) of the Settlement Agreement requires the Special Master to determine whether a wrongful death or survival claim filed by the Representative Claimant of a deceased Retired NFL Football Player who died before January 1, 2006, would be barred by the statute of limitations under applicable state law as of:

- (a) The date the Representative Claimant (or the Retired NFL Football Player before his death) filed litigation against the NFL or the NFL Properties relating to the subject matter of the NFL Concussion Settlement, if such a wrongful death or survival claim was filed before June 25, 2014 (the Settlement Date); or
- (b) June 25, 2014 (the Settlement Date), where no such suit had been filed before that date.

Rule 9. Lawsuit Information. Upon request by the Claims Administrator, the NFL Parties will provide all information in their possession on whether the Representative Claimant (or the Retired NFL Football Player before his death) filed any litigation against the NFL or the NFL Properties relating to the subject matter of the NFL Concussion Settlement, including the date any such litigation was filed. The Claims Administrator will furnish such information to the Special Master.

Rule 10. Elements Controlled by the Applicable Law. The law applicable to the Statute of Limitations Matter pursuant to the choice of law rule selected under Rule 11 will control (a) the date of accrual of a claim by the Representative Claimant (or deceased Retired NFL Football Player) for wrongful death or as a survival action, which will fix the date on which the statute of limitations period began to run; (b) the statute of limitations period; and (c) whether the running of that statute of limitations period is subject to tolling on any basis, including under a discovery rule regarding awareness of injury and/or a cause of action, class action tolling based on the August 17, 2011 filing of the putative class action in *Easterling v. Nat'l Football League*, No. 11-cv-5209 (E.D. Pa.), equitable enlargement, tolling or suspension of the limitations period for any reason.

Rule 11. Choice of Law Rules. The law applicable to a Statute of Limitations Matter will be determined as follows:

- (a) **Lawsuit Filed Outside the MDL:** If the Representative Claimant (or the Retired NFL Football Player before his death) filed suit against the NFL or the NFL Properties relating to the subject matter of the NFL Concussion Settlement outside the MDL, the choice of law rules of the jurisdiction in which such suit was filed will be used to determine the law that applies to the Statute of Limitations Matter.

- (b) **Lawsuit Filed Directly in the MDL or No Lawsuit Filed:** If the Representative Claimant (or the Retired NFL Football Player before his death) filed suit against the NFL or the NFL Properties relating to the subject matter of the NFL Concussion Settlement directly in the MDL or has not filed suit in any jurisdiction, the choice of law rules of Pennsylvania will be used to determine the law that applies to the Statute of Limitations Matter, unless the Representative Claimant establishes that the choice of law rules of another jurisdiction in which venue would have been appropriate for such suit should be used for that purpose.

Rule 12. Wrongful Death Cause of Action or Survival Action. A Claim Package asserting a Qualifying Diagnosis of Death with CTE under Section 5 of Exhibit A-1 to the Settlement Agreement will be considered as a wrongful death cause of action for statute of limitations purposes. All other Qualifying Diagnoses under Exhibit A-1 to the Settlement Agreement will be considered survival actions for statute of limitations purposes.

Rule 13. No Consideration of Statute of Repose Issues. Because Section 6.2(b) of the Settlement Agreement refers only to the statute of limitations applicable to claims of Retired NFL Football Players who died before January 1, 2006, no party may raise and the Special Master will not consider any argument or issues regarding any statute of repose of any jurisdiction.

Rule 14. Burden of Proof. The Representative Claimant has the burden of establishing to the Special Master it more likely than not that the claim asserted by the Representative Claimant is not barred by the statute of limitations under applicable state law, unless a different burden of proof applies to the resolution of this issue under the state law applicable under Rule 11 to the Statute of Limitations Matter.

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 in any Statute of Limitations Matter, unless the Special Master determines it to be necessary for the determination of applicable law or of a disputed issue of material fact presented in a Statute of Limitations Matter.

TITLE III: BRIEFING AND DECISIONS

Rule 16. Opening Brief of Representative Claimant. Within 30 days after notice from the Claims Administrator that it has advised the Special Master of a Statute of Limitations Matter requiring adjudication, the Representative Claimant will submit an Opening Brief of up to 25 pages addressing:

- (a) **Choice of Law:** Which state's choice of law rules apply to the claim.
- (b) **Choice of Law Rules:** What are the choice of law rules of that state.
- (c) **Possible States with an Interest:** Unless the Representative Claimant agrees it is not relevant to the choice of law analysis, which states have a connection with the claim and may have an interest in applying their laws to the claim, because of:

- (1) Where the Retired NFL Football Player played NFL Football;
- (2) Where the Retired NFL Football Player lived; and
- (3) Where the Retired NFL Football Player died.

If the Representative Claimant will use any of these facts in the choice of law analysis, the Opening Brief of the Representative Claimant must provide where the Retired NFL Football Player played NFL Football, where he lived and where he died.

- (d) Applicable State's Law: Which state's law applies to the claim, under the choice of law rule the Representative Claimant contends applies.
- (e) Statute of Limitations Period: The statute of limitations period for a survival action or wrongful death action (Death with CTE claims), under that state's law.
- (f) Accrual Date: When the Retired NFL Football Player's cause of action against the NFL or NFL Properties accrued and the limitations period began to run, under that state's law.
- (g) Discovery Rule: Whether that state's law recognizes any postponement of the accrual date or tolling of the running of the limitations period based on when the Retired NFL Football Player was aware, or should have been aware, of injury giving rise to a cause of action and/or a cause of action against the NFL or NFL Properties.
- (h) Class Action Tolling: Whether that state's law recognizes class action tolling by the filing of the putative class action in *Easterling v. Nat'l Football League*, No. 11-cv-5209 (E.D. Pa.) on August 17, 2011.
- (i) Other Matters: Any other arguments or matters the Representative Claimant contends are relevant to the statute of limitations analysis under that state's law or otherwise.

On any of these items that require the consideration of evidence to permit the Special Master to make factual findings essential to a determination on the item, the Representative Claimant must describe that evidence in the Opening Brief of Representative Claimant and present any such evidence as exhibits under Rule 17.

Rule 17. Exhibits to the Opening Brief of Representative Claimant. The Representative Claimant will submit as exhibits to the Opening Brief any affidavits, documents or other materials the Representative Claimant wishes the Special Master to consider.

Rule 18. Submissions by Co-Lead Class Counsel.

- (a) Representative Claimant with Personal Counsel: If the Representative Claimant is represented by his/her own lawyer in the Statute of Limitations Matter, Co-Lead Class Counsel may submit, within 10 days after the date of the Opening Brief of the Representative Claimant, a Statement of Co-Lead Class Counsel on the Statute of Limitations Matter, of up to 10 pages.

(b) **Representative Claimant without Personal Counsel:** If the Representative Claimant is not represented by his/her personal lawyer, a lawyer appointed by the Court to serve as the Pro Se Liaison will assist the Representative Claimant in the preparation and submission of the Opening Brief of the Representative Claimant and exhibits, Reply of the Representative Claimant, and any other submissions or actions of the Representative Claimant in the Statute of Limitations Matter involving that Representative Claimant. Nonetheless, Co-Lead Class Counsel may submit, within 10 days after the date of the Opening Brief of the Representative Claimant, a Statement of Co-Lead Class Counsel on the Statute of Limitations Matter, of up to 10 pages.

Rule 19. Brief of NFL Parties. Within 30 days after the date of the later of the Representative Claimant's Opening Brief or the Statement of Co-Lead Class Counsel, the NFL Parties may submit a Brief of NFL Parties of up to 25 pages addressing any of the matters in the Opening Brief of the Representative Claimants or exhibits and any Statement of Co-Lead Class Counsel, and presenting any other matters and argument the NFL Parties wish the Special Master to consider. If the NFL Parties agree that the Representative Claimant's claim should be considered to be timely and not barred by a statute of limitations, the Special Master will direct the Claims Administrator to consider the claim to be timely and there will be no further proceedings in the Statute of Limitations Matter.

Rule 20. Exhibits to the Brief of NFL Parties. The NFL Parties will submit as exhibits to its Brief of NFL Parties any affidavits, documents or other materials the NFL Parties wish the Special Master to consider.

Rule 21. Reply of Representative Claimant. Within 10 days after the date of the Brief of NFL Parties, the Representative Claimant may submit a Reply of Representative Claimant of up to 10 pages. The Representative Claimant may not submit additional exhibits to the Reply of Representative Claimant, unless the Special Master approves such submission. There will be no further briefs or exhibits permitted, unless the Special Master so directs.

Rule 22. Additional Material Required by the Special Master. The Special Master may at any time direct any Party to the Statute of Limitations Matter to submit additional memoranda or material if the Special Master determines that such additional submissions would aid in the consideration of the Statute of Limitations Matter. No other memoranda or materials may be submitted unless permitted by the Special Master.

Rule 23. 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 Statute of Limitations Matter, 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 Statute of Limitations Matter. 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 a Statute of Limitations Matter may be introduced or referred to in any oral argument.

Rule 24. The Record on a Statute of Limitations Matter. The Record on a Statute of Limitations Matter will consist of:

- (a) The Settlement Agreement;
- (b) The Claim Package on the Claim involved in the Statute of Limitations Matter, including any actions by the Claims Administrator on the Claim;
- (c) Opening Brief of Representative Claimant (and any exhibits);
- (d) Statement of Co-Lead Class Counsel;
- (e) Brief of NFL Parties (and any exhibits);
- (f) Reply of Representative Claimant;
- (g) Oral argument permitted by the Special Master; and
- (h) Any other exhibits, memoranda and submissions directed or permitted by the Special Master.

Rule 25. Multiple Claims Presenting Common Issues. The Special Master has discretion to consolidate for purposes of briefing and/or decision the proceedings on any Statute of Limitations Matters 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 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 have preclusive effect under Rule 27 and may not be re-litigated in any other Statute of Limitations Matter.

Rule 26. Decision by the Special Master. The Special Master will issue to the Claims Administrator a decision on a Statute of Limitations Matter within 60 days after the later of the date of the last submission by the parties or the date of any oral argument, unless the Special Master determines that additional time is required for consideration of the Statute of Limitations Matter. The Special Master may make such explanation of the grounds for the decision as the Special Master deems appropriate.

Rule 27. Preclusive Effect of a Decision by the Special Master.

- (a) Legal Issues: The legal issues under the applicable state law decided by the Special Master in a decision on a Statute of Limitations Matter will be given preclusive effect as to this Program and such issues may not be relitigated in a subsequent Statute of Limitations Matter, unless the Special Master directs otherwise.
- (b) Factual Findings: Any factual findings by the Special Master in a decision on a Statute of Limitations Matter that are common to other Statute of Limitations Matters will be given preclusive effect as to this Program and such issues may not be relitigated in a subsequent Statute of Limitations Matter, unless the Special Master directs otherwise.

Rule 28. Notice of Special Master Decision. Within five days after the date of a decision by the Special Master on a Statute of Limitations Matter, the Claims Administrator will serve the decision on the Parties to the Statute of Limitations Matter by Portal or mail.

Rule 29. Withdrawal of a Statute of Limitations Matter. The Parties to the Statute of Limitations Matter may agree at any time before issuance of the decision by the Special Master (or by the Court on any Objection to Special Master Decision) to withdraw the matter by withdrawal of the Claim or by agreement that the Claim will be treated as not barred by a statute of limitations.

Rule 30. Finality of the Special Master's Decision. The Special Master's decision on a Statute of Limitations Matter is subject to appeal to the Court pursuant to Fed. R. Civ. P. 53(f)(3) and (4) and the Court's July 13, 2016 Order appointing the Special Masters. The Court will review *de novo* (that is, anew) any objections to the Special Master's decision.

Rule 31. Objections to a Special Master Decision.

- (a) A Representative Claimant, Co-Lead Class Counsel or the NFL Parties wishing to object to Special Master decision 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 the Notice of Special Master Decision under Rule 28, setting forth the arguments in support of the Objection.
- (b) The other Parties to the Statute of Limitations Matter may respond in 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 forth 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 of Statute of Limitations Matter 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 Statute of Limitations Matter 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, or 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 Statute of Limitations Matter. The Court's decision is final and not subject to further review by appeal or otherwise.

Rule 32. Publishing the Decisions of the Special Master and the Court. The Special Master and the Court will designate in a decision on a Statute of Limitations Matter 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 Statute of Limitations Matters.