



IN THE COURT OF COMMON PLEAS OF
CENTRE COUNTY, PENNSYLVANIA
CIVIL ACTION

DEBRA C. JIMMEL
PROTHONOTARY
CENTRE COUNTY, PA

2017 JAN 12 PM 4:12

FILED FOR RECORD

GRAHAM B. SPANIER

Plaintiff,

v.

PENNSYLVANIA STATE
UNIVERSITY

Defendant.

) Docket No. 2016-057
)
) Type of Case:
) Breach of Contract
)
) Type of Pleading: **SECOND AMENDED
COMPLAINT**
)
) Filed on behalf of: Plaintiff
)
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GRAHAM B. SPANIER,

Plaintiff,

v.

PENNSYLVANIA STATE UNIVERSITY

Defendant.

COURT OF COMMON PLEAS
OF CENTRE COUNTY

Docket No. 2016-0571

NOTICE TO DEFEND

YOU HAVE BEEN SUED IN COURT. If you wish to defend against the claims set forth in the following pages, you must take action within twenty (20) days after this Second Amended Complaint and Notice are served, by entering a written appearance personally or by attorney and filing in writing with the Court your defenses or objections to the claims set forth against you. You are warned that if you fail to do so the case may proceed without you and a judgment may be entered against you by the Court without further notice for any money claimed in the Second Amended Complaint or for any other claim or relief requested by the Plaintiff. You may lose money or property or other rights important to you.

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YOU SHOULD TAKE THIS PAPER TO YOUR LAWYER AT ONCE. IF YOU DO NOT HAVE A LAWYER, GO TO OR TELEPHONE THE OFFICE SET FORTH BELOW. THIS OFFICE CAN PROVIDE YOU WITH INFORMATION ABOUT HIRING A LAWYER.

IF YOU CANNOT AFFORD TO HIRE A LAWYER, THIS OFFICE MAY BE ABLE TO PROVIDE YOU WITH INFORMATION ABOUT AGENCIES THAT MAY OFFER LEGAL SERVICES TO ELIGIBLE PERSONS AT A REDUCED FEE OR NO FEE TO FIND OUT WHERE YOU CAN GET LEGAL HELP:

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PENNSYLVANIA STATE UNIVERSITY

Defendant.

COURT OF COMMON PLEAS
OF CENTRE COUNTY

No. 2016-0571

SECOND AMENDED COMPLAINT

NATURE OF THE ACTION

1. This is a breach of contract action brought by Dr. Graham B. Spanier ("Dr. Spanier") against Pennsylvania State University ("Penn State" or "University"). The lawsuit arises out of negative and disparaging statements made by Penn State and certain members of the University's Board of Trustees, and other

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breaches of contract by Penn State — following Dr. Spanier’s separation from Penn State as president of the University.

2. Upon his resignation from the Presidency of Penn State in November 2011, Dr. Spanier and Penn State entered into a contract setting forth the terms of the separation (“Separation Agreement”). The contract prohibited Penn State from making negative comments about Dr. Spanier — with limited exceptions — and required Penn State to undertake reasonable efforts to ensure that no members of the Board of Trustees made prohibited negative comments about Dr. Spanier.

3. In addition, Penn State was (and remains) required to provide Dr. Spanier administrative support commensurate with that received by other tenured Penn State professors and former presidents, including an office location, a secretary, and IT support.

4. The contract also requires Penn State to pay all expenses and legal fees incurred by Dr. Spanier arising out of any alleged acts or omissions occurring during his time as President, specifically including all such legal fees and expenses arising out of the Grand Jury’s indictments relating to the acts of former Penn State assistant football coach Jerry Sandusky, criminal charges, and/or Dr. Spanier’s resignation from his position as President.

5. Penn State has repeatedly breached the Separation Agreement in several material respects. Penn State has breached the contract’s prohibition on

negative and untrue statements regarding Dr. Spanier by making multiple negative and untrue public statements about Dr. Spanier. In July 2012, Penn State scheduled two press conferences in which Penn State's President and two members of Penn State's Board of Trustees ("Board") repeatedly made negative and untrue comments about Dr. Spanier. Penn State also organized and/or acquiesced in the organization of separate media appearances for members of its Board of Trustees to make negative comments about Dr. Spanier in breach of the contract.

6. Penn State has also failed to provide Dr. Spanier with administrative support, office space, and teaching opportunities as required by the Separation Agreement. Moreover, Penn State has repeatedly refused to reimburse and indemnify Dr. Spanier for legal fees and related expenses despite being contractually obligated to do so.

7. Dr. Spanier brings this action to vindicate his rights under civil law, to restore his reputation as a highly-regarded educator and university administrator, and to obtain redress and damages for Penn State's repeated breaches of Dr. Spanier's Separation Agreement.

THE PARTIES AND OTHER RELEVANT THIRD PARTIES

8. Plaintiff Graham B. Spanier is an individual residing in Centre County in the Commonwealth of Pennsylvania. Between 1995 and 2011, Dr. Spanier was

the President of Pennsylvania State University. Dr. Spanier has resided in Centre County, Pennsylvania, for over 30 years and continues to do so today.

9. Defendant Pennsylvania State University is a nonprofit corporation organized under the laws of the Commonwealth of Pennsylvania. Its principal place of business is located at 201 Old Main, University Park, Pennsylvania 16802. Following Dr. Spanier's resignation as President of Penn State, Penn State contracted with him to govern the terms of his resignation and continuing employment.

10. Gerald A. "Jerry" Sandusky ("Sandusky") was an assistant football coach at Penn State from 1969 to 1999. In 1977, Sandusky founded The Second Mile, a Pennsylvania non-profit organization that supported at-risk and underprivileged youth. Before his indictment, Sandusky was generally lauded for his charity work and efforts on behalf of youth, receiving awards and praise from politicians, famous athletes, and others. Following a three-year investigation, Sandusky was indicted in November 2011 and subsequently arrested and charged with dozens of counts relating to alleged sexual crimes involving underage youth. On June 22, 2012, a jury found Sandusky guilty of 45 of 48 counts. On October 9, 2012, Sandusky was sentenced to serve 60 years in prison.

11. The Second Mile was a Pennsylvania non-profit charity organization that served underprivileged youth. Headquartered in State College, Pennsylvania, it

was founded by Sandusky in 1977 and claimed to serve up to 100,000 Pennsylvania kids a year. By 2009, The Second Mile had revenues of \$3 million per year. Several Penn State Trustees also had relationships with the organization. The Second Mile ceased operations following the fallout from the Sandusky scandal.

