

**UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF PENNSYLVANIA**

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IN RE: NATIONAL FOOTBALL  
LEAGUE PLAYERS' CONCUSSION  
INJURY LITIGATION

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: No. 2:12-md-02323-AB  
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: MDL No. 2323  
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: **Hon. Anita B. Brody**  
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THIS DOCUMENT RELATES TO

Legacy Pro Sports, LLC Audit

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**SETTLEMENT IMPLEMENTATION DETERMINATION**

Before me is an objection by Legacy Pro Sports LLC and its founders [REDACTED] and Ryan Sherry (collectively, "LPS") to the Special Masters' Statement on Remand from the Court Regarding Legacy Pro Sports. For the reasons discussed below, I will deny LPS's objection.

**I. BACKGROUND**

Legacy Pro Sports LLC is a Florida company founded by [REDACTED] and Ryan Sherry that "provide[s] assistance to former NFL players in preparing their Claims for submission to the Settlement Program." Doc. No. 236279, at 1 ("Remand Decision").

In 2017, Class Counsel alerted the Settlement Program to reports that LPS was coaching players on how to perform in their neurological and neuropsychological exams and claiming that it had special relationships with Settlement doctors. Doc. No. 216229, at 1 ("Rule 15 Audit Report"). Furthermore, after investigation, the Claims Administrator determined that four Settlement Class Members who were LPS clients had submitted claims for monetary awards, though three hundred seventeen Settlement Class Members had been LPS clients at some point.

*Id.* at 1-2. As a result, the Claims Administrator initiated an audit of LPS. *Id.* The Claims Administrator also placed three of the four submitted claims into audit.<sup>1</sup> *Id.*

On January 31, 2019, the Claims Administrator issued an Audit Report detailing evidence that LPS (1) “coached players in preparation for their [neurological and neuropsychological] exams”; (2) “said that [it] had [its] ‘own’ doctors in the [Settlement] Program”; and (3) “created template medical histories to use for other players.” *Id.* at 11. Based on these findings, the Claims Administrator concluded that there was a reasonable basis to support to a finding that LPS had misrepresented, omitted, or concealed material facts in connection with Monetary Award claims. *Id.*

On May 19, 2019, the Special Masters issued a Rule 18 Decision accepting referral of the LPS Audit for further proceedings. Doc. No. 216230 (“Rule 18 Decision”). Though the Special Masters found that there was no reasonable basis to support to a finding that LPS had misrepresented, omitted, or concealed material facts in connection with the three claims submitted by LPS clients, the Special Masters concluded that LPS’s conduct had “significant implications for the integrity and fair administration of the Settlement Agreement as a whole.” *Id.* at 2. As such, the Special Masters ordered that the Claims Administrator: (1) allow the three claims submitted by LPS clients to continue through the claims process; (2) issue a cease-and-desist letter to LPS regarding its Settlement-related activities; and (3) place into audit any future claims by LPS clients. *Id.*

On October 4, 2019, the Special Masters issued a Rule 27 Decision finding that LPS (1) “purported to coach players on what to do or say in their medical exams in order to get a Qualifying Diagnosis”; (2) “may have copied language from players’ medical histories and sent

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<sup>1</sup> The Claims Administrator did not place the fourth claim into audit because the player involved in the claim was diagnosed with Parkinson’s Disease before LPS was founded. Rule 15 Audit Report 2 n.4.

that language as a template to several players and law firms for use in their Monetary Award Claim Packages”; and (3) “represented to clients that [it has its] own doctors in the Settlement Program, implying that such connections would increase players’ chances of securing a Qualifying Diagnosis.” Doc. No. 216193 (“Rule 27 Decision”). The Special Masters then reaffirmed the remedies in their Rule 18 Decision. *Id.*

LPS objected. Doc. No. 216195.

On August 17, 2020, the Court remanded the Special Masters’ Rule 27 Decision for further explanation. Doc. No. 236278.

On April 16, 2021, the Special Masters issued their Remand Decision. *See generally* Remand Decision.

