

# NFL CONCUSSION SETTLEMENT

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

## RULES GOVERNING ATTORNEYS' LIENS

The retirement of the Magistrate Judge who assisted the Court with the resolution of Attorney Liens since the early days of claims administration offers an opportunity to modify existing practices and minimize the expenditure of judicial resources on matters that are ancillary to this Settlement. On September 21, 2023, the Court expanded the role of the Special Masters to include responsibilities in this area. The Special Masters have developed these Rules to define their role and announce new procedures for effective resolution of these disputes.

As described below, all Attorney Lien Disputes will be heard by the Special Masters, who will prepare a Report and Recommendation for the Court. If the parties reach an agreement before a Report and Recommendation is filed, they may “withdraw” their dispute by submitting a form to the Claims Administrator. Submission of a Withdrawal form in compliance with these Rules will terminate the dispute process and enable the Claims Administrator to release the withheld portion of the Award to the parties as set out in the parties’ agreement without further review or approval by either the Special Masters or the Court.

### **Rule 1. Scope.**

- These Rules apply to all Attorney Liens that have not yet been subject to a report and recommendation pending before the District Court.
- All notices of Attorney’s Lien that were already filed on the MDL docket will be transferred to the Claims Administrator for processing under these Rules.

### **Rule 2. How Liens are to be Filed.**

- *Attorneys are no longer permitted to file Attorney Liens on the MDL Docket.* Instead, attorneys are to file a Notice of Attorney’s Lien with the Claims Administrator on the Portal, using a form that the Claims Administrator will develop.
- Anyone who does not use the Portal must file the form Notice through hard copy by mail or delivery.

### **Rule 3. Who May File an Attorney’s Lien.**

- If an attorney wants to assert an Attorney’s Lien against the award, or potential future award, of a Settlement Class Member (an “SCM”), the attorney must file an Attorney’s Lien under these Rules.
- If an SCM’s current attorney believes that other competing lien payments, including but not limited to those for medical expenses and services, child support, unpaid taxes, and judgment debts, may interfere with recovery of his or her attorney’s fees and/or costs, that attorney also must assert an Attorney’s Lien through this process to protect his or her interests.
- If a Party to an Attorney’s Lien Dispute wishes to seek an upward or downward deviation from the 22% presumptive fee cap, that Party must file with the Claims

Administrator a petition for the requested deviation. The Special Masters will consider the petition in the Attorney's Lien dispute resolution process.

**Rule 4. The Deadline to File an Attorney's Lien.**

- The Attorney Lienholder must file the Notice of Attorney's Lien *before the date the disbursement list containing the SCM's Award is finalized and sent to the NFL Parties for approval.*
- Failure to submit the Notice before this deadline will result in the waiver of the Attorney Lienholder's right to assert an Attorney's Lien or seek costs against that SCM's award.
- Liens that were previously asserted on the Court's MDL docket will satisfy this Rule if they complied with the procedure in place when filed.

**Rule 5. Notice of Lien to Settlement Class Member and Attorney Lienholder.**

- Once the Claims Administrator has received both a Notice of Lien and a Claim Package or Derivative Claim Package for the SCM, it will issue a Notice to the SCM and the Attorney Lienholder of the filing of the Lien.
- The SCM will be provided copies of the proof of the Attorney's Lien and given at least 20 days to consent to or dispute it.

**Rule 6. Notice of Duty to Resolve Lien Dispute to Settlement Class Member and Attorney Lienholder.**

- If the SCM does not consent to the Attorney's Lien as described above, then upon the SCM's eligibility for an Award, the Claims Administrator will issue a Notice of Duty to Resolve Lien Dispute to the SCM and the Attorney Lienholder.
- This Notice is intended to prompt discussions between the parties in the hope they will reach their own resolution.
- The Claims Administrator will withhold adequate funds from the SCM's Award to pay the unresolved lien, as well as the fees and/or costs of any current attorney, in accordance with the Presumptive Fee Cap, to the extent funds are available, and until the Dispute is resolved.

