



IN THE COURT OF COMMON PLEAS OF CENTRE COUNTY, PENNSYLVANIA

CIVIL DIVISION

GRAHAM B. SPANIER,

Plaintiff-Counterdefendant,

v.

THE PENNSYLVANIA STATE
UNIVERSITY,

Defendant-Counterplaintiff.

)Docket No. 2016-0571

)

)Type of Pleading: PRELIMINARY

)OBJECTION

)

)**PRELIMINARY OBJECTION TO**

)**COUNT V OF THE FIRST AMENDED**

)**COMPLAINT**

)

)Filed on behalf of The Pennsylvania State

)University

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PRELIMINARY OBJECTION TO COUNT V OF THE FIRST AMENDED COMPLAINT

The Pennsylvania State University (“Penn State” or “the University”), through its undersigned counsel, hereby files this Preliminary Objection to Count V of the First Amended Complaint. In support hereof, Penn State avers as follows.

FIRST PRELIMINARY OBJECTION – INSUFFICIENT SPECIFICITY IN A PLEADING (RULE 1028(a)(3))

Rule 1028(a)(3) of the Pennsylvania Rules of Civil Procedure permits a preliminary objection where a pleading contains “insufficient specificity.” Count V of the First Amended Complaint fails to contain the factual specificity required by Pa. R. Civ. P. 1019(a), (f), and (h).

In Count V, Dr. Spanier contends that Penn State has breached the Separation Agreement the parties executed on November 15, 2011, by failing to indemnify him for alleged “Covered Costs” under his 2010 Employment Agreement.

The allegations of Count V, however, including the antecedent allegations of the First Amended Complaint on which Count V is based (paragraphs 182 through 211), are confusing,

contradictory, and factually deficient in several ways. For example, the First Amended Complaint appears to intersperse allegations about communications Dr. Spanier's representatives had with the University and communications they had with the University's insurers. Because, as Count V presently is pleaded, it is difficult to ascertain who said what to whom and when, it is difficult for Penn State to provide a meaningful response. Penn State therefore respectfully requests that Count V be dismissed without prejudice to Dr. Spanier re-filing it with the requisite factual specificity.

In many instances, Count V fails to identify when Dr. Spanier allegedly tendered his demand to be reimbursed for any given invoice, the individual to whom any such invoice allegedly was sent, and the individual alleged to have refused his demand for indemnity. The lack of specificity is compounded when Dr. Spanier conflates Penn State representatives with lawyers and other representatives for Penn State's various insurers in his pleading.

For example, paragraph 195 of the First Amended Complaint refers to a discussion that "Stephanie Kao, counsel for Penn State" had with Dr. Spanier's counsel. However, Ms. Kao is *not* counsel for the University; to the contrary, she represents one of the University's insurers.

As another example: paragraph 199, when read in conjunction with paragraph 198, appears to allege that, on two dates in 2013, Dr. Spanier's attorneys at Schnader Harrison, sent the University invoices for legal work in connection with, *inter alia*, "a petition in federal court to intervene in the wrongful prosecution [of Dr. Spanier] by the Attorney General." That petition, however, was not filed until March 31, 2014. *See* <http://triblive.com/news/adminpage/5863488-74/spanier-state-fina>.

In addition, although Dr. Spanier is demanding that Penn State reimburse him for more than \$570,000 for work performed by the law firm of Sullivan & Cromwell (*see* First Amended Complaint, ¶¶ 202, 203, 278 & Exhibit G), Count V is devoid of factual allegations from which Penn State -- or this Court, for that matter -- could conclude that the Sullivan & Cromwell work includes Covered Costs. Indeed, the Sullivan & Cromwell invoice that is attached to the Amended Complaint as Exhibit G contains no description whatsoever of the nature of the work for which Dr. Spanier is demanding indemnity.

In short, the way Count V presently is framed, it is too confusing to allow for either a meaningful response or meaningful discussions about ways to possibly narrow the parties' dispute with respect to the scope of the University's indemnity obligations. Penn State respectfully submits that the parties, and the Court, would benefit from a pleading that contains additional factual specificity with respect to the particulars of Count V.

WHEREFORE, for the foregoing reasons, The Pennsylvania State University respectfully requests that the Court dismiss Count V of the First Amended Complaint without prejudice.

DATED this the 19th day of December, 2016. A proposed order is attached.

Respectfully submitted,



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CERTIFICATE OF SERVICE

The undersigned, one of the attorneys for The Pennsylvania State University, hereby certify that I caused to be served a true and correct copy of the foregoing PRELIMINARY OBJECTION TO COUNT V OF THE FIRST AMENDED COMPLAINT this 19TH day of December, 2016, by mailing same via U.S. mail, first class, postage prepaid, upon the following counsel of record:

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