12. The Special Investigations Task Force (“Task Force”) was a working group convened by the Penn State Board of Trustees in November 2011. Penn State Trustee Kenneth Frazier served as Chair of the Task Force, and Trustee Ronald Tomalis was Vice Chair. In November 2011, the Task Force engaged Louis Freeh and his law firm, Freeh Sporkin & Sullivan, to prepare a written report regarding “the recently publicized allegations of sexual abuse at the facilities and the alleged failure of the Pennsylvania State University (“PSU”) personnel to report such sexual abuse to appropriate police and government authorities.” The resulting report, released on July 12, 2012, is commonly referred to as the Freeh Report.

13. Kenneth C. Frazier (“Frazier”) is currently the Chairman, President, and Chief Executive Officer of Merck & Co., Inc. He was elected to the Penn State Board of Trustees as a business and industry Trustee for a three-year term beginning in July 2009, and was reelected in 2012. Frazier served as Chair of the Task Force.

14. Keith Masser (“Masser”) is currently the Chairman and Chief Executive Officer of Stermann Masser, Inc. He was elected to the Penn State Board of Trustees by delegates from agricultural societies effective July 2008 and was

subsequently reelected for second and third terms. He was elected Chair of the Board in January 2013.

15. Karen Peetz (“Peetz”) is currently the President of BNY Mellon. Peetz was elected to the Penn State Board of Trustees in 2010 as a business and industry Trustee and became Chairman of the Board of Trustees in 2012. Peetz resigned from the Board of Trustees effective January 15, 2015.

16. Ira Lubert (“Lubert”) is a Philadelphia-based businessman who manages an investment fund and conducts several business ventures including real estate, gaming and casinos, and other enterprises. He has served as a member of Penn State’s Board of Trustees through two different appointments and currently serves as Chair of the Board. Documents from The Second Mile show that Lubert donated at least \$50,000.00 to the organization in 2001 alone. In addition, he was listed as a member of The Second Mile Southeast Region Board of Directors from 2005 until 2008. His membership on the board concluded at approximately the same time the Sandusky investigation began. Lubert also served as a limited partner with Green Hills Sports Camp in Berks County, Pennsylvania, and his company allowed Sandusky and The Second Mile to conduct its Summer Challenge camps at Green Hills. Lubert never advised Dr. Spanier of any knowledge Lubert may have had about an investigation of Sandusky.

JURISDICTION AND VENUE

17. The Defendant is subject to personal jurisdiction in this Commonwealth because it is incorporated in Pennsylvania, its principal place of business is in Pennsylvania, it has significant contacts with Pennsylvania, it regularly transacts business in Pennsylvania, it caused harm or injury by acts or omissions in Pennsylvania, and it breached a contract executed and performed in Pennsylvania.

18. This Court has original subject matter jurisdiction over this action pursuant to 42 Pa.C.S. § 931, because no other Pennsylvania court has exclusive original jurisdiction over this action.

19. Venue is proper in Centre County pursuant to Pennsylvania Rules of Civil Procedure 1006, 2179, and 2130, because (i) the causes of action described herein arose in Centre County and (ii) transactions and occurrences from which the causes of action arose took place in Centre County.

FACTUAL BACKGROUND

Dr. Spanier Serves as President of Penn State

20. Between 1995 and 2011, Dr. Spanier served as the President of The Pennsylvania State University (“Penn State”) and worked primarily in University Park, Centre County, Pennsylvania.

21. Penn State is one of the largest and most comprehensive universities in the United States. Penn State's academic, research, and athletic operations are highly decentralized; the university operates in more than 140 locations, with 24 campuses, more than 97,000 students and approximately 47,000 employees. It was founded in 1855 and has enjoyed an excellent worldwide reputation for academic excellence.

22. Penn State is not only a national leader in academics, it is also a national leader in a broad range of endeavors, including intercollegiate athletics, with its sports teams participating in NCAA Division I and the Big Ten Conference. Among its 31 teams competing at the highest levels of NCAA competition, Penn State is particularly known for the tradition and success of its football program, which represents the University as a member of the Big Ten Conference. Joe Paterno became head coach of the Nittany Lions in 1966, after 16 years as an assistant coach, and remained head coach until 2011. As head coach, Paterno led the Nittany Lions to 409 victories, two national championships, and 24 bowl victories. Throughout its 156-year existence, Penn State had never been punished for athletic infractions, but on July 23, 2012, the NCAA removed 112 of those victories, based solely and directly on the Freeh Report's conclusions. The NCAA restored these wins in January 2015 as part of a settlement of a lawsuit filed by officials of the Commonwealth of Pennsylvania. Paterno's motto of "Success with Honor" was, in

fact, practiced by the football program, which graduated 85% of its players during Paterno's tenure, with many named Academic All Americans.

23. Penn State is also an important center of research in dozens of disciplines, including national defense-related research. The University is home to the Applied Research Laboratory ("ARL"), a Department of Defense-designated University Advanced Research Center. The ARL was established at Penn State in 1945 and maintains a long-term strategic relationship with the U.S. Navy in addition to providing support for other government agencies. The ARL performs basic and applied research, exploratory development, advanced development in systems engineering, and manufacturing technology in support of national security. The ARL is also the largest research unit within Penn State, with more than 1,000 faculty and staff. It was in the context of overseeing such research that Dr. Spanier was first required to maintain a top-secret security clearance.

24. Before becoming President, Dr. Spanier had been Chancellor of the University of Nebraska-Lincoln, Provost and Vice President for Academic Affairs at Oregon State University, Vice Provost for Undergraduate Studies at the State University of New York at Stony Brook, and had held faculty and administrative posts at Penn State.

25. Dr. Spanier is a family sociologist, demographer, and marriage and family therapist. He earned his Ph.D. from Northwestern University, where he was

a Woodrow Wilson Fellow. He is the author of more than 100 publications in his field, including 10 books. His scholarship has focused on children, youth, and families. He is a clinical member and fellow of the American Association for Marriage and Family Therapy and former president of the National Council on Family Relations. He was the founding editor of the Journal of Family Issues. He is considered a leading scholar in his field and is the recipient of three honorary doctorates.

26. A national leader in higher education, Dr. Spanier was the first university president to receive the TIAA-CREF Theodore M. Hesburgh Award for Leadership Excellence. Dr. Spanier has chaired the Association of American Universities, the National Association of State Universities and Land-Grant Colleges, the Big Ten Conference Council of Presidents/Chancellors, and the NCAA Division I Board of Directors. He led the Kellogg Commission on the Future of State and Land-Grant Universities, was a founding member of the Internet2 Board, was U.S. Chair and international Vice Chair of the Worldwide Universities Network, and served as co-chair, with the President of the Recording Industry Association of America, of the Committee on Higher Education and the Entertainment Industry. Spanier served as chair of the Bowl Championship Series (BCS) Presidential Oversight Board.