**Rule 7. Special Master Report and Recommendation as to Disputed Liens.**

- When a Monetary Award has been approved but remains the subject of a Lien Dispute, the Claims Administrator will serve the Parties with a Schedule of Document Submissions, setting forth the Special Masters' requirements for the length, content, and timing of submissions that will be used to evaluate the competing claims.
- The Special Masters may order a hearing if they believe it would aid their decisionmaking.
- Absent a Withdrawal of the Lien Dispute, the Special Master will issue a Report and Recommendation ("R&R").
- Objections may be filed within 20 days, and a reply to the objections may be filed within 20 days thereafter. Both objections and replies are limited to 10 pages in length.
- The Claims Administrator will transmit the complete record to the Court for a final decision and, upon the Court's ruling, will disburse the withheld funds in accordance

with that decision, the provisions of the Settlement Agreement, and prior Court orders regarding implementation.

**Rule 8. Withdrawal of Attorney’s Lien Dispute.**

- If the Parties reach a resolution of their lien dispute before the Special Master has filed a Report and Recommendation, they may submit a Withdrawal of Attorney’s Lien Dispute form (“Withdrawal”).
- If the Withdrawal is completed as described below, the dispute process will have concluded. The Claims Administrator will disburse the withheld portion of the Award pursuant to the Withdrawal terms and in accordance with the provisions of the Settlement Agreement and prior Court orders regarding implementation.
- In order to effectuate the conclusion of the dispute process, the Withdrawal must include:
  - (a) A statement of the allocation of the attorneys’ fees between the Parties, which must be consistent with the Presumptive Fee Cap unless a Petition for Deviation upward was timely filed;
  - (b) A statement of costs from the current attorney for the SCM, if represented, with an itemized list of those costs including a brief explanation of the date of the costs and their purpose;
  - (c) A statement of the Attorney Lienholder’s costs and the date each was incurred, if costs were asserted as part of the Lien, with an itemized list of those costs including a brief explanation of the purpose of incurring the costs;
  - (d) A statement of how each Party will allocate responsibility for the 5% deduction for common benefit fees, and a statement allocating any potential future refund of common benefit fees between the Parties; and
  - (e) The signature of all Parties submitting the Withdrawal, using an original wet ink signature, a PDF or other electronic image of an actual signature, or an electronic signature. The current attorney may sign on behalf of the SCM.

**Rule 9. Utilization of the Portal.**

- Notices and decisions under these Rules will be served through the Portal.
- All parties who have access to it must upload their submissions to the Portal, which will result in service of the submission on the other Dispute Parties who use the Portal.
- If a party does not have access to the Portal, the Claims Administrator will identify that party, and the other parties will be responsible for mailing or delivering to that party any submission they upload to the Portal.
- Any party who does not use a Portal will mail or deliver its submissions to the Claims Administrator, which will upload the item to the Portals of other parties in the dispute. To safeguard confidentiality, materials may not be submitted by email.
- If a party is represented by a lawyer, service will be made on that lawyer only.
- The Special Master will also access all Disputes using the Special Master Portal. No party may send any material directly to the Special Master.
- Any decision issued by the Special Master will be filed on the Portal, and any objections are to be filed there as well.
- The Court’s final decision will be filed on the Portal unless it indicates otherwise.

**Rule 10. Adoption and Implementation of These Rules.**

- The Court has approved these Rules pursuant to its continuing and exclusive jurisdiction under Article XXVII of the Settlement Agreement and Paragraph 17 of the Court's May 8, 2015 Amended Final Approval Order and Judgment (ECF No. 6534).
- The Special Masters have adopted these Rules in the exercise of their duties pursuant to their appointment by the Court in its Referral Order of September 21, 2023 (ECF No. 12343).
- The Claims Administrator has discretion to develop and maintain internal policies and procedures it deems necessary to implement these Rules.
- The Court retains continuing and exclusive jurisdiction over the interpretation, implementation, and enforcement of these Rules.