LPS has now filed an objection to the Special Masters’ Remand Decision. Doc. No. 236280 (“Objection”).

## **II. DISCUSSION**

LPS challenges the Special Masters’ Remand Decision on three grounds. First, LPS argues that the Special Masters exceeded the scope of their audit authority. Second, LPS argues that the Special Masters erred by improperly weighing the evidence and failing to credit LPS’s explanations. Third, LPS argues that the Special Masters abused their discretion by disqualifying LPS from participating in the Settlement Program. None of these arguments are availing.

### **A. The Special Masters Did Not Exceed the Scope of Their Audit Authority.**

LPS argues that the Special Masters had no authority to continue the audit proceedings once the Special Masters concluded that there was no reasonable basis to find that LPS misrepresented, omitted, or concealed material facts in connection with the three claims submitted by LPS clients. Put otherwise, LPS contends that the Special Masters’ audit authority

ended once they determined that no *past or currently pending* claims were *actually* affected by LPS's wrongdoing. This is not so.

As an initial matter, the Special Masters had the discretion to consolidate for briefing and/or decision the audit of the three claims submitted by LPS clients and the broader audit of LPS's conduct in relation to the Settlement—including LPS's conduct in relation to Settlement Class Members with potential future claims. *See Rules Governing the Audit of Claims* r. 26 (“Special Master has discretion to consolidate for purposes of briefing and/or decision any Audit Proceedings with 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.”). The Special Masters’ consolidation of these proceedings for efficiency, however, does not mean that the Special Masters’ resolution of the audit of the three submitted claims necessarily resolved the audit of LPS’s conduct in relation to Settlement Class Members with potential future claims.

Furthermore, the Settlement—viewed as a whole—gives the Special Masters the authority to address wrongdoing that has the potential to affect future claims. The Rules Governing the Audit of Claims require the Special Masters to determine whether

the Settlement Class Member(s) subject to the Audit Report (or any other persons or entities whom the Special Master has required to respond under Rule 22) have established that there is no reasonable basis to support a finding that there has been a misrepresentation, omission or concealment of a material fact made in connection with a Claim by the Settlement Class Member.

Rules Governing the Audit of Claims r. 27.<sup>2</sup> The Rules define “material fact” as a fact that “did affect or has any potential to affect whether the Settlement Class Member qualifies for a

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<sup>2</sup> LPS erroneously contends that under the Rules Governing the Audit of Claims, “any ‘misrepresentation, omission or concealment of a material fact’ is limited to those made ‘by the Settlement Class Member’ and would not be inclusive of any such statements made by a third party to a Settlement Class Member.” Objection 6. To the contrary, the clear text of Rule 27 merely requires that “a misrepresentation, omission

Monetary Award, Supplemental Monetary Award or Derivative Claimant Award and/or the amount of such award in favor of the Settlement Class Member under the provisions of the Settlement Agreement.” *Id.* r. 12(c).

LPS points to the May 31, 2019 version of the Rules Governing the Audit of Claims, which defined “Claim” in the past tense as a “Claim Package (or portion of a Claim Package) submitted to the Claims Administrator . . . .” Rules Governing the Audit of Claims r. 3(d) (May 31, 2019) (emphasis added). Based on this definition, LPS argues that the word “Claim” in the Rules Governing the Audit of Claims only refers to past or pending claims, so the Special Masters’ audit authority only extends to misrepresentations, omissions, or concealments made in connection with past or pending claims—not future claims.

Viewing the Settlement *as a whole*, however, the word “Claim” in the Rules Governing the Audit of Claims must include future claims. The Settlement Agreement makes clear that the audit process is intended to “detect and *prevent* fraudulent submissions to, and payments of fraudulent claims from, the Monetary Award Fund.”<sup>3</sup> Settlement Agreement § 10.3(b) (emphasis added); *accord* § 10.3 (“Audit Rights and Detection and *Prevention* of Fraud” (emphasis added)). As such, the Special Masters are explicitly tasked with “[o]verse[ing] fraud detection and *prevention* procedures, and review[ing] and decid[ing] the appropriate disposition of

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or concealment of a material fact [be] made *in connection with a Claim* by the Settlement Class Member.” Rules Governing the Audit of Claims r. 27 (emphasis added); *accord id.* r. 12(a).

<sup>3</sup> LPS contends that the Special Master should have read this language with the “emphasis . . . on ‘fraudulent,’ not ‘prevent,’” and that the Special Masters “conflate[d] fraud and the discrete elements thereof.” Objection 7. The Settlement, however, does not require the Special Masters to establish every element of fraud before acting. *See* Rules Governing the Audit of Claims r. 28 (requiring Special Masters to determine whether there is a “reasonable basis” to find a misrepresentation, omission, or concealment, and allowing—but not requiring—the Special Masters to find that the misrepresentation, omission, or concealment was intentional).

potentially fraudulent claims.” *Id.* § 10.1(b)(5) (emphasis added). The Rules Governing the Audit of Claims confirm this understanding. *See* Rules Governing the Audit of Claims r. 6 (“[T]he Claims Administrator has established and implemented the Audit procedures to detect and *prevent* fraudulent submissions to and payments of fraudulent Claims from the Monetary Award Fund.” (emphasis added)). The plain meaning of “[p]revention inherently requires proactive measures and implicates future—that is, potential but currently unsubmitted—Claims.”<sup>4</sup> Remand Decision 7. “The Special Masters[’] authority to issue remedies thus cannot logically be limited only to already submitted Claims.”<sup>5</sup> *Id.*

To summarize, the Settlement requires the Special Masters to determine whether there is a reasonable basis to find that there has been a “misrepresentation, omission, or concealment” of a fact that “did affect or has any potential to affect” whether a Settlement Class Member qualifies for an award or the amount of the award and that was “made in connection with a [past, current, or future] Claim by the Settlement Class Member.” Rules Governing the Audit of Claims rs. 12, 28. If the Special Masters determine there is a reasonable basis to find that this type of misrepresentation, omission, or concealment occurred, the Special Masters have the authority to “direct such relief as deemed appropriate.” *Id.* r. 31

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<sup>4</sup> *See, e.g., Prevent*, Black’s Law Dictionary (11th ed. 2019) (“To stop from happening; to hinder or impede.”); *Prevent*, Merriam-Webster Dictionary, <https://www.merriam-webster.com/dictionary/prevent> (last visited Aug. 4, 2021) (“to keep from happening or existing”; “to hold or keep back”; “to deprive of power or hope of acting or succeeding”); *Prevent*, Oxford English Dictionary, <https://www.oed.com/view/Entry/151073?rskey=h4xJsd&result=2#eid> (last visited Aug. 4, 2021) (“To anticipate or act in advance.”).

<sup>5</sup> In fact, in March 2020, the Rules Governing Rules Governing the Audit of Claims were revised to clarify this exact point. *See* Rules Governing Rules Governing the Audit of Claims r. 3(d) (Mar. 18 2020) (defining “Claim” as “any Claim Package (or portion of a Claim Package) submitted or that *may be submitted* to the Claims Administrator . . . .” (emphasis added)).

The Special Masters acted within this authority. As the Special Masters stated, “[r]epresenting to coach players, providing potential claimants with template medical histories, and claiming to have special relationships with doctors within the Settlement all have the potential to affect whether a player qualifies for a Monetary Award.” Remand Decision 7. Based on this finding, the Special Masters had the authority to “direct such relief as deemed appropriate” regarding LPS’s conduct. Rules Governing the Audit of Claims r. 31. Thus, the Special Masters did not exceed the scope of their audit authority.<sup>6</sup>

**B. The Special Masters’ Factual Determinations Are Not Reviewable.**

LPS cannot challenge the weight that the Special Masters accorded certain evidence, nor can it challenge the Special Masters’ decision to not credit LPS’s explanations for certain evidence because the Special Masters’ factual findings are not reviewable. See Rules Governing the Audit of Claims r. 33 (“The decision of the Special Master on a referred Audit Report . . . is not subject to appeal or review by the Court, except . . . the Court will review *de novo* (that is, anew) any objection to the Special Master’s conclusions of law.”).

**C. The Special Masters Did Not Abuse Their Discretion by Disqualifying LPS.**

The Special Masters did not err in disqualifying LPS from participating in the Settlement Program. The Rules Governing the Audit of Claims provide the Special Masters with authority to

direct such relief as deemed appropriate, including without limitation . . . [d]isqualification of the lawyer, law firm, claims service, healthcare provider or other person or entity, and/or Settlement Class Member(s) subject to the Audit Proceeding from further participation in the Settlement Program;

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<sup>6</sup> Similarly, the Claims Administrator did not exceed the scope of its audit authority because it is also expressly tasked with preventing fraud and addressing misrepresentations that have the potential to affect past, current, or future claims. Settlement Agreement §§ 10.2(b)(7), 10.3(b); Rules Governing the Audit of Claims r. 12.

[and] . . . [s]uch other and further relief as the Special Master may deem appropriate.

Rules Governing the Audit of Claims r. 31.<sup>7</sup>

I may only set aside the Special Masters’ ordered relief if they abused their discretion. Fed. R. Civ. P. 53(f)(5). “An abuse of discretion occurs only where the [Special Masters’] decision is ‘arbitrary, fanciful, or clearly unreasonable’—in short, where ‘no reasonable person would adopt the [Special Masters’] view.’” *United States v. Green*, 617 F.3d 233, 239 (3d Cir. 2010) (quoting *United States v. Starnes*, 583 F.3d 196, 214 (3d Cir. 2009)).

The Special Masters did not abuse their discretion by disqualifying LPS from participating in the Settlement. The LPS Audit revealed that LPS “(1) represented to potential claimants that they would help train them for medical exams; (2) provided potential claimants with template medical histories; and (3) claimed to have special relationships with doctors within the Settlement.” Remand Decision 6. Based on this information, it was reasonable for the Special Masters to conclude that any relief short of disqualification—including merely placing future claims by LPS clients into audit—would fail to prevent LPS from engaging in future wrongdoing.<sup>8</sup> Thus, the Special Masters did not abuse their discretion by disqualifying LPS from participating in the Settlement Program.

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<sup>7</sup> Likewise, Settlement Agreement § 10.3(i) provides: “The Special Master’s review and findings [of a referred audit report] . . . may include the following relief, *without limitation*: . . . disqualification of the attorney, physician and/or Settlement Class Member from further participation in the Class Action Settlement.” Settlement Agreement § 10.3(i) (emphasis added). LPS argues that it is not a “attorney, physician, [or] Settlement Class Member,” so the Special Masters cannot disqualify it from the Settlement under § 10.3. This is not so. Section 10.3 explicitly states that the listed remedies are not the sole and exclusive remedies that the Special Masters may order.

<sup>8</sup> LPS also erroneously argues that the Special Masters’ ordered remedies—disqualifying LPS from the Settlement Program and placing future claims by LPS clients into audit—are internally inconsistent. These remedies are not inconsistent. The LPS Audit revealed that three hundred seventeen Settlement Class Members were LPS clients at some point, but only four have submitted claims to date. Remand Decision 1. Thus, even if LPS is disqualified from participating in the Settlement, its former clients may nevertheless submit claims at a future date. These future claims by LPS clients will be placed into audit.

Based on a review of the Special Masters' Remand Decision, LPS's objection, and the NFL Parties' opposition to the objection, I approve and adopt the conclusions in the Special Masters' Remand Decision.

**AND NOW**, on this 25th day of August, 2021, it is **ORDERED** that Legacy Pro Sports LLC, [REDACTED], and Ryan Sherry's Rule 34 Objection to the Special Masters' Statement on Remand from the Court Regarding Legacy Pro Sports (Doc. No. 236280) is **DENIED**.

s/ ANITA B. BRODY, J.  
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ANITA B. BRODY, J.