

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

IN RE: NATIONAL FOOTBALL LEAGUE
PLAYERS' CONCUSSION INJURY
LITIGATION

THIS DOCUMENT RELATES TO:

ALL ACTIONS

: No. 2:12-md-02323-AB
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MDL No. 2323

Hon. Anita B. Brody

**CLAIMS ADMINISTRATOR'S MEMORANDUM REGARDING
SUBMISSIONS TO THE INQUIRY INBOX**

1. *Norming Agreement Notice.* BrownGreer PLC is the Court-appointed Claims Administrator of the Settlement Program established under the Class Action Settlement Agreement in this litigation. The January 3, 2022 "Important Notice from the Court" regarding "The Elimination of Race as a Consideration in the Assessment of Neuropsychological Test Results" (the "Notice") instructed BrownGreer to circulate the "notice, with a copy of the motion and attached exhibits (ECF No. 11567), to all members of the Class." The Notice also directed that "BrownGreer must post these documents on the Settlement Program's website (www.nflconcussionsettlement.com)." We posted the Notice, with a copy of the motion and attached exhibits (ECF No. 11567) on the Settlement Website and on the Program Portals for the *Pro Se* Settlement Class Members and the law firms representing Settlement Class Members on January 3, 2022. In addition, on January 4, 2022, we emailed 17,844 Settlement Class Members and all 562 law firms representing Settlement Class Members in the Program, alerting them to these filings and provided links to access the documents. On January 5, 2022,

we mailed packets with the Notice and a copy of the motion and attached exhibits (ECF No. 11567) to 1,107 Settlement Class Members for whom we did not have an email address. We mailed 1,241 additional packets to Settlement Class Members whose emails bounced back and therefore were not delivered.

The Notice stated that “If you have any comments, questions, or concerns regarding the proposed resolution, please send an email to Norming@NFLConcussionSettlement.com by January 25, 2022.” As directed, we set up and made this inbox (the “Inquiry Inbox”) operational on January 3, 2022. We summarize and explain the inquiries we received in this memorandum (the “Memorandum”).

2. *Submissions to the Inquiry Inbox.* We received a total of 61 submissions to the Inquiry Inbox. Of these, 52 were submitted by January 25, 2022, and the other nine on January 26 through February 2, 2022. We summarize and address all 61 inquiries in this Memorandum.

3. *Inquiries from Settlement Class Members.* Of the 61 total inquiries received, 47 were sent by Settlement Class Members or on behalf of Settlement Class Members by their family members and one by a Settlement Class Member’s business advisor. We will make these inquiries available to the Court for *in camera* inspection upon request but, due to privacy concerns, are not submitting each of these inquiries with this Memorandum. Forty-three of these inquiries ask for specific information about a particular Settlement Class Member such as, “I received this new communication about norming but not sure how that fits with my case” and “what should I do if I was denied in the initial case?” Of these 43 inquiries:

- (a) Twenty-six of the Settlement Class Members are represented by lawyers in the Settlement Program. We responded to these inquiries with “Thank you for

your inquiry. We will share it with the Court. Our records indicate that you are represented by an attorney in relation to the NFL Concussion Settlement Program. To discuss specific details of your possible claims, please contact your attorney.”

- (b) Seventeen of the Settlement Class Members are proceeding as *pro se* in the Settlement Program. We responded to their inquiries by replying that “we have received your email and will provide your message to the Court.” In addition, Class Counsel sent a personalized message to each of these seventeen *pro se* Players responding to their specific questions and/or explaining that more information will be forthcoming to assess the Player’s individual circumstances.

The remaining four inquiries from Settlement Class Members or on their behalf focus on individual circumstances but also raise more general questions, quoted here:

- (a) “Why did the wording need to change for fairness to be administered across the board?”
- (b) “Was the settlement amount that was awarded to the players affected by race as well or was the concession settlement paid out on an equal scale?”
- (c) “As a retired NFL player who participated in the testing program, I support the agreement of eliminating any consideration of race in the settlement program. Many retired players, such as myself are living with problems caused by concussions and dementia, as a true reality. I feel it’s a racist practice and should be abolished.”
- (d) “We are urging the NFL Concussion Settlement program to allow players that have previously been tested to be retested without race being taken into consideration. We have experienced repeatedly in both health and other public/private sectors the impacts of racial profiling which have caused loss of opportunity and income. In this case, we were told we could only utilize NFL-sanctioned doctors to perform the neurological assessment and for us this meant going to a White doctor that we had never met before and who had never met us (I accompanied my husband on his visits). From the beginning, I did not think the doctor was giving my husband a fair chance and the doctor seemed uninterested and passive when it came to collecting information from my husband and asking my husband questions. From my vantage point, it seemed the doctor had already summed up my husband and his playing career. He made references as such and when we left, neither I nor my husband felt confident that he had been treated with the best of intentions and service.

