#460 - The NFL's Concussion Epidemic and It's Relationship to Disability Law

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presented by

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Mr. Daniels also serves as the Educational Director for The Social Security Disability Practice Institute, an organization that educates attorneys on disability law and marketing a practice. Mr. Daniels is the co-author of the book, "The Disability Guys' Guide to Navigating Through The Social Security Disability Maze".

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2011–20 NFL Collective Bargaining Agreement (click here)
ARE PROFESSIONAL ATHLETES ENTITLED TO WORKERS’ COMPENSATION BENEFITS?

• Workers’ compensation benefits
• Did the injury occur while working?
• Other instances where coverage could apply
• Medical coverage

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ARE PROFESSIONAL ATHLETES ENTITLED TO
SOCIAL SECURITY DISABILITY BENEFITS

• Eligibility requirements
• Significance of the claimant’s “Date Last Insured”
• Does a player’s salary prevent eligibility?
• Injuries during playing career
• Long-term effects of previous injuries

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The NFL’s Concussion Epidemic

• Former players allege that the NFL intentionally misrepresented and concealed medical evidence about the short-term and long-term risks associated with repetitive traumatic brain injury
• Violent nature of the sport
• Obvious consequences of powerful collisions
• NFL’s old protocol for players that suffered a potential concussion

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Concussion Symptoms

• Short Term Effects: Loss of consciousness, drowsiness, confusion, headaches, nausea, vomiting, blurred vision, loss of memory
• Long Term Effects: dementia, memory loss, Parkinson’s disease
• Chronic Traumatic Encephalopathy (CTE)
• Alzheimer’s disease
• Social Security Disability criteria for benefits
• Workers Compensation criteria for benefits

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The Legal Battle
Arguments On Each Side

• **Former Players**: The NFL should have warned players about the risk of permanent damage after suffering a concussion. The league also told players that concussions did not pose serious risks.

• **NFL**: The NFL is inherently violent. The players assumed the risk of sustaining short-term and long-term damage from injuries that were foreseeable.

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The Settlement Agreement

- $765 million agreement between NFL and players
  - $675 million for compensatory claims
  - $75 million for baseline testing for asymptomatic men
  - $10 million for medical research and education
  - Awards capped at $5 million for men with Alzheimer’s disease
  - $4 million cap for men diagnosed AFTER THEIR DEATH with CTE
  - $3 million cap for players with dementia
- Any of the approximately 18,000 former NFL players are eligible
- NFL would also pay an additional $112 million to the players’ lawyers
- Total payout: nearly $900 million
The Settlement Agreement continued...

- Judge Anita Brody’s surprise ruling
- Significance of preliminary rejection
- Was it enough to cover future medical care?
- What about current players?
- Is the NFL doing enough?
Federal judge approves NFL concussion settlement

Associated Press
Published: July 7, 2014 at 05:04 p.m.   Updated: July 7, 2014 at 05:29 p.m.

A federal judge on Monday granted preliminary approval to a landmark deal that would compensate thousands of former NFL players for concussion-related claims.

The ruling by U.S. District Judge Anita Brody in Philadelphia came about two weeks after the NFL agreed to remove a $675 million cap on damages. Brody had previously questioned whether that would be enough money to pay all claims.

"A class action settlement that offers prompt relief is superior to the likely alternative - years of expensive, difficult, and uncertain litigation, with no assurance of recovery, while retired players' physical and mental conditions continue to deteriorate," Brody wrote.

More than 4,500 former players have filed suit, some accusing the league of fraud for its handling of concussions. They include former Dallas Cowboys running back Tony Dorsett and Super Bowl-winning Chicago Bears quarterback Jim McMahon, who suffers from dementia.

The settlement is designed to last at least 65 years and cover retirees who develop Lou Gehrig's disease and other neurological problems.

"This is an extraordinary settlement for retired NFL players and their families - from those who suffer with neuro-cognitive illnesses today, to those who are currently healthy but fear they may develop symptoms decades into the future," plaintiffs' attorneys Sol Weiss and Christopher Seeger said in a statement.

NFL senior vice president Anastasia Danias said in a statement that the league was "grateful to Judge Brody for her guidance and her thoughtful analysis of the issues as reflected in the comprehensive opinion she issued today."

The original settlement included $675 million for compensatory claims for players with neurological symptoms, $75 million for baseline testing and $10 million for medical research and education. The NFL would also pay an additional $112 million to the players' lawyers, for a total payout of more than $870 million.

The revised settlement eliminates the cap on overall damage claims but retains a payout formula for individual retirees that considers their age and illness. A young retiree with amyotrophic lateral sclerosis, or Lou Gehrig's disease, would receive $5 million, a 50-year-old with Alzheimer's disease would get $1.6 million and an 80-year-old with early dementia would get $25,000.