27. Much of Dr. Spanier's professional career has been dedicated to the social and emotional development of children and youth, advocacy for the well-being and protection of children, and national and international initiatives to foster improvement in the lives of children and youth. He has served on the boards of several child development and youth development organizations, including the Board of Directors of 4-H and the Board of Governors of Junior Achievement Worldwide. He was also Chair of the Board of Christian Children's Fund (now known as Child Fund International).

28. Dr. Spanier has served on the boards of numerous not-for-profit organizations, community groups, and charities. He has also served on the boards of directors of three corporations overseen by regulatory bodies such as the Security and Exchange Commission and the Federal Reserve.

29. As President of Penn State, Dr. Spanier oversaw one of the nation's largest and most comprehensive universities, with 47,000 employees on 24 campuses, annual revenues approaching \$5 billion, and a physical plant of 1,700 buildings. He led two capital campaigns for Penn State and enhanced the resources of the University by managing to raise approximately \$3.5 billion in philanthropic contributions.

30. During his presidency, Dr. Spanier created the Penn State World Campus, the Schreyer Honors College, and the Presidential Leadership Academy.

He led the creation of numerous academic units, including the College of Information Sciences and Technology, the School of International Affairs, and programs in forensic sciences and security and risk analysis. He launched the International Center for the Study of Terrorism. Dr. Spanier also oversaw the merger with the Dickinson School of Law.

31. During his tenure, applications soared to more than 120,000 per year, enrollments grew to 97,000, and the academic standing of dozens of programs rose in national and international rankings. His goals were to make Penn State the “top student-centered research university in America” and for the university to lead the nation in “the integration of teaching, research, and service.” The theme of the recently-completed, \$2 billion fund raising campaign was “For the Future: The Campaign for Penn State Students.” He oversaw the design and construction of dozens of new buildings — adding millions of square feet of space for instruction, research, recreation, and community support. He was recognized with the American Institute for Architects award for outstanding contributions by a non-architect, and he received the Elizabeth Holtzman Award for his improvements to campus landscaping, master planning, and community relations.

32. Dr. Spanier’s work as President of Penn State was supported by 12 vice presidents and more than 40 vice provosts, deans, and chancellors, whose work was in turn supported by several hundred department heads and administrative staff. As

is common for chief executives of institutions of the size and complexity of Penn State, Dr. Spanier substantially relied on normal administrative processes to address issues in the University community as they arose.

33. Dr. Spanier has worked with the federal government on various projects pertaining to law enforcement, defense, homeland security, intelligence, and national security, and Dr. Spanier had held several high-level security clearances dating back to 1995. The federal government has accordingly performed numerous investigations into Dr. Spanier's conduct over the years — including a four-month investigation led by the Federal Investigative Service after the Sandusky scandal broke publicly that reconfirmed Dr. Spanier's fitness to continue to hold a Top Secret security clearance. Special clearances he has held require a polygraph administered by highly-trained federal specialists.

34. Dr. Spanier served as chair of the National Security Higher Education Advisory Board, a member of the National Counterintelligence Working Group, and a member of the Board of Advisors of the Naval Postgraduate School and the Naval War College. He has received numerous recognitions for his contributions to law enforcement and national security, including being honored as one of the “Most Influential People in Security,” the “Wings of Law” Award from the Respect for Law Alliance, and the award for “Exceptional Public Service” presented by the FBI. He has been a frequent speaker at FBI and other governmental and educational

conferences and seminars throughout the nation on topics related to national security. He is the recipient of the Warren Medal “for outstanding contributions to the national security of the United States of America.”

Gerald (“Jerry”) Sandusky

35. Gerald “Jerry” Sandusky was an assistant coach for the Penn State football team from 1969 to 1999, and separately managed the charity organization he founded called The Second Mile. He held the position of defensive coordinator from 1977 until his retirement.

36. Before his criminal indictment and conviction, Sandusky was a man with a reputation for helping young people. As noted, he was founder of The Second Mile, an organization devoted to the social development of disadvantaged youth. He and his wife served as foster-parents to numerous children and themselves adopted six children.

37. Dr. Spanier did not interact with Sandusky personally. Dr. Spanier had spoken with Sandusky in only one formal meeting and encountered him only in passing at football games, events, and the like, but Dr. Spanier has never had a personal conversation with Sandusky.

38. In 1998, Sandusky retired from Penn State after being informed by head coach Joe Paterno that Sandusky was not being considered as Joe Paterno’s replacement. He coached one additional season following his 1998 retirement. By

2001, Sandusky was no longer employed in any capacity by Penn State. Sandusky did, however, retain his leadership role at The Second Mile.

39. Dr. Spanier had no direct relationship with The Second Mile. He never served on its board, never attended a meeting, and had no awareness of its operations, staff, or the many young people served by The Second Mile organization.

40. In sharp contrast to Dr. Spanier, several members of the Penn State Board of Trustees were involved in — and had a direct relationship with — The Second Mile.

41. Additionally, The Second Mile personnel, including child psychologists, along with members of the Penn State Board of Trustees had extensive contact with Sandusky over the many years of his leadership of The Second Mile and actually regularly observed Sandusky and his interactions with The Second Mile youth.

Sandusky's Alleged Criminal Activities

42. On information and belief, during the fall of 2008, the Pennsylvania Attorney General's Office began investigating allegations that Sandusky had sexually abused boys he had supervised while an employee of The Second Mile.

43. In November 2011, multiple criminal charges were brought against Sandusky alleging that he had sexually abused a number of minors associated with The Second Mile organization over the years.

44. In November 2011, Tim Curley (“Curley”), the former Athletic Director at Penn State, and Gary Schultz (“Schultz”), the former Senior Vice-President for Finance and Business at Penn State, were criminally indicted for failing to report Sandusky’s crimes. Curley and Schultz were each charged in connection with an incident reported to have occurred in 2002 — later found to have been 2001 (“the 2001 incident” or “the McQueary/Sandusky incident”) — in which an assistant coach, Michael McQueary (“McQueary”), observed Sandusky taking a shower and allegedly engaging in inappropriate contact with a 10- or 12-year-old boy in one of the Penn State athletic facilities.