In medicine and science it is very possible to run tests blindly and with full anonymity. These protocols should be put in place immediately to make sure that every player is given equal and fair treatment. There are ample studies demonstrating the bias and racial discrimination that occurs in the health field and I have highlighted a few.”

4. ***Inquiries from Law Firms.*** Of the 61 total inquiries received, 14 were submitted by law firms. Two of these questions pertained to individual Player circumstances. We will make those inquiries available to the Court for *in camera* inspection upon request but, due to privacy concerns, are not submitting them with this Memorandum. The remaining 12 inquiries are attached to this Memorandum, after redacting the names and other identifying information.

Respectfully submitted,

CLAIMS ADMINISTRATOR

By: 
Roma Petkauskas
Virginia State Bar No.: 71357
BrownGreer PLC
250 Rocketts Way
Richmond, Virginia 23231
Telephone: (804) 521-7218
Facsimile: (804) 521-7299
Email: rpelkauskas@browngreer.com

Dated: February 4, 2022.

CERTIFICATE OF SERVICE

I hereby certify that I caused the foregoing Claims Administrator's Memorandum Regarding Submissions to the Inquiry Inbox to be served via the Electronic Case Filing (ECF) system in the United States District Court for the Eastern District of Pennsylvania, on all parties registered for CM/ECF in the litigation.

Dated: February 4, 2022.


Roma Petkauskas

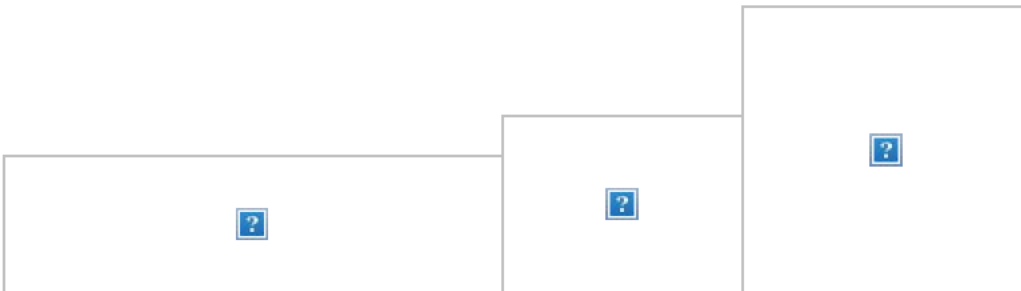
ATTACHMENT

From: [REDACTED]
To: [REDACTED]
Cc: [NFL Concussion Norming](#)
Subject: RE: IMPORTANT: Notice of Elimination of Race as a Consideration in the Assessment of Neuropsychological Test Results
Date: Tuesday, January 4, 2022 12:46:11 PM
Attachments: [image001.png](#)
[image002.png](#)
[image003.png](#)

[REDACTED]

From: [REDACTED]
Sent: Tuesday, January 4, 2022 11:56 AM
To: [REDACTED]
Subject: Re: IMPORTANT: Notice of Elimination of Race as a Consideration in the Assessment of Neuropsychological Test Results
What will be the procedure to have previously denied claims reevaluated?

[REDACTED]



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*** Please note that I have NOT expressly designated my email address as appropriate for electronic service in a pleading or other writing under [REDACTED]

On Jan 4, 2022, at 9:03 AM, [REDACTED] wrote:

This is an official notification from the NFL Concussion Settlement Program Claims Administrator.