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Numbers At A Glance

According to Forbes.com

• 2013 NFL revenue: approximately $9 billion
• 2011 contracts with NBC, CBS, FOX and ESPN amount to $42 billion of revenue (ESPN’s deal ends 2019. Deals with the other 3 networks ends 2022)
• The NFL Network
• Super Bowl spots: 30-second slots allegedly costing $4 million (according to USA Today)

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NFL’s Efforts To Take Care of Former Players

• Neuro-cognitive Benefit Plan – 2011 Collective Bargaining Agreement
• Line-Of-Duty Disability Benefits
  – Player release promising NOT to sue the NFL
  – Choosing between litigation and benefits
• Total and Permanent disability benefits
• Bert Bell/Pete Rozelle NFL Retirement Plan
• NFL’s 2013 Concussion Protocol (NFL.com)

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Recap

The NFL, Concussions, Workers’ Comp and Social Security Disability benefits

- Concussions and brain injury
- Class action lawsuit against NFL
- Workers’ comp claims
- Social Security Disability benefits
- NFL programs

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ARTICLE 61
NFL PLAYER DISABILITY PLAN

Section 1. Maintenance: The parties agree to create a new Taft-Hartley, welfare benefit plan for the payment of disability benefits to former players who are eligible and qualify. This new disability plan will combine the provisions of the Retirement Plan that deal with the payment of disability benefits, including but not limited to eligibility, criteria for qualifying for the benefit, and amounts of benefits and the provisions of the NFL Supplemental Disability Plan into one separate plan to be known as the NFL Player Disability Plan (the "Disability Plan"). Upon creation of this Disability Plan, the Retirement Plan shall be amended to eliminate its provisions relating to disability benefits that are incorporated into this new Disability Plan and the Supplemental Disability Plan shall terminate. The benefits payable under this new Disability Plan shall be reduced beginning at the player's normal retirement age by the monthly benefit the player is entitled to receive under the Retirement Plan beginning at the player's normal retirement age in the form of a life annuity. The benefits payable under this Disability Plan shall be reduced by the amount which would have resulted due to the application of Section 4.5 of the Retirement Plan due to the player electing an Early Payment Benefit. Subject to Section 4 below, this new Disability Plan will be continued and maintained in full force and effect during the term of this Agreement.

Section 2. New Disability Benefits: All substantive provisions regarding the payment of disability benefits in the Retirement Plan and the Supplemental Disability Plan will be incorporated into this new Disability Plan so as not to change the current methodology or amount of the benefit except as follows:

(a) New Disability Terms.

(i) The Disability Plan will change the definition of "Total and Permanent Disability" to permit a player to receive up to $30,000 per year of earned income and to clarify that an applicant's educational level and prior training are not factors taken into account in determining whether he is "unable to engage in any occupation or employment for remuneration or profit." The new definition will define "permanent" for this purpose as follows: "A disability will be deemed to be "permanent" if it has persisted or is expected to persist for at least twelve months from the date of its occurrence, excluding any reasonably possible recovery period."

(ii) The Disability Plan will provide that applications for benefits in the categories of Football Degenerative Total and Permanent Disability and Inactive Total and Permanent Disability shall no longer be accepted and such categories of benefits shall be eliminated. These disability benefits shall be replaced by two new Total and Permanent Disability Benefits referred to as Inactive A Disability Benefits and Inactive B Disability Benefits. Neither of these disabilities shall require the Total and Permanent Disability to have arisen out of football activities. Effective for applications received on or after September 1, 2011, players who file for Total and Permanent Disability Benefits within 15 years after their last Credited Season shall receive an Inactive A Disability Benefit in the amount specified in Section 3 below, if qualified, and players who file for Total and...
Permanent Disability Benefits after 15 years of their last Credited Season shall receive an Inactive B Disability Benefit in the amount specified in Section 3 below, if qualified.

(iii) Players whose Total and Permanent Disability is caused by the use of, addiction to, or dependence upon any controlled substance as defined in 21 USC Sec. 802(b), alcohol, or illegal drugs, shall only be eligible for Inactive B Disability Benefits. Notwithstanding the foregoing, a player may, if otherwise qualified, receive Total and Permanent Disability Benefits in any category if his Total and Permanent Disability is caused by the use of, addiction to, or dependence upon any controlled substance as defined in 21 USC Sec. 802(b) and (a) such use of, addiction to, or dependence upon results from the substantially continuous use of a controlled substance that was prescribed for League football activities or for any injury (or injuries) or illness arising out of League football activities of the applicant while he was an active player, and (b) an application for Total and Permanent Disability Benefits is received based on such use of, addiction to, or dependence upon a controlled substance no later than eight years after the end of the player's last Credited Season.

(iv) Effective for applications received on or after September 1, 2011, to provide that the Line of Duty Benefit shall be no less than $2,000 per month (which such amount shall be increased in $500 increments every other year, beginning in 2013).

(b) The Disability Plan will permit players who elected to retire under the Retirement Plan prior to the Normal Retirement date and who subsequently receive a Social Security Disability award prior to attaining the age of 55 to receive a Total and Permanent disability benefit for which they qualify.