45. Notwithstanding the Attorney General’s comprehensive investigation into Sandusky’s sexual abuse of children, the Attorney General found no evidence to bring charges against Dr. Spanier in November 2011.

Dr. Spanier Enters into a Separation Agreement with Penn State

46. In the immediate aftermath of the November 2011 criminal charges against Sandusky, Curley, and Schultz, Dr. Spanier offered to resign as President of Penn State if he would be a distraction for the University as it dealt with the crisis. On November 9, 2011, the Penn State Board of Trustees voted to accept Dr. Spanier’s resignation as President of Penn State under the “Termination Without Cause” provision of his employment contract.

47. At the time of his resignation, Dr. Spanier and Penn State were parties to a July 1, 2010 Employment Agreement that set forth the terms of Dr. Spanier's employment with Penn State.

48. A copy of the 2010 Employment Agreement is attached to this Second Amended Complaint as Exhibit E.

49. The 2010 Employment Agreement stated that Penn State "wishes to continue the employment of Dr. Spanier as President of the University in recognition of his extraordinary achievements," and that "[t]he University desires to make further arrangements which will suitably recognize the extraordinary responsibilities and duties of Dr. Spanier and will reward him for his many unique accomplishments thus far during his time as President of the University."

50. By 2011, Dr. Spanier had received 16 consecutive exceptionally positive annual reviews, and the 2010 Employment Agreement was his fifth consecutive such multi-year contract, a highly unusual and affirming circumstance in higher education.

51. In the 2010 Employment Agreement, there were three provisions under which Dr. Spanier's position as President could have been terminated, including "For Cause," "Without Cause," and by "Resignation." Under either the "For Cause" or "Resignation" provisions of the 2010 Employment Agreement, Dr. Spanier would have foregone any future compensation and/or benefit from Penn State. Under the

termination “Without Cause” provision, Dr. Spanier was entitled to certain ongoing compensation and benefits.

52. Contrary to media reports, Dr. Spanier was not fired from his position as President. Indeed, Dr. Spanier offered to resign his position. After offering his resignation on November 8, 2011, and being encouraged not to resign, on November 9 the Board of Trustees accepted his resignation. Far from firing Dr. Spanier, the Penn State Board of Trustees determined Dr. Spanier’s resignation would be treated as a termination “Without Cause” for purposes of the 2010 Employment Agreement. Accordingly, Dr. Spanier was entitled to future compensation and continued employment with the University.

53. Nevertheless, in subsequent public statements and media statements, members of the Board of Trustees shifted their commentary to reflect the notion that Dr. Spanier was fired, including a false story that they fired Dr. Spanier for issuing unauthorized statements and for failing to keep the Board of Trustees informed during the Sandusky investigation, further disparaging Dr. Spanier, suggesting the appearance of wrongdoing, and setting the stage for Louis Freeh’s defamation of Dr. Spanier and the disrepute that would follow Dr. Spanier professionally and in the court of public opinion.

54. To memorialize the terms of his separation as President of Penn State, Dr. Spanier and Penn State entered into a Confidential Separation Agreement on November 15, 2011 (“Separation Agreement”).

55. Under the terms of the Separation Agreement, Dr. Spanier relinquished his position on the University’s Board of Trustees, the presidency of the Corporation for Penn State, and other duties tied specifically to his presidency. Dr. Spanier, however, remained a tenured member of the Penn State faculty in the Department of Human Development and Family Studies of the College of Health and Human Development, with the titles of President Emeritus, University Professor, and Professor of Human Development and Family Studies, Sociology, Demography, and Family and Community Medicine.

56. The Separation Agreement incorporates the terms of Sections E.5 and E.6 of Dr. Spanier’s 2010 Employment Agreement, which provide for a one-year, post-Presidency sabbatical transition period, after which Dr. Spanier would continue to hold a position as a tenured faculty member. Section 4(d) of the Separation Agreement states:

(d) During the post-Presidency transition period referred to in Section E.5 of the Employment Agreement, the University will provide Dr. Spanier with administrative support to assist him with his responsibilities, including computer access and IT support, in the manner previously provided to past presidents of the University, in addition to all support referred to in the last paragraph of Section E.6 of the Employment Agreement. Following the post-Presidency transition, the University will

provide Dr. Spanier with administrative support commensurate with that provided with other tenured faculty members and University Professors, and will continue to provide the administrative support referred to in the last paragraph of Section E.6 of the Employment Agreement.

57. The last paragraph of Section E.6 of the 2010 Employment Agreement states: “The University *shall* provide Dr. Spanier with administrative support, including an office and a staff assistant to assist him with his responsibilities following the conclusion of the presidency. The terms of Section E.6 shall survive the expiration of this Agreement.”¹

58. Paragraph 4(f) of the Separation Agreement also provides that Penn State will reimburse Dr. Spanier for all attorneys’ fees and all expenses he incurs in connection with “matters relating to the grand jury presentment and his termination from the position of President of the University.” The Separation Agreement requires Penn State to continue to indemnify Dr. Spanier in accordance with the terms of Section J of the 2010 Employment Agreement. Section J of the 2010 Employment Agreement provides that Penn State shall indemnify Dr. Spanier for all legal fees, expenses, judgments, and other financial amounts incurred while serving in his capacity as President of the University (“Covered Costs”). Section J further provides that Dr. Spanier shall continue to be indemnified subsequent to termination

¹ Emphasis added unless otherwise noted.

of his employment as President with respect to acts or omissions occurring while he was serving as President. Indeed, the Employment Agreement leaves no doubt that the University agreed to hold Dr. Spanier harmless against Covered Costs “to the extent permitted by law.”

59. Paragraph 13 of the Separation Agreement contains a non-disparagement clause. Paragraph 13 states:

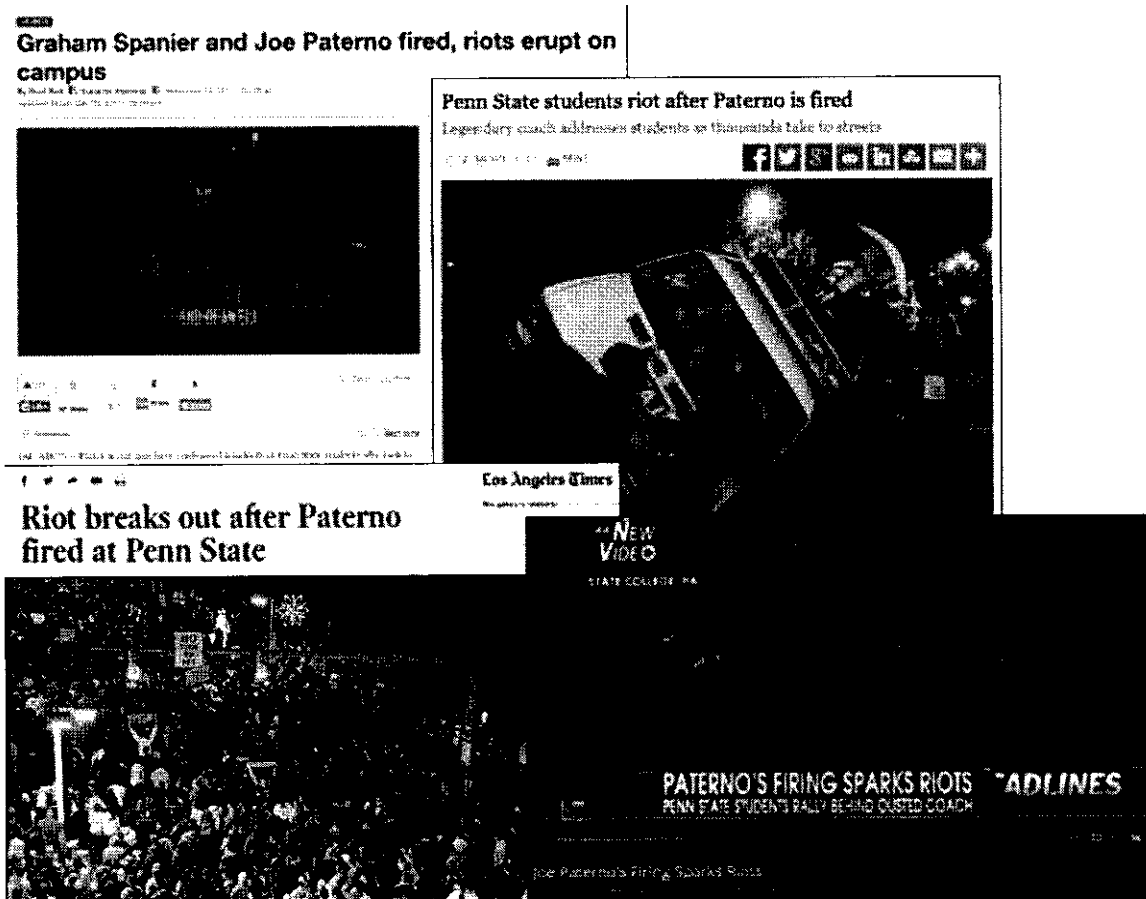
The University will not, and will use reasonable efforts to cause the members of the Board of Trustees not to, make any negative comments about Dr. Spanier to the media, to their professional colleagues or to any other members of the public, unless required by law or to comply with legal obligations and/or to provide truthful information in connection with ongoing or forthcoming investigations.

60. Paragraph 14 of the Separation Agreement states that in the event of a breach of any provision of the Separation Agreement, the prevailing party in any litigation over such breach shall be entitled to an award of reasonable counsel fees and expenses incurred in investigating and litigating such breach.

61. The Separation Agreement does not in any way provide that the Agreement shall be terminated or cease to operate in the event that Dr. Spanier is criminally charged. Accordingly, the Separation Agreement survives and remains in effect to this day.

The Freeh Engagement

62. On the same day that Dr. Spanier's presidency ended, the Board of Trustees fired Joe Paterno as the head coach of the Penn State football team. Thousands of Penn State students took to the streets of Penn State's campus, riots erupted, and the national media feverishly reported the growing controversy:



63. The Board of Trustees' premature and careless firing of Coach Paterno created a full-scale media and public relations disaster.

64. To address the growing media frenzy — and to vindicate its hasty decision to terminate Coach Paterno — Penn State's Board of Trustees retained

Louis Freeh and his law firm Freeh Sporkin & Sullivan (“FSS”) on or about November 21, 2011, to conduct a purportedly “independent, full, and complete” investigation of “the alleged failure of Penn State University personnel to respond to, and report to the appropriate authorities, the sexual abuse of children by former University football coach Gerald A. Sandusky.”

65. Freeh’s firm was not the only option that Penn State officials considered. In fact, Penn State officials were concerned that FSS was too small and simply did not have the manpower to conduct a complete and comprehensive investigation. There was also concern about the close association between FSS and Pepper Hamilton LLP, a Philadelphia-based law firm, because Pepper Hamilton has many attorneys that are active and involved in Pennsylvania politics.

66. In the end the Penn State Board of Trustees chose Freeh principally because of his personal experience with, and ability to navigate, the media and public relations aspects of such investigations. The fact that Freeh was known as being very focused on the media narrative was a deciding factor in his retention.

From: Frazer, Kenneth C. [mailto:ken_frazer@merck.com]
 Sent: Thursday, November 17, 2011 3:21 PM
 To: Ammerman, Paula
 Cc: Garbaro, John P. [jgarbaro@us.com]; Baldwin, Cynthia
 Subject: Special Committee

Dear Colleagues,

I write to report on the progress Ron Tomala and I made today with regard to the vetting of candidates for the independent counsel role. This morning we interviewed Louis Freeh (former Director of the FBI) and Michael Chertoff (former Secretary of the Department of Homeland Security). In addition to the roles described in the foregoing parentheticals, both men have served as former U.S. Attorneys and federal judges. They are both highly experienced in these kinds of investigations and are eminently qualified. On balance, Ron and I recommend Judge Freeh. He strikes us as more at ease with the media side of things and it is clear that this will be his #1 priority. We also think the FBI credential lends itself to an investigation of this type.

Both our independent experience also identify them as former U.S. Attorneys and federal judges.

Please forgive my initial choice of e-mail for this report. However, given the time pressures, I thought this would allow us to more efficiently gain your approval and consent. Of course, if anyone wants us to set up a call for tonight or early tomorrow, we will be happy to do so.

Thank you and please advise whether you will allow us to proceed.

67. To date, Penn State paid Freeh and FSS over \$8.3 million for their work on the Sandusky matter. Moreover, the University indemnified Freeh and FSS, thus pre-insuring Freeh against the risk of the adverse legal consequences arising from his defamatory Report, and effectively giving him carte blanche to make statements he deemed necessary to accomplish the Board of Trustees' objectives.

68. Freeh and FSS issued the Freeh Report on the Sandusky matter on July 12, 2012, at which time he described his work on the Penn State engagement as "largely completed."

Penn State and the Board of Trustees Ignored Contradictory Information in Its Possession and Provided by Dr. Spanier About the Commissioned Report

69. Prior to, and at the time of, publication of the Freeh Report, Penn State had access to Freeh's source materials, Spanier's emails, and his calendar which all included information that contradicted the Freeh Report and its

conclusions. Moreover, the Board of Trustees received a letter from Dr. Spanier specifically rebutting Freeh's conclusions, providing additional information directly contradicting Freeh's conclusions.

70. Dr. Spanier's attorneys also privately submitted to the university's general counsel a detailed summary of errors and omissions in the Freeh Report. Dr. Spanier even requested a meeting with the Board to answer any and all questions and to set the record straight. His written and oral requests were all ignored.

The Freeh Report Falsely Labeled Dr. Spanier a Pedophile-Enabler Based on a 1998 Incident in Which Authorities Cleared Sandusky of Any Wrongdoing

71. The Freeh Report largely focuses on the response of Penn State officials — including Dr. Spanier — to two incidents involving Sandusky. The first occurred in 1998, when Sandusky was employed by The Second Mile and still employed by Penn State. The second incident occurred in 2001, long after Sandusky had retired, and while Sandusky was employed by The Second Mile.

72. According to the Freeh Report, on May 4, 1998, a State College woman called the University Police Department — the police agency for the Penn State campus — to report that Sandusky had apparently showered with her 11-year-old son in an athletic facility on the Penn State campus following a workout. The mother did not allege that Sandusky sexually abused or assaulted her son.

73. The Penn State Police Department immediately launched an investigation, and the detective assigned to the case interviewed the boy that same day. In addition to the Police Department, the Department of Public Welfare, Centre County Children and Youth Services, and the Centre County District Attorney's Office also investigated the matter.

74. Over the course of that month, officials would interview the boy multiple times, question Sandusky, interview a friend of the boy who also had contact with Sandusky, and actually eavesdrop on two different conversations Sandusky had with the boy's mother about the matter.

75. As the Freeh Report notes, a report by a Counselor for Children and Youth Services who interviewed the boy found that *nothing* sexual occurred between Sandusky and the boy. The Freeh Report quotes from the Counselor's written opinions, which stated that "there seems to be no incident which could be termed as sexual abuse, nor did there appear to be any sequential pattern of logic and behavior which is usually consistent with adults who have difficulty with sexual abuse of children." The Counselor informed the University Police detective investigating the case that he too found no evidence of sexual abuse.

76. Soon after, the same detective and a Department of Public Welfare caseworker named Jerry Lauro interviewed Sandusky. The detective's notes from

the interview state that both he and the caseworker agreed after interviewing Sandusky that *no sexual assault* had occurred.

77. The last entry in the detective's report of the investigation, dated June 3, 1998, states: "As a result of the investigation it could not be determined that a sexual assault occurred and SANDUSKY was advised of such. LAURO also advised that he agreed with Reporting Officer that no sexual assault occurred. Reporting Officer advised Sandusky not to shower with any child. Sandusky stated he wouldn't. CASE CLOSED."

78. In late May or June 1998, the Centre County District Attorney's Office decided it would not press any charges against Sandusky regarding the incident. The Freeh investigators did not interview anyone involved with that decision, but acknowledged that it was due to the fact that the report issued by the Youth Services Counselor explicitly found that nothing sexual occurred between Sandusky and the boy that night. Therefore, there was no crime to prosecute.

79. Ultimately, the records of the 1998 investigation were even expunged from Pennsylvania's statewide "ChildLine" database of suspected child abuse reports. This was because, pursuant to Pennsylvania's Child Protective Services Law, the 1998 report regarding Sandusky was classified as "*unfounded*."

80. The Freeh Report also notes that certain Penn State officials were aware of and kept informed of the investigation. In particular, Athletic Director Tim

Curley, Senior Vice President of Finance and Business Gary Schultz, and the University Police Chief, Tom Harmon, corresponded regarding the course of the investigation. On June 1, 1998, Harmon emailed Schultz to tell him that the police had informed Sandusky that no criminal behavior had been established, and the investigation was closed.

81. According to the Freeh Report itself, there was no evidence of any awareness by Dr. Spanier of the 1998 report other than the possibility that he could have seen two emails between others on which Dr. Spanier was merely copied. The first, from May 5, 1998, is an email from Curley to Schultz, which does not mention Sandusky's name, and simply states, without any additional context or background: "I have touched base with the coach. Keep us posted. Thanks." Schultz responds, again merely copying Dr. Spanier, "Will do. Since we talked tonight I've learned that the Public Welfare people will interview the individual Thursday." The Freeh Report claims that because Dr. Spanier was copied on this email, Dr. Spanier was necessarily aware of the 1998 investigation of Sandusky. But there is no evidence that this email even involved Sandusky at all.

82. Then, on June 9, 1998, Schultz emailed Curley, copying Dr. Spanier, and wrote that investigators "met with Jerry on Monday and concluded there was *no criminal behavior and the matter was closed as an investigation....* I think the matter has been appropriately investigated and I hope it is behind us."

83. Dr. Spanier has no recollection of receiving or reviewing these emails. But Dr. Spanier's detailed calendar entries from 1998 show that he was out of the country on an international trip to the United Kingdom from June 8 to June 16, 1998. This occurred at a time before BlackBerry-type devices were available, and during a trip when Dr. Spanier was moving each day from one U.K. university to another.

84. Dr. Spanier was without email access and could not have possibly seen the June 9 email until he returned to the United States a week later, if he saw it at all, at which time it would have been among a thousand emails waiting in his inbox.

85. At the time, Dr. Spanier received approximately 25,000 emails a year. Moreover, Dr. Spanier's calendar shows he turned right around and left town on the morning of June 17 for a board meeting in Washington, D.C. for two days. Furthermore, there is no record of any response to or acknowledgment of receipt of such emails.

86. Freeh and FSS had access to and made copies of Dr. Spanier's calendars. Freeh was aware that Dr. Spanier had been travelling internationally at the time the June 9, 1998 email was sent, that he would have had up to a thousand emails waiting for him when he got back, and that he therefore may have never even seen the June 9 email, or may have skimmed past it quickly without an understanding of who or what the email referred to.

87. Accordingly, Freeh and FSS knew it was likely that Dr. Spanier did not see the June 9, 1998 email, and that even if he did, he was merely copied on an exchange between others on an email expressly stating that there was “*no evidence of criminal behavior.*” Freeh recklessly and intentionally minimized the import of this information to reinforce his claim that Dr. Spanier knew Sandusky was a pedophile and chose to conceal that information.

88. Thus, the Freeh Report details an incident in 1998 in which (1) Sandusky allegedly showered with a boy in a locker room after a workout; (2) numerous agencies of the State and County were informed of the situation by appropriate law enforcement authorities who conducted investigations; (3) trained professionals concluded that no sexual abuse or impropriety took place, and the report was determined to be “unfounded;” (4) the authorities declined to prosecute, finding no crime; and (5) Dr. Spanier was copied on two emails (the first with a vague reference and no name mentioned and the second of which was sent while he was out of the country and may never have seen, and consisted of his subordinate — who *was* following the investigation — stating that the matter was appropriately investigated and that the case was closed).

89. The Freeh Report then claims that Dr. Spanier’s failure to act on this information renders him a pedophile enabler. The Report rails that Dr. Spanier “took no action to limit Sandusky’s access to Penn State facilities or [] any measures to

protect children on their campuses.” And despite begrudgingly acknowledging that Sandusky was effectively cleared of any wrongdoing, the Freeh Report then faults Dr. Spanier, who was not involved in any way, for not declaring Sandusky a “persona non grata” on the Penn State Campus.

90. Finally, the Freeh Report, after concluding that the 1998 incident had nothing to do with Sandusky’s retirement, then accuses Dr. Spanier of actively deciding “to allow Sandusky to retire in 1999, not as a suspected child predator, but as a valued member of the Penn State football legacy....” This Report, authored by a former federal prosecutor and judge, makes this accusation with absolutely no explanation as to how or why Dr. Spanier could have or should have considered Sandusky a “suspected child predator” in 1999, after law enforcement officials determined that Sandusky *did not* abuse the boy or commit any other criminal act.

91. The Freeh Report’s accusations that Dr. Spanier knowingly failed to protect potential sexual abuse victims, and his faulting of Dr. Spanier for affirmatively choosing to allow Sandusky to retire in 1999 without labeling him a “suspected child predator” — even though Freeh and FSS knew no sexual abuse was alleged or occurred, and they knew that Dr. Spanier likely did not even know of the investigation — are false.

The Freeh Report Falsely Accused Dr. Spanier of Conspiring to Cover up a Sexual Assault by Sandusky in 2001

92. The second Sandusky incident that the Freeh Report focuses on is a 2001 incident in which a Penn State football staffer reported witnessing Sandusky and a male in the showers of an athletic facility on the Penn State campus. Graduate assistant Mike McQueary is believed to have reported to Joe Paterno on February 10, 2001 that on the evening before, Friday, February 9, 2001, he witnessed something that made him uncomfortable. More than a decade later, McQueary testified that he entered the locker room of the Lasch Building between 9:00 p.m. and 9:30 p.m. and heard what he described as “sexual sounds.” McQueary’s story about what he saw that night has been inconsistent at best.

93. McQueary says he saw Sandusky — who by that time was employed solely by The Second Mile — with a boy McQueary believed to be between 10 and 12 years old. Exactly what McQueary saw that night may never be known. As multiple news outlets have reported, and as transcripts of his court testimony reveal, McQueary’s stories of what he saw and what he reported varied widely and changed multiple times.

94. According to McQueary, the first persons he informed immediately after the alleged incident were his father, John McQueary, and a family friend and colleague of his father’s, a prominent local physician named Dr. Jonathon Dranov at

John McQueary's home. During Sandusky's criminal trial, Dr. Dranov — who under Pennsylvania law is *required* to report suspected child abuse — testified under oath that McQueary reported that he was upset by the incident, but, when pressed by Dr. Dranov three times, said that he *did not witness anything sexual*.

95. Acting on his father and Dr. Dranov's suggestions, McQueary then set up a meeting with head coach Joe Paterno. Both McQueary and Paterno later testified that McQueary told Paterno nothing specific, but rather advised that he saw something that he felt was inappropriate.

96. On Sunday, February 11, Paterno spoke with Athletic Director Curley. Paterno passed along substantially the same information that was related to him by McQueary, and Curley later testified that all he understood was that the graduate assistant saw something in the shower area that made him uncomfortable. Curley later relayed this information to Senior Vice President Schultz, who had the impression that Paterno described the events very generally, and speculated that the incident may have involved "wrestling around" activity. Schultz believed that the incident was inappropriate, but not a crime.

97. On February 12, 2001 Schultz and Curley met briefly with Dr. Spanier to give him a "heads up" regarding the situation. During his interview with Freeh and two of his investigators, Dr. Spanier related that this was a short meeting, and that he was told of Sandusky and a youth "horsing around" in the showers. Dr.

Spanier specifically asked if that is how the incident was described, and they answered affirmatively. Dr. Spanier was and is adamant that neither Curley or Schultz told him that there was anything abusive, criminal or sexual that occurred between Sandusky and the young male. Curley and Schultz independently have verified Dr. Spanier's account. Dr. Spanier was told the shower was after a workout and the witness was unsure what he saw because it was "indirect and around a corner." McQueary's name was not mentioned. Dr. Spanier was not aware of the witness, the specific location, or time of day and did not know that The Second Mile youth might be below high school age.

98. Dr. Spanier explained to Freeh that he recalled an agreed-upon plan for Curley to advise Sandusky that (1) he was being directed to not shower again with youth, and (2) that the head of The Second Mile should be advised of this directive.

99. On February 27, 2001, Curley emailed Schultz and Dr. Spanier to say that he believed the best course of action was to meet with Sandusky and tell him that bringing young men into the campus facilities was inappropriate. Moreover, Curley would meet with the head of The Second Mile, the youth charity that employed Sandusky, to inform the organization of the allegations.

100. Dr. Spanier responded to this email to say that this approach was acceptable and a reasonable way to proceed.

101. Dr. Spanier told Freeh investigators that several days later, he saw Curley, who informed him that both the meeting with Sandusky and the meeting with The Second Mile had occurred and gone well. Dr. Spanier considered this to have been an appropriate response to what he understood to be mere horseplay between a Second Mile employee and a youth that took place on campus. Dr. Spanier considered the matter closed at that time.

102. Dr. Spanier did not hear of any other incidents involving Sandusky, including any allegations of abuse by Sandusky, until Sandusky was criminally indicted a decade later.

103. The Freeh Report makes numerous sweeping and defamatory statements regarding Dr. Spanier and his actions in 2001. The Report charges that nothing indicates that Dr. Spanier “made any effort to identify the child victim or determine if he had been harmed.” Freeh accuses Dr. Spanier of “total and consistent disregard ... for the safety and welfare of Sandusky’s child victims,” and of “fail[ing] to protect against a child sexual predator harming children for over a decade.” Freeh further accuses Dr. Spanier of “conceal[ing] Sandusky’s activities from the Board of Trustees, the University community and authorities,” and of “exhibit[ing] a striking lack of empathy for Sandusky’s victims by failing to inquire as to their safety and well-being, especially by not attempting to determine the identity of the child who Sandusky assaulted in the Lasch Building in 2001.”

Finally, Freeh claims that by knowingly failing to alert the Board of Trustees of “child sexual abuse allegations against Sandusky,” Dr. Spanier is guilty of intentionally “empower[ing] Sandusky to attract potential victims to the campus.”

104. Freeh and his colleagues made these severe, irreparably harmful allegations despite a lack of any evidence whatsoever that Dr. Spanier was informed of any allegations of sexual assault or child abuse in 2001 or at any other time. Not only did Freeh know that his investigation was glaringly deficient and far too inadequate to allow him a basis to make such accusations, he in fact willfully ignored, purposefully avoided, or downplayed actual evidence regarding exactly what Dr. Spanier knew — evidence that uniformly shows that Dr. Spanier was *not* informed of any allegation of sexual abuse of any child by Sandusky.

105. The Freeh Report’s claims regarding Dr. Spanier’s knowledge of, and response to, the 2001 incident are false.

Penn State and the Board of Trustees Knew the Freeh Report Would Scapegoat Dr. Spanier

106. Freeh went to great lengths in his Report and accompanying press conference to stress that his investigation was comprehensive, complete, and independent. Freeh and the Penn State Board of Trustees knew that, to serve the Report’s intended purpose to convince the public that the “bad apples” had been rooted out, that “closure” had been achieved, and so they could “move on,” it was

essential that Freeh be viewed as an impartial and disinterested neutral, with no stake in the ultimate outcome of the investigation.

107. One way Freeh perpetrated this illusion was by trumpeting the claim that the final Freeh Report was released to the public and the Penn State Board of Trustees at the same time. The fact that the Board did not get an advance copy of the Report was held up as an example of the independence of Freeh's investigation.

108. But in fact Freeh had ongoing discussions with selected Board members regarding the course of the investigation, and its likely outcome, long before the release of the final Report. Emails between Freeh and Board members show that Freeh regularly briefed Board members on the status of the investigation.

109. For example, in April 2012 — three months before Freeh even interviewed Dr. Spanier, and three months before the Report was released — Freeh and two members of the Board openly discussed targeting Dr. Spanier. When a media outlet reported that Dr. Spanier had been asked to take on a national security position with a government agency, Freeh and Board members plotted to deny Dr. Spanier this employment opportunity. Freeh went so far as to refer to the coordinated targeting of Dr. Spanier by the Board and FSS as “our job.”

From: Frazier, Kenneth C. <ken.frazier@merck.com>
Sent: Thursday, April 12, 2012 8:31 AM
To: Louis Freeh
Cc: Tomalis, Ronald; Omar McNeil -- Freeh Group
Subject: Re: Former Penn State University president Graham Spanier to begin new job for federal government

Oh brother...

Sent from my iPad

On Apr 12, 2012, at 8:22 AM, "Louis Freeh" <freeh@freehgroup.com> wrote:

Very interesting--we have done our job notifying the Federal prosecutors regarding the latest information.

Sent from my iPhone

On Apr 12, 2012, at 8:18 AM, "Tomalis, Ronald" <<mailto:rtomalis@pa.gov>rtomalis@pa.gov> wrote:

Seems someone might not have done their homework...

Former Penn State University president Graham Spanier to begin new job for federal government

Sara Ganim

Patriot News

April 11, 2012

Former Penn State University president Graham Spanier said he will soon begin working for the federal government on projects related to national security.

"For the next several months, as I transition to my post-presidential plans, I will be working on a special project for the U.S. government relating national security. This builds on my prior positions working with federal agencies to foster improved cooperation between our nation's national security agencies and other entities," Spanier said in an email.

Spanier was ousted as the university's leader on Nov. 9, less than a week after former assistant football coach Jerry Sandusky was charged with child sex abuse.

110. Through such discussions, which are not revealed in Freeh's "independent" Report, Freeh kept his client aware of his intentions, and Freeh's client communicated its desires to Freeh. The claim that Freeh released his Report to the Board at the same time as it was released to the public was a public relations

ploy meant to create the illusion that the Board had no involvement at all in Freeh's "independent" investigation. In fact, some members of the Board knew the ultimate accusations the Report would contain before it was released.

111. Indeed, the primary goal of the Freeh investigation was to assign blame to specific individuals, which is evidenced by the engagement letter memorializing the agreement between FSS and the "Special Investigations Task Force," a group formed by the Board of Trustees to oversee the Freeh investigation.

112. The engagement letter states that the express purposes of Freeh's investigation, and the Report that would follow, would be to make findings concerning: "i) failures that occurred in the reporting process; ii) the cause for those failures; iii) who had knowledge of the allegations of sexual abuse; and iv) how those allegations were handled by the Trustees, PSU administrators, coaches, and other staff." Thus, Freeh's investigation from the outset *assumed* that certain individuals at Penn State were aware of and concealed evidence of sexual abuse by Sandusky, and Freeh's charge was to identify those individuals and explain why they failed to report suspected child abuse.

113. The engagement letter also makes clear that Freeh and FSS were to "act under the sole direction of the Task Force in performing the [above-described] services," and that Freeh and FSS would perform these services "for the Task Force's benefit."

114. Freeh also knew that, at the time he was retained, a media narrative was forming that suggested Penn State officials, particularly Schultz, Curley, and Paterno, had been aware of allegations regarding Sandusky but had not done enough to intervene. In particular, Schultz and Curley were indicted in connection with the investigation along with Sandusky, before Freeh was retained.

115. On June 16, 2012, — a month before the Report was published — the Associated Press published an interview with Penn State University Trustee Keith Masser, in which Masser defended the Board of Trustees’ purported decision to oust Dr. Spanier as President of the University. Masser was quoted as saying that Dr. Spanier was “involved in a cover-up,” and that “top administration officials and top athletic officials were involved in making the decision to not inform the proper authorities” of Sandusky’s criminal activities.

116. The Masser interview was published by the Associated Press and widely circulated by other media outlets nearly three weeks before Freeh interviewed Dr. Spanier and nearly a month before the Freeh Report was released.

117. Before Freeh interviewed Dr. Spanier and before he issued his Report, Freeh knew that his client had publicly accused Dr. Spanier of participating in a cover-up of Sandusky’s sexual abuse. Freeh knew