The Court overseeing the NFL Concussion Settlement entered an important Notice of Elimination of Race as a Consideration in the Assessment of Neuropsychological Test Results. **You can read the Notice by clicking [HERE](#).** Clinicians in the Settlement Program were previously permitted but not required to consider a Retired Player's race in assessing his neuropsychological test results for purposes of diagnoses and awards based on dementia. Last year, two Retired Players brought legal actions challenging this practice. The NFL Parties, Class Counsel, and the attorneys for the two Players have collaboratively reached an agreement to eliminate any consideration of race in the Settlement Program. This agreement will be referred to as the "Norming Agreement." On December 30, 2021, the Court received a motion (ECF No. 11567, 12-md-2323) to approve modifications to the Class Action Settlement Agreement in order to implement those components of the Norming Agreement impacting the Class. **You can read the motion and attached exhibits (ECF No. 11567) by clicking [HERE](#).**

[REDACTED]
Law Firm Contact

BROWN GREER PLC

250 Rocketts Way

Richmond, Virginia 23231

[REDACTED]
Facsimile: (804) 521-7299

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From: [REDACTED]
To: [NFL Concussion Norming](#)
Cc: [REDACTED]
Subject: Race Norming
Date: Tuesday, January 4, 2022 2:13:54 PM

Do you know how this development will impact Players' previous diagnoses? Is there a procedure in place to request reconsideration of previous results determinations? Your assistance is greatly appreciated.

[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

*** Please note that I have NOT expressly designated my email address as appropriate for electronic service in a pleading or other writing under [REDACTED]



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From: [REDACTED]
To: [NFL Concussion Norming](#)
Subject: Questions
Date: Wednesday, January 5, 2022 10:17:31 AM

Good morning,

I have a couple questions regarding the new change eliminating race as a consideration in the assessment of neuropsychological test results.

- 1.) How does the change affect past claim packages? Do we need contact the neuropsychologist directly to re-score the player's exam? Does the player have to get re-examined and/or seen again in person by the neuropsychological/MAF doctor again?

Thank you,

[REDACTED]

From: [REDACTED]
To: [NFL Concussion Norming](#)
Subject: Questions (#1)
Date: Thursday, January 13, 2022 12:40:11 PM

Section 8.2 Class Counsel. Class Counsel represents and warrants, as of the Settlement Date, that: (i) it is empowered and authorized to sign on behalf of and bind the individuals for whom it has signed; and (ii) this Agreement constitutes Class Counsel's legal, valid, and binding obligation.

Who is it specifically that Class Counsel represents if not the Class Members? This says it binds the individuals for whom it has signed, and I can't conceive of this being other than the Class of retired players.

Consider, this Judge Brody, did not rule on my motion to intervene and the mediation went forward without me, it involved only Henry/Davenport & Counsel, NFL Counsel and Class Counsel, who would he have been negotiating on behalf of the class members? The release is for NFL Counsel and Class Counsel from Henry/Davenport & Counsel. Are NFL Counsel and Class Counsel not released from the class members? Does NFL Counsel and Class Counsel have any exposure to the class members?

Sincerely,

[REDACTED]



[REDACTED]

image002



Dictated but not proof read to expedite
Siri is an unforgiving transcriptionist

From: [REDACTED]
To: [NFL Concussion Norming](#)
Subject: Question (#2)
Date: Thursday, January 13, 2022 12:41:11 PM

The joint motion by the NFL and Class Counsel asks the Court to approve modifications to the Settlement Agreement which is binding upon all Class Members. Although Exhibits 2 and 3 only show modifications to the Qualifying Diagnoses, the motion references a proposed order (several times) that I've been unable to find. It doesn't appear to be appended to the motion, nor is it one of the three Exhibits. The motion states, "*Specifically, the Claims Administrator will distribute a notice to the Settlement Class and counsel representing Settlement Class Members that directs them to **this Motion and the proposed Order, both of which will be available on the Settlement Program's website.***," but it is not posted there--only the Class Notice, Motion and Exhibits 1-3 were posted to the site. Where can I find the text of the proposed order?

[REDACTED]

Dictated but not proof read to expedite
Siri is an unforgiving transcriptionist.

An attorney-client relationship is not created with [REDACTED] or any of its lawyers unless there is an express written agreement between the client and the firm. Sending information to, or speaking with, [REDACTED], or its lawyers or employees does not create an attorney-client relationship.

From: [REDACTED]
To: [NFL Concussion Norming](#)
Subject: Question (#3)
Date: Thursday, January 13, 2022 12:42:00 PM

Section 12.5Beneficiaries. This Agreement will be binding upon the Parties and will inure to the benefit of the NFL Parties, Intervenor, Intervenor's Counsel, Class Counsel, and the Released Parties, as well as all Class Members in the Class Action Settlement Agreement. No provision in this Agreement is intended to create any other third-party beneficiary to this Agreement other than those expressly referenced in this Section 12.5. Nothing expressed or implied in this Agreement is intended to or will be construed to confer upon or give any person or entity other than the NFL Parties, Intervenor, Intervenor's Counsel, Class Counsel, the Released Parties, and Class Members in the Class Action Settlement Agreement, any right or remedy under or by reason of this Agreement.

I understand that "Parties" is defined as, "the Intervenor, Class Counsel, and NFL Parties," but taken with Section 8.2, could this possibly include Class Members whom Class Counsel represents?

Sincerely,

[REDACTED]

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From: [REDACTED]
To: [NFL Concussion Norming](#)
Subject: Question (#4)
Date: Thursday, January 13, 2022 12:43:21 PM

Section 3.1 (c) Once diagnostically accurate long-term Norms are developed, they will replace the New Method prospectively in the Settlement Program in accordance with the terms of this Agreement (as amended by the Parties if necessary), and the New Method will no longer be used.

Is it prudent to agree to implement "long-term norms" that have not yet been developed? Who will approve the long-term norms? Do they require approval by Intervenor as well as the NFL and Class Counsel?

Sincerely,

[REDACTED]

Dictated but not proof read to expedite
Siri is an unforgiving transcriptionist.

An attorney-client relationship is not created with [REDACTED] or any of its lawyers unless there is an express written agreement between the client and the firm. Sending information to, or speaking with, [REDACTED] or its lawyers or employees does not create an attorney-client relationship.

From: [REDACTED]
To: [NFL Concussion Norming](#)
Cc: [REDACTED]
Subject: Questions regarding Notice of Elimination of Race as a Consideration in the Assessment of Neuropsychological Test Results
Date: Wednesday, January 19, 2022 11:45:23 AM

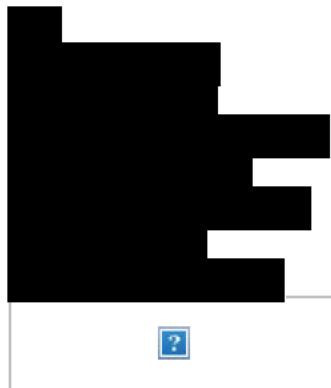
Good morning,

I have some questions about this Notice please.

First, does this only effect clients whose awards are based on BAP eval? We have some clients who received an award based on their medical records so I'm not sure it will apply to their cases.

Second, we do not have to proactively do anything at this point, correct? The clients who automatically qualify to be rescored will be notified of that new score from the Settlement Administrator?

Thanks for the help,



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From: [REDACTED]
To: [REDACTED]
Cc: [NFL Concussion Norming](#)
Subject: RE: IMPORTANT: Notice of Elimination of Race as a Consideration in the Assessment of Neuropsychological Test Results
Date: Friday, January 21, 2022 10:25:44 AM

[REDACTED]

From: [REDACTED]
Sent: Thursday, January 20, 2022 10:48 AM
To: [REDACTED]
Subject: FW: IMPORTANT: Notice of Elimination of Race as a Consideration in the Assessment of Neuropsychological Test Results

[REDACTED] – is the Exhibit attached below contain the new guidelines for the neuropsychs to follow? Or do they need to wait until the Exhibit is “finalized”? We have some players who were tested who need to have their results re-scored under the new guidelines. I am not clear whether Exhibit A has been finally approved and will be the standard from here on out. Please let me know.

[REDACTED]

----- Forwarded message -----

From: [REDACTED]
Date: Tue, Jan 4, 2022 at 12:28 PM
Subject: IMPORTANT: Notice of Elimination of Race as a Consideration in the Assessment of Neuropsychological Test Results
To: [REDACTED]

This is an official notification from the NFL Concussion Settlement Program Claims Administrator.

The Court overseeing the NFL Concussion Settlement entered an important Notice of Elimination of Race as a Consideration in the Assessment of Neuropsychological Test Results. **You can read the Notice by clicking [HERE](#).**

Clinicians in the Settlement Program were previously permitted but not required to consider a Retired Player’s race in assessing his neuropsychological test results for purposes of diagnoses and awards based on dementia. Last year, two Retired Players brought legal actions challenging this practice. The NFL Parties, Class Counsel, and the attorneys for the two Players have collaboratively reached an agreement to eliminate any consideration of race in the Settlement Program. This agreement will be referred to as the “Norming Agreement.” On December 30, 2021, the Court received a motion (ECF No. 11567, 12-md-2323) to approve modifications to the Class Action Settlement Agreement in order to implement those components of the Norming Agreement impacting the Class. **You can read the motion and attached exhibits (ECF No. 11567) by clicking [HERE](#).**

Thank you.

Claims Administrator

NFL Concussion Settlement

BROWN GREER PLC

Telephone: (855) 887-3485

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BELIEVE IT, CLAIM IT AND WORK IT OUT....

MEMORANDUM

TO: Whomever it Concerns

FROM: [REDACTED]

DATE: January 24, 2022

SUBJECT: **Improper Race-based Norms and Resulting Settlement**

It is my understanding that the new BAP Testing will be scored using Race Neutral Norms, which in turn means more money for players who need it desperately. This is good news, however, it does nothing to penalize the NFL for utilizing the biased norms in the first place.

There is mistrust between the older players and the NFL. A multi-billion dollar organization, consisting of billionaires, and billion+ dollar stadiums control the narrative. You have players who put their bodies on the line to play the game of football, yet the older players have no negotiating power at the table. Anything we get from the NFL is controlled by the NFL. When I played, the narrative was called "Institutional Discrimination".

NFL players who sue the NFL and win will not receive any money. The NFL will set up another "program", like dental or vision. Any issue they have with players results in another program controlled by them. The programs are just a ploy to deny players monetary compensation for winning lawsuits. They are hoping the older players will not be around to benefit, resulting in more money for the owners.

Bottom line—if we have a settlement in place and each player is trying his best to follow the rules, and an unexpected requirement is thrown into the mix (Race based norms), this is a breach of contract. An environment of mistrust has, also, been created.

The players won the case. Now, it is up to Judge Brody to make a decision on how she will rule. Please do not let them off the hook, when they created this situation of mistrust. They will continue to find loopholes for nonpayment of settlements or spread the payments out over an astronomical number of years. A slap on the wrist will not get their attention, or deter them from cheating again. Something has to be done to get their attention.

Thank you in advance for considering my concerns.

From: [REDACTED]
To: [NFL Concussion Norming](#)
Subject: Comment Re: Race Norming Motion
Date: Tuesday, January 25, 2022 10:45:08 AM

Please consider the following Comment to the *Motion Of The NFL Parties And Class Counsel To Approve Modifications To The NFL Concussion Settlement Agreement Pursuant To Section 6.6*. (Hereinafter, "Motion")

On ECF page 22, (pdf p.20) the Motion states:

New BAP examinations conducted under these provisions must occur within twenty-four months of the Court's Order granting this Motion to implement certain provisions of the Norming Agreement.

As an attorney who is involved with BAP scheduling, and recognizing the time it takes to obtain appointments and the unavoidable delays that sometimes occur when attending exams, (e.g., COVID) I suggest the Parties and/or the Court consider amending the language as follows:

New BAP examinations conducted under these provisions must ~~be requested occur~~ within twenty-four months of the Court's Order granting this Motion to implement certain provisions of the Norming Agreement.

Such a change is consistent with a prior BAP deadline of June 6, 2019, in that certain claimants had to have only *requested* BAP by that date. (see FAQ 52) I am also aware this date was subject to certain exceptions the Parties had informally agreed to many of which were dependent on the status of existing claims, appeals and audits. Those exceptions, for consistency, should also be included with any changes that result from this Motion and the underlying agreement.

Respectfully,

/s

[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

From: [REDACTED]
To: [REDACTED]
Cc: [NFL Concussion Norming](#)
Subject: RE: Race Norming
Date: Wednesday, January 26, 2022 3:54:21 PM

[REDACTED]

From: [REDACTED]
Sent: Wednesday, January 26, 2022 11:12 AM
To: [REDACTED]
Subject: Race Norming

[REDACTED] – I’m reading the agreement and have a question. On page 18. “B. Expanded BAP Examinations”, the agreement states there may be an additional BAP exam is the claim was denied “because of the insufficiency of his T scores”. What does that mean? I have several players who failed their validity tests and therefore their testing was deemed insufficient to diagnose impairment one way or another. Does this section allow for a new exam for a player who failed his BAP or MAF exam for validity/effort reasons?

If not, what “insufficiency” is it referring to?

Thanks, [REDACTED]

[REDACTED]