(c) The Disability Plan will contain a provision that reads substantially as follows: “Any person receiving total and permanent disability benefits may be required to submit to periodic physical examinations for the purpose of re-examining his condition. The examinations will occur not more often than once every five (5) years, except that upon request of three or more voting members of the Retirement Board, examinations may occur as frequently as once every six months. For each calendar year in which a person receives total and permanent disability benefits, he must submit an executed copy of IRS Form 4506-T by July 1 of the subsequent calendar year. A person who has not filed his annual federal income tax return by July 1 also must either (1) submit a signed statement that he does not intend to file such tax return, and state the amount of total income from all sources for that year, or (2) submit an accounting of his total income from all sources for that year. If the Disability Plan Board or the Disability Initial Claims Committee determines that such person is no longer totally and permanently disabled, the total and permanent disability benefits will terminate. The total and permanent disability benefits of any person refusing to submit to a required physical examination or to submit an IRS Form 4506-T annually will be suspended until such refusal is resolved to the satisfaction of the Disability Plan Board. If such refusal is not resolved to the satisfaction of the Disability Plan Board within one year after such person is notified of the consequences of his refusal, his total and permanent disability benefits will be terminated. In that event, such person must submit a new application to be eligible to receive any further total and permanent disability benefits, but the rules classifying the type of T&P benefit will not apply.”
(d) The Disability Plan shall contain the same provisions as the Retirement Plan for resolving benefit disputes, including the following new provision: “Effective for benefit disputes arising under the Disability Plan on and after September 1, 2011, the arbitrator selected to resolve the dispute must base his decision solely on the administrative record that was before the Disability Board, as it may be supplemented by records that were in existence prior to the date the dispute is referred to the arbitrator. In addition, each side shall be permitted to take depositions of any expert relied on by the other side based on the administrative record, supplemented as provided above.”

(e) The Disability Board shall engage an independent firm mutually selected by the NFL and the NFLPA to examine annually a representative sample of persons receiving benefits under the Disability Plan to ensure that each such person is eligible to receive the benefits being provided.

(f) A healthcare professional designated by the parties shall become a member of the Disability Initial Claims Committee (“DICC”). He or she shall cast the deciding vote only on those cases that are preliminarily “deemed denials” because of a disagreement between the other two members of the DICC over a medical aspect of the case. Notwithstanding the foregoing, in situations where the designated healthcare professional determines that the medical evidence is either inconclusive or insufficient, he or she will abstain from voting resulting in the “deemed denial” becoming the final decision of the DICC.

Section 3. Increase in Benefit Amounts: Effective September 1, 2011, the minimum benefit amounts shall be increased as set forth below, both for future applications and for players currently in pay status. For this purpose, players currently receiving Football Degenerative Benefits shall be switched to Inactive A and players currently receiving Inactive Benefits shall be switched to Inactive B. Any player who was awarded a disability benefit prior to September 1, 2011 (including any player whose application for a disability benefit was received by the Disability Plan prior to September 1, 2011, that leads to an award of a benefit) will not be eligible for a benefit under the rules governing the award of disability benefits that go into effect on September 1, 2011, unless based on an impairment other than the one that originally qualified him for a disability benefit. Furthermore, the rules in effect prior to September 1, 2011, will govern all appeals and reclassifications of disability benefits that were awarded prior to September 1, 2011 (including any player whose application for a disability benefit was received by the Disability Plan prior to September 1, 2011, that leads to an award of a benefit):

<table>
<thead>
<tr>
<th>Benefit Type</th>
<th>Amount</th>
<th>Effective Date</th>
</tr>
</thead>
<tbody>
<tr>
<td>Active Football</td>
<td>$250,000</td>
<td>Increased to $265,000</td>
</tr>
<tr>
<td></td>
<td></td>
<td>effective January 1, 2016</td>
</tr>
<tr>
<td>Active Nonfootball</td>
<td>$150,000</td>
<td>Increased to $165,000</td>
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<tr>
<td></td>
<td></td>
<td>effective January 1, 2016</td>
</tr>
<tr>
<td>Inactive A</td>
<td>$120,000</td>
<td>Increased to $135,000</td>
</tr>
<tr>
<td></td>
<td></td>
<td>effective January 1, 2016</td>
</tr>
<tr>
<td>Inactive B</td>
<td>$50,000</td>
<td>Increased to $60,000</td>
</tr>
<tr>
<td></td>
<td></td>
<td>effective January 1, 2016</td>
</tr>
</tbody>
</table>

Section 4. Continuation of Benefits Following Term of Agreement: After the term of the Agreement, the portion of the disability benefit that would have been paid under the Retirement Plan but for the changes made pursuant to this Article shall continue to
be paid from the Disability Plan, provided that the player continues to qualify for the benefit

**Section 5. Improvements:** The parties shall appoint designated representatives no later than October 31, 2011, to discuss in good faith additional improvements to the disability benefits provided under this Agreement including, but not limited to, expediting processing of applications, streamlining medical evaluation procedures, and maximizing benefits payable to the players. Among other things, the parties will discuss modifying the Disability Plan’s benefit structure to make benefits hereunder tax-free to players.
ARTICLE 62
LONG TERM CARE INSURANCE PLAN

Section 1. Eligibility and Maintenance: The Long Term Care Insurance Plan ("LTC Plan") in effect as of the date hereof, and all future amendments thereto, are incorporated by reference and made a part of this Agreement; provided, however, that the terms used in the LTC Plan and the definitions of such terms are applicable only to the LTC Plan and shall have no applicability to this Agreement unless the context of this Agreement specifically mandates the use of such terms. The LTC Plan will be continued and maintained in full force and effect during the term of this Agreement; provided, however, that if the Management Council determines that it would be more efficient and economical to administer the LTC Plan under the Former Player Life Improvement Plan, the LTC Plan may be terminated and the benefits provided hereunder be provided under the Former Player Life Improvement Plan, subject to approval by the NFLPA. Only players who have permanently ceased playing professional football; who are vested under the Retirement Plan based on Credited Seasons; who have attained the age of 50 and not yet attained the age of 76; and who satisfy the underwriting requirements of the insurer are eligible for insurance under the LTC Plan.

Section 2. Benefits: All eligible players will be entitled to receive benefits under a long-term care insurance contract provided by a national insurer in the event the player is certified by a licensed health care provider as (i) requiring critical supervision, or (ii) requiring the presence of another person within arm's reach due to inability to perform a required number of defined activities of daily living. The long-term care insurance contract is renewable for life and entitles the player to receive a maximum daily benefit of $150 for a maximum of four years.

Section 3. Limitations: Benefits will not be paid for confinement, treatment, services or care: (i) resulting from alcoholism, drug addiction, or chemical dependency, unless as a result of medication prescribed by a physician; (ii) arising out of suicide (while sane or insane), attempted suicide, or intentionally self-inflicted injury; (iii) provided in a government facility (unless otherwise required by law), services for which benefits are payable under Medicare, or would be payable except for application of a deductible or coinsurance amount, or other governmental programs (except Medicaid), and services for which no charge is normally made in the absence of insurance; (iv) received outside the United States; (v) for which benefits are payable under any state or federal workers' compensation, employer's liability of occupational disease law; (vi) that are not included in a participant's plan of care; or (vii) that are prohibited by federal law.

Section 4. Plan Benefits Primary: Any player who is entitled to any payment or benefit under any other Article of this Agreement that would be eligible for payment or reimbursement under the LTC Plan will have such payment or benefit offset by the amount eligible for payment or reimbursement under the LTC Plan.

Section 5. Administration: The NFL shall administer the LTC Plan.
§ 65.2-101. Definitions.

As used in this title:

"Average weekly wage" means:

1. a. The earnings of the injured employee in the employment in which he was working at the time of the injury during the period of 52 weeks immediately preceding the date of the injury, divided by 52; but if the injured employee lost more than seven consecutive calendar days during such period, although not in the same week, then the earnings for the remainder of the 52 weeks shall be divided by the number of weeks remaining after the time so lost has been deducted. When the employment prior to the injury extended over a period of less than 52 weeks, the method of dividing the earnings during that period by the number of weeks and parts thereof during which the employee earned wages shall be followed, provided that results fair and just to both parties will be thereby obtained. When, by reason of a shortness of time during which the employee has been in the employment of his employer or the casual nature or terms of his employment, it is impractical to compute the average weekly wages as above defined, regard shall be had to the average weekly amount which during the 52 weeks previous to the injury was being earned by a person of the same grade and character employed in the same class of employment in the same locality or community.

b. When for exceptional reasons the foregoing would be unfair either to the employer or employee, such other method of computing average weekly wages may be resorted to as will most nearly approximate the amount which the injured employee would be earning were it not for the injury.

2. Whenever allowances of any character made to an employee in lieu of wages are a specified part of the wage contract, they shall be deemed a part of his earnings. For the purpose of this title, the average weekly wage of the members of the Virginia National Guard, the Virginia Naval Militia and the Virginia Defense Force, registered members on duty or in training of the United States Civil Defense Corps of this Commonwealth, volunteer firefighters engaged in firefighting activities under the supervision and control of the Department of Forestry, and forest wardens shall be deemed to be such amount as will entitle them to the maximum compensation payable under this title; however, any award entered under the provisions of this title on behalf of members of the National Guard, the Virginia Naval Militia or their dependents, or registered members on duty or in training of the United States Civil Defense Corps of this Commonwealth or their dependents, shall be subject to credit for benefits paid them under existing or future federal law on account of injury or occupational disease covered by the provisions of this title.

3. Whenever volunteer firefighters, volunteer lifesaving or volunteer rescue squad members, volunteer law-enforcement chaplains, auxiliary or reserve police, auxiliary or reserve deputy sheriffs, volunteer emergency medical technicians, members of volunteer search and rescue organizations, volunteer members of community emergency response teams, and volunteer members of medical reserve corps are deemed employees under this title, their average weekly wage shall be deemed sufficient to produce the minimum compensation provided by this title for injured workers or their dependents. For the purposes of workers' compensation insurance premium calculations, the monthly payroll for each volunteer firefighter or volunteer lifesaving or volunteer rescue squad member shall be deemed to be $300.

4. The average weekly wage of persons, other than those covered in subdivision 3 of this definition, who respond to a hazardous materials incident at the request of the Department of Emergency Management shall be based upon the earnings of such persons from their primary employers.

"Award" means the grant or denial of benefits or other relief under this title or any rule adopted pursuant thereto.

"Change in condition" means a change in physical condition of the employee as well as any change in the conditions under which compensation was awarded, suspended, or terminated which would affect the right to,
amount of, or duration of compensation.

"Client company" means any person that enters into an agreement for professional employer services with a professional employer organization.

"Coemployee" means an employee performing services pursuant to an agreement for professional employer services between a client company and a professional employer organization.

"Commission" means the Virginia Workers' Compensation Commission as well as its former designation as the Virginia Industrial Commission.

"Employee" means:

1. a. Every person, including aliens and minors, in the service of another under any contract of hire or apprenticeship, written or implied, whether lawfully or unlawfully employed, except (i) one whose employment is not in the usual course of the trade, business, occupation or profession of the employer or (ii) as otherwise provided in subdivision 2 of this definition.

b. Any apprentice, trainee, or retrainee who is regularly employed while receiving training or instruction outside of regular working hours and off the job, so long as the training or instruction is related to his employment and is authorized by his employer.

c. Members of the Virginia National Guard and the Virginia Naval Militia, whether on duty in a paid or unpaid status or when performing voluntary service to their unit in a nonduty status at the request of their commander.

Income benefits for members of the National Guard or Naval Militia shall be terminated when they are able to return to their customary civilian employment or self-employment. If they are neither employed nor self-employed, those benefits shall terminate when they are able to return to their military duties. If a member of the National Guard or Naval Militia who is fit to return to his customary civilian employment or self-employment remains unable to perform his military duties and thereby suffers loss of military pay which he would otherwise have earned, he shall be entitled to one day of income benefits for each unit training assembly or day of paid training which he is unable to attend.


e. Registered members of the United States Civil Defense Corps of this Commonwealth, whether on duty or in training.

f. Except as provided in subdivision 2 of this definition, all officers and employees of the Commonwealth, including (i) forest wardens; (ii) judges, clerks, deputy clerks and employees of juvenile and domestic relations district courts and general district courts; and (iii) secretaries and administrative assistants for officers and members of the General Assembly employed pursuant to § 30-19.4 and compensated as provided in the general appropriation act, who shall be deemed employees of the Commonwealth.

g. Except as provided in subdivision 2 of this definition, all officers and employees of a municipal corporation or political subdivision of the Commonwealth.

h. Except as provided in subdivision 2 of this definition, (i) every executive officer, including president, vice-president, secretary, treasurer or other officer, elected or appointed in accordance with the charter and bylaws of a corporation, municipal or otherwise and (ii) every manager of a limited liability company elected or appointed in accordance with the articles of organization or operating agreement of the limited liability company.

i. Policemen and firefighters, sheriffs and their deputies, town sergeants and their deputies, county and city commissioners of the revenue, county and city treasurers, attorneys for the Commonwealth, clerks of circuit courts and their deputies, officers and employees, and electoral board members appointed in accordance with § 24.2-106.
who shall be deemed employees of the respective cities, counties and towns in which their services are employed and by whom their salaries are paid or in which their compensation is earnable. However, notwithstanding the foregoing provision of this subdivision, such individuals who would otherwise be deemed to be employees of the city, county, or town in which their services are employed and by whom their salaries are paid or in which their compensation is earnable shall be deemed to be employees of the Commonwealth while rendering aid outside of the Commonwealth pursuant to a request, approved by the Commonwealth, under the Emergency Management Assistance Compact enacted pursuant to § 44-146.28:1.

j. Members of the governing body of any county, city or town in the Commonwealth, whenever coverage under this title is extended to such members by resolution or ordinance duly adopted.

k. Volunteers, officers and employees of any commission or board of any authority created or controlled by a local governing body, or any local agency or public service corporation owned, operated or controlled by such local governing body, whenever coverage under this title is authorized by resolution or ordinance duly adopted by the governing board of any county, city, town, or any political subdivision thereof.

l. Except as provided in subdivision 2 of this definition, volunteer firefighters, volunteer lifesaving or rescue squad members, volunteer law-enforcement chaplains, auxiliary or reserve police, auxiliary or reserve deputy sheriffs, volunteer emergency medical technicians, members of volunteer search and rescue organizations, volunteer members of regional hazardous materials emergency response teams, volunteer members of community emergency response teams, and volunteer members of medical reserve corps, who shall be deemed employees of (i) the political subdivision or state institution of higher education in which the principal office of such volunteer fire company, volunteer lifesaving or rescue squad, volunteer law-enforcement chaplains, auxiliary or reserve police force, auxiliary or reserve deputy sheriff force, volunteer emergency medical technicians, volunteer search and rescue organization, regional hazardous materials emergency response team, community emergency response team, or medical reserve corps is located if the governing body of such political subdivision or state institution of higher education has adopted a resolution acknowledging those persons as employees for the purposes of this title or (ii) in the case of volunteer firefighters or volunteer lifesaving or rescue squad members, the companies or squads for which volunteer services are provided whenever such companies or squads elect to be included as an employer under this title.

m. (1) Volunteer firefighters, volunteer lifesaving or rescue squad members, volunteer law-enforcement chaplains, auxiliary or reserve police, auxiliary or reserve deputy sheriffs, volunteer emergency medical technicians, members of volunteer search and rescue organizations and any other persons who respond to an incident upon request of the Department of Emergency Management, who shall be deemed employees of the Department of Emergency Management for the purposes of this title.

(2) Volunteer firefighters when engaged in firefighting activities under the supervision and control of the Department of Forestry, who shall be deemed employees of the Department of Forestry for the purposes of this title.

n. Any sole proprietor, shareholder of a stock corporation having only one shareholder, member of a limited liability company having only one member, or all partners of a business electing to be included as an employee under the workers' compensation coverage of such business if the insurer is notified of this election. Any sole proprietor, shareholder or member or the partners shall, upon such election, be entitled to employee benefits and be subject to employee responsibilities prescribed in this title.

When any partner or sole shareholder, member or proprietor is entitled to receive coverage under this title, such person shall be subject to all provisions of this title as if he were an employee; however, the notices required under §§ 65.2-405 and 65.2-600 of this title shall be given to the insurance carrier, and the panel of physicians required under § 65.2-603 shall be selected by the insurance carrier.

o. The independent contractor of any employer subject to this title at the election of such employer provided (i) the independent contractor agrees to such inclusion and (ii) unless the employer is self-insured, the employer's insurer agrees in writing to such inclusion. All or part of the cost of the insurance coverage of the independent contractor
may be borne by the independent contractor.

When any independent contractor is entitled to receive coverage under this section, such person shall be subject to all provisions of this title as if he were an employee, provided that the notices required under §§ 65.2-405 and 65.2-600 are given either to the employer or its insurance carrier.

However, nothing in this title shall be construed to make the employees of any independent contractor the employees of the person or corporation employing or contracting with such independent contractor.

p. The legal representative, dependents and any other persons to whom compensation may be payable when any person covered as an employee under this title shall be deceased.

q. Jail officers and jail superintendents employed by regional jails or jail farm boards or authorities, whether created pursuant to Article 3.1 (§ 53.1-95.2 et seq.) or Article 5 (§ 53.1-105 et seq.) of Chapter 3 of Title 53.1, or an act of assembly.

r. AmeriCorps members who receive stipends in return for volunteering in local, state and nonprofit agencies in the Commonwealth, who shall be deemed employees of the Commonwealth for the purposes of this title.

s. Food Stamp recipients participating in the work experience component of the Food Stamp Employment and Training Program, who shall be deemed employees of the Commonwealth for the purposes of this title.

t. Temporary Assistance for Needy Families recipients not eligible for Medicaid participating in the work experience component of the Virginia Initiative for Employment Not Welfare Program, who shall be deemed employees of the Commonwealth for the purposes of this title.

2. "Employee" shall not mean:

a. Officers and employees of the Commonwealth who are elected by the General Assembly, or appointed by the Governor, either with or without the confirmation of the Senate. This exception shall not apply to any "state employee" as defined in § 51.1-124.3 nor to Supreme Court Justices, judges of the Court of Appeals, judges of the circuit or district courts, members of the Workers' Compensation Commission and the State Corporation Commission, or the Superintendent of State Police.

b. Officers and employees of municipal corporations and political subdivisions of the Commonwealth who are elected by the people or by the governing bodies, and who act in purely administrative capacities and are to serve for a definite term of office.

c. Any person who is a licensed real estate salesperson, or a licensed real estate broker associated with a real estate broker, if (i) substantially all of the salesperson's or associated broker's remuneration is derived from real estate commissions, (ii) the services of the salesperson or associated broker are performed under a written contract specifying that the salesperson is an independent contractor, and (iii) such contract includes a provision that the salesperson or associated broker will not be treated as an employee for federal income tax purposes.

d. Any taxicab or executive sedan driver, provided the Commission is furnished evidence that such individual is excluded from taxation by the Federal Unemployment Tax Act.

e. Casual employees.

f. Domestic servants.

g. Farm and horticultural laborers, unless the employer regularly has in service more than three full-time employees.

h. Employees of any person, firm or private corporation, including any public service corporation, that has
regularly in service less than three employees in the same business within this Commonwealth, unless such employees and their employers voluntarily elect to be bound by this title. However, this exemption shall not apply to the operators of underground coal mines or their employees. An executive officer who is not paid salary or wages on a regular basis at an agreed upon amount and who rejects coverage under this title pursuant to § 65.2-300 shall not be included as an employee for purposes of this subdivision.

i. Employees of any common carrier by railroad engaging in commerce between any of the several states or territories or between the District of Columbia and any of the states or territories and any foreign nation or nations, and any person suffering injury or death while he is employed by such carrier in such commerce. This title shall not be construed to lessen the liability of any such common carrier or to diminish or take away in any respect any right that any person so employed, or the personal representative, kindred or relation, or dependent of such person, may have under the act of Congress relating to the liability of common carriers by railroad to their employees in certain cases, approved April 22, 1908, or under §§ 8.01-57 through 8.01-62 or § 56-441.

j. Employees of common carriers by railroad who are engaged in intrastate trade or commerce. However, this title shall not be construed to lessen the liability of such common carriers or to take away or diminish any right that any employee or, in case of his death, the personal representative of such employee of such common carrier may have under §§ 8.01-57 through 8.01-61 or § 56-441.

k. Except as provided in subdivision l of this definition, a member of a volunteer fire-fighting, lifesaving or rescue squad when engaged in activities related principally to participation as a member of such squad whether or not the volunteer continues to receive compensation from his employer for time away from the job.

l. Except as otherwise provided in this title, noncompensated employees and noncompensated directors of corporations exempt from taxation pursuant to § 501(c)(3) of Title 26 of the United States Code (Internal Revenue Code of 1954).

m. Any person performing services as a sports official for an entity sponsoring an interscholastic or intercollegiate sports event or any person performing services as a sports official for a public entity or a private, nonprofit organization which sponsors an amateur sports event. For the purposes of this subdivision, "sports official" includes an umpire, referee, judge, scorekeeper, timekeeper or other person who is a neutral participant in a sports event. This shall not include any person, otherwise employed by an organization or entity sponsoring a sports event, who performs services as a sports official as part of his regular employment.

n. Any person who suffers an injury on or after July 1, 2012, for which there is jurisdiction under either the Longshore and Harbor Workers' Compensation Act, 33 U.S.C. § 901 et seq., and its extensions, or the Merchant Marine Act of 1920, 46 U.S.C. § 30104 et seq. However, this title shall not be construed to eliminate or diminish any right that any person or, in the case of the person's death, his personal representative, may have under either the Longshore and Harbor Workers' Compensation Act, 33 U.S.C. § 901 et seq., and its extensions, or the Merchant Marine Act of 1920, 46 U.S.C. § 30104 et seq.

"Employer" includes (i) any person, the Commonwealth or any political subdivision thereof and any individual, firm, association or corporation, or the receiver or trustee of the same, or the legal representative of a deceased employer, using the service of another for pay and (ii) any volunteer fire company or volunteer lifesaving or rescue squad electing to be included and maintaining coverage as an employer under this title. If the employer is insured, it includes his insurer so far as applicable.

"Executive officer" means (i) the president, vice-president, secretary, treasurer or other officer, elected or appointed in accordance with the charter and bylaws of a corporation and (ii) the managers elected or appointed in accordance with the articles of organization or operating agreement of a limited liability company. However, such term does not include noncompensated officers of corporations exempt from taxation pursuant to § 501(c)(3) of Title 26 of the United States Code (Internal Revenue Code of 1954).

"Filed" means hand delivered to the Commission's office in Richmond or any regional office maintained by the Commission; sent by means of electronic transmission approved by the Commission; sent by facsimile.
transmission; or posted at any post office of the United States Postal Service by certified or registered mail. Filing by first-class mail, electronic transmission, or facsimile transmission shall be deemed completed only when the document or other material transmitted reaches the Commission or its designated agent.

"Injury" means only injury by accident arising out of and in the course of the employment or occupational disease as defined in Chapter 4 (§ 65.2-400 et seq.) of this title and does not include a disease in any form, except when it results naturally and unavoidably from either of the foregoing causes. Such term shall not include any injury, disease or condition resulting from an employee's voluntary:

1. Participation in employer-sponsored off-duty recreational activities which are not part of the employee's duties; or

2. Use of a motor vehicle that was provided to the employee by a motor vehicle dealer as defined by § 46.2-1500 and bears a dealer's license plate as defined by § 46.2-1550 for (i) commuting to or from work or (ii) any other nonwork activity.

Such term shall include any injury, disease or condition:

1. Arising out of and in the course of the employment of (a) an employee of a hospital as defined in § 32.1-123; (b) an employee of a health care provider as defined in § 8.01-581.1; (c) an employee of the Department of Health or a local department of health; (d) a member of a search and rescue organization; or (e) any person described in clauses (i) through (iv), (vi), and (ix) of subsection A of § 65.2-402.1 otherwise subject to the provisions of this title; and

2. Resulting from (a) the administration of vaccinia (smallpox) vaccine, Cidofovir and derivatives thereof, or Vaccinia Immune Globulin as part of federally initiated smallpox countermeasures, or (b) transmission of vaccinia in the course of employment from an employee participating in such countermeasures to a coemployee of the same employer.

"Professional employer organization" means any person that enters into a written agreement with a client company to provide professional employer services.

"Professional employer services" means services provided to a client company pursuant to a written agreement with a professional employer organization whereby the professional employer organization initially employs all or a majority of a client company's workforce and assumes responsibilities as an employer for all coemployees that are assigned, allocated, or shared by the agreement between the professional employer organization and the client company.

"Staffing service" means any person, other than a professional employer organization, that hires its own employees and assigns them to a client to support or supplement the client's workforce. It includes temporary staffing services that supply employees to clients in special work situations such as employee absences, temporary skill shortages, seasonal workloads, and special assignments and projects.

SEASONAL ATHLETIC FIELD USE PERMIT APPLICATION

LEAGUE NAME:_________________________________________________________

TEAM NAME:__________________________________________________________

CONTACT PERSON:____________________________________________________

ADDRESS:________________________________________________________________

________________________________________________________________________

CITY STATE ZIP CODE

PHONE # HOME ( ) __________________ FAX # ( ) __________________

BUSINESS ( ) __________________ EXT. __________________

INSURANCE COMPANY:__________________________________________________

INSURANCE EXPIRATION DATE:___________________________________________

SEASON: __________________________________ SPRING = APRIL 1st – JUNE 14th

____ GAMES ____ PRACTICES SUMMER = JUNE 15th – AUG 31st

____ Softball ____ Baseball ____ Football ____ Soccer FALL = SEPT 1st – NOV 24th

FIELD REQUESTED:____________________________________________________

Does NOT include BRESLIN FIELD, PALISADES PARK SPORTS COMPLEX OR

OVERPECK – RIDGEFIELD PARK

DAYS REQUESTED:_____________________________________________________

TIME REQUESTED: __________________________ (START / ENDING)

PLEASE SUBMIT SEPARATE APPLICATION FOR EACH SPORT, FIELD AND SEASON
Dear Park Patron;

Each year the Bergen County Department of Parks receives numerous requests for park-use permits.

Prior to issuance of a permit, the Department requires that a Certificate of Insurance be filed with our office.

The Certificate is to show a minimum of $1,000,000 per occurrence, $2,000,000 aggregate General Liability and $10,000/person Medical Expense. THE COUNTY OF BERGEN AND ITS OFFICIALS, EMPLOYEES AND AGENTS must be named as ADDITIONAL INSURED and COUNTY OF BERGEN shown as CERTIFICATE HOLDER.

Your insurance company (agent) must be told of this requirement and the above underlined paragraph. They will, at that time, send you the Certificate of Insurance.

Please make sure the term of the insurance (effective date to expiration date) falls within the dates you anticipate using the Bergen County Department of Parks facilities.

If you have any questions concerning this matter, please call me at (201) 336-7275.

Thank you for your cooperation.

Sincerely,

Permit Department
BERGEN COUNTY PARKS
Season Fields

SADDLERIVER COUNTY PARK

Rochelle Park Area: 40 Railroad Ave, Rochelle Park

Fields: 1 Softball Field

Saddle Brook Area, Otto C. Pehle Area: 760 Saddle River Rd., Saddle Brook

Fields: 1 Softball Field, 1 Baseball Field (Vander Sande Baseball Field).

Fairlawn Area: Saddle River Road, Fairlawn

Fields: 1 Soccer Field.

VAN SAUN COUNTY PARK: 216 Forest Ave., Paramus

Fields: 1 Softball Field, 1 Baseball Field, 1 Soccer Field.

PASCAWK BROOK COUNTY PARK: Emerson Rd., Westwood

Fields: 1 Softball Field, 1 Baseball Field.

SAMUEL NELKIN COUNTY PARK: Rose St., Wallington

Fields: 1 Softball/Baseball Field.

OVERPECK COUNTY PARK

Henry Hobel Area, Leonia-North: Fort Lee Rd., Leonia

Fields: 1 Baseball Field, 1 Soccer Field, 1 Football Field.
BERGEN COUNTY SEASONAL FIELD

FEE SCHEDULE

Leagues/Teams:
Monday – Friday 6:00 p.m. – 8:00 p.m.
Saturday & Sunday
9:00 a.m. – noon
6:00 p.m. – 8:00 p.m.

Spring: April 1st – June 14th
Summer: June 14th – August 31st
Fall: September 1st – Sunday before Thanksgiving

Seasonal Fee: Bergen County Resident
$395/season and $395 (Security Deposit)
$145/game and $145 (Security Deposit)

Seasonal Fee: Non-Bergen County Resident
$790/season and $790 (Security Deposit)
$225/game and $225 (Security Deposit)

Payment is to be made with 2 separate checks made out to:

Bergen County Department of Parks

++To qualify for Bergen County rates address on insurance certificate and application must be in Bergen County. Payment checks must also be imprinted with a Bergen County address.

**Does not include Riverside/Palisades Park Sportsplex or Ridgefield Park fields.