

NFL

CONCUSSION SETTLEMENT

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

**RULES GOVERNING
THIRD-PARTY FUNDING
RESOLUTION PROTOCOL**

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RULES GOVERNING THIRD-PARTY FUNDING RESOLUTION PROTOCOL

TITLE I: GENERAL

Rule 1. The Purpose of These Rules. These Rules govern the Third-Party Funding Resolution Protocol. These Rules do not address the enforceability of the original underlying agreements between Third-Party Funders and Settlement Class Members. *See generally In re Nat'l Football League Players' Concussion Injury Litig.*, 923 F.3d 96 (3d Cir. 2019). Instead, they outline an alternative dispute resolution process. Participation in this process is completely voluntary.

Any dispute over the enforceability or validity of a Third-Party Funder Transaction must be litigated or arbitrated in an appropriate forum outside of the claims administration context, subject to “the full array of standard contract defenses” available. *In re Nat'l Football League*, 923 F.3d at 112-13. As the Third Circuit has noted, “some of the class members are cognitively impaired, and it is possible that some of them lacked the capacity to contract at the time they entered into [these] agreements. . . . There may also be issues of unconscionability, fraud, or usury based on the high effective interest rates in the agreements,” which may function as “disguised predatory loans.” *Id.* at 112. However, if an agreement is found to be enforceable, a Settlement Class Member may risk incurring additional expenses by refusing to pay any of the disputed funds while the dispute over enforceability plays out. These risks may include potential interest obligations and/or the cost of defending a lawsuit. Settlement Class Members might consider seeking legal advice on their options.

In some instances, these Rules call for the Claims Administrator to pay a Monetary Claim directly to a Settlement Class Member, rather than submitting that payment to the Settlement Class Member’s lawyer. This payment has no bearing whatsoever on the Settlement Class Member’s potential legal obligations. For instance, Settlement Class Members receiving such direct payments might be sued by a Third-Party Funder. A Settlement Class Member **SHOULD NOT** assume that this payment means that his/her lawyer has already paid off all obligations potentially owed to Third-Party Funders.¹

Rule 2. Approval and Modification by the Court and Special Masters. The Court and Special Masters have approved the terms of this Resolution Protocol and have authorized the Claims Administrator to proceed in accordance with this Resolution Protocol. The Special Master may modify this Resolution Protocol at any time, subject to approval of the Court.

Rule 3. Non-Retroactive Application of Modified Rules. These Rules were initially published on September 20, 2018.² They were modified to reflect their current form on March 19, 2020 (the “Modification Date”). The current version of these Rules only

¹ Likewise, direct payment to a Settlement Class Member has no bearing on whether the underlying agreement with a given Third-Party Funder is or is not valid or enforceable.

² The September 20, 2018 version of these Rules was called the “Third-Party Funding Resolution Protocol,” rather than the “*Rules Governing* Third-Party Funding Resolution Protocol.”

applies to Monetary Claims that have not yet received a Notice of Monetary Award as of the Modification Date. For Monetary Claims that have received a Notice of Monetary Award prior to the Modification Date, the September 20, 2018 version of these Rules continues to apply.

Rule 4. Definitions Used in These Rules. The capitalized terms in these Rules are defined as follows:

- (a) “Declaration of Consent to Substitution” means the form—accessible [here](#)—that all Third-Party Funders must complete and submit in order to participate in the Resolution Protocol.
- (b) “Final Decision” means the moment the window closes for all potential appeals of a Monetary Award—either because no appeals have been filed and the time for filing appeals has passed, or because appeals that have been filed have been resolved.
- (c) “Monetary Award” means a Monetary Award, Derivative Claimant Award, or Supplemental Monetary Award, as those terms are defined, respectively, in Sections 2.1(aaa), 2.1(zzzz), and 2.1(ff) of the Settlement Agreement.
- (d) “Monetary Claim” means a claim submitted by a Settlement Class Member for a Monetary Award.
- (e) “Notice of Monetary Award” means a Notice of Monetary Award Claim Determination (as that term is defined in Section 2.1(kkk) of the Settlement Agreement) that provides a determination that a Settlement Class Member is entitled to a Monetary Award.
- (f) “Non-Participating Funder” means a Third-Party Funder who is not participating in this Resolution Protocol.
- (g) “Participating Funder” means a Third-Party Funder who is participating in this Resolution Protocol.
- (h) “Payment Rules” mean the Rules Governing Payment of Claims Involving Third-Party Funders, accessible [here](#).
- (i) “Resolution Amount” means the amount of money—described by the Participating Funder in the Termination and Release Agreement—that a Participating Funder will accept to resolve any claims arising under the original agreement(s) between the Participating Funder and the Settlement Class Member.
- (j) “Resolution Protocol” means the process described in these Rules.
- (k) “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).

- (l) “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 is how this term is defined in the Settlement Agreement.
- (m) “Settlement Program” means the program for benefits for Settlement Class Members established under the Settlement Agreement.
- (n) “Special Master” and “Special Masters” mean any of the Special Masters appointed by the Court, either in its July 13, 2016 Order (Document 6871) or in any subsequent Orders of the Court.
- (o) “Third-Party Funder” means a person or entity that engaged in a Third-Party Funder Transaction with a Settlement Class Member.
- (p) “Third-Party Funder Transaction” means any agreement, contract, document, or arrangement between a Settlement Class Member and a third party under which: (i) the Settlement Class Member borrowed or received funds from a third party prior to receipt of a Monetary Award from the Settlement Program; and (ii) in exchange, either assigned/attempted to assign any rights related to the Settlement Class Member Monetary Award or Monetary Claim. This definition is meant to be construed broadly, so as to cover all potential cash advance agreements where a third-party entity loans or advances funds in exchange for rights to receive payment from the proceeds of any future Monetary Award, or in exchange for rights to “step into the shoes of” the Settlement Class Member and “seek funds directly from” the Settlement Program.
- (q) “Third-Party Funder Transaction List” means the list described in Rule 5(b) of these Rules.
- (r) “Termination and Release Agreement” means the form-contract—accessible [here](#)—that Participating Funders and Settlement Class Members must sign in order to reach a resolution under the Resolution Protocol, as described in Rule 8 of these Rules.

TITLE II: HOW TO JOIN THE RESOLUTION PROTOCOL

Rule 5. Participation in Resolution Protocol. To participate in the Resolution Protocol, a Third-Party Funder must provide the Claims Administrator with the following two documents:

- (a) Declaration of Consent to Substitution. Any Third-Party Funder seeking to participate in the Resolution Protocol must submit a signed and completed “Declaration of Consent to Substitution” form.

- (b) Third-Party Funder Transaction List. Third-Party Funders seeking to participate in the Resolution Protocol must also submit a “Third-Party Funder Transaction List.” In this list, the Third-Party Funder must identify every Settlement Class Member with whom the Third-Party Funder has entered into a Third-Party Funder Transaction that has not already been resolved. This list must be submitted in an Excel worksheet on a template provided by the Claims Administrator and must provide sufficient information to allow the Claims Administrator to identify each listed Settlement Class Member, including the last four digits of each Settlement Class Member’s Social Security Number. The Third-Party Funder is responsible for updating this list—and providing the Claims Administrator with an updated version—whenever any information in the list changes. For instance, if a Settlement Class Member satisfies the amount owed to the Third-Party Funder, the Third-Party Funder must remove the Settlement Class Member from the list and provide an updated version to the Claims Administrator.

Rule 6. Settlement Class Member’s Notice and Consent: Form SWS-5(A). Once a Settlement Class Member’s Monetary Award has received a Final Decision, the Claims Administrator will check to see if he/she has been identified in a Third-Party Funder Transaction List. If so, the Claims Administrator will send a Form SWS-5(A) to the Settlement Class Member,³ which does the following:

- (a) Provides Information to the Settlement Class Member. The form informs the Settlement Class Member that (i) his/her Monetary Claim has received a Final Decision and (ii) one or more Participating Funders have named the Settlement Class Member in a Third-Party Funder Transaction List.
- (b) Asks the Settlement Class Member for Consent. As to each Participating Funder who has identified the Settlement Class Member, the form asks the Settlement Class Member to (i) consent or decline to participate in the Resolution Protocol; and (ii) consent or decline to share information regarding his/her claim status with the Participating Funder.
- (c) Asks the Settlement Class Member About Third-Party Funder Transactions. The form asks the Settlement Class Member whether he/she has assigned or attempted to assign any settlement benefits from his/her Monetary Claim to any Non-Participating Funders. If the answer is “yes,” the form asks the Settlement Class Member to provide all relevant related documents.

Rule 7. Third-Party Funder Notice. If the Settlement Class Member consents under Rule 6(b) of these Rules, the Claims Administrator will inform the Participating Funder(s) of the amount and status of the Settlement Class Member’s Monetary Award. At this point, the Claims Administrator will also send a Termination and Release Agreement to the Participating Funder(s), which will trigger the Termination and Release Agreement Process described below.

³ If the Settlement Class Member has *not* been identified on a Third-Party Funder Transaction List, the Claims Administrator will send him/her a Form SWS-5(B), rather than a Form SWS-5(A), as explained in more detail in the Payment Rules.

TITLE III: TERMINATION AND RELEASE AGREEMENT PROCESS

Rule 8. Termination and Release Agreement Process. In any case where (i) one or more Participating Funders exist and (ii) the Settlement Class Member consents to participate in the Resolution Protocol with at least one of those Participating Funders, the Claims Administrator will offer the following opportunity for resolution. This process is completely voluntary. If the Settlement Class Member has multiple Participating Funders, but only consents to participate and share information with some of them, Steps One and Two will only apply to the Participating Funders who have received such consent.

- (a) **Step One:** Once a Settlement Class Member consents to participate and in the Resolution Protocol and share information with a Participating Funder, the Claims Administrator will send a Termination and Release Agreement to the Participating Funder to sign and return within 30 days of receipt. The Termination and Release Agreement asks the Participating Funder to indicate the “Resolution Amount.” This is the amount of money that the Participating Funder agrees to accept from the Settlement Class Member to resolve any claims under the original agreement(s) between the Participating Funder and the Settlement Class Member.
- (b) **Step Two:** If the Claims Administrator receives a Termination and Release Agreement completed by the Participating Funder within the 30-day period described in Rule 8(a), it will then send the Termination and Release Agreement to the Settlement Class Member and, if represented, to his/her lawyer. The Settlement Class Member will have 30 days to sign and return the Termination and Release Agreement to signify that (i) he/she agrees with the Resolution Amount and (ii) he/she consents to direct payment of that amount by the Claims Administrator to the Third-Party Funder in exchange for the Third-Party Funder’s termination of all relevant agreements/contracts relating to the Third-Party Funder Transaction and relinquishment of all claims arising under that Third-Party Funder Transaction.

Upon request, the Claims Administrator may exercise its discretion to extend the thirty-day periods described in Rules 8(a) and 8(b).

Rule 9. Payment Outcomes. If the Settlement Class Member does not reach a timely agreement with any Participating Funders under the process described in Rule 8, then the Claims Administrator will direct that the Settlement Class Member be paid pursuant to Rule 6(a) of the Payment Rules. If the Settlement Class Member reaches an agreement with one or more Participating Funders and sends the Claims Administrator a timely and complete Termination and Release Agreement, the Claims Administrator will direct payment pursuant to Rules 6(b) and 6(c) of the Payment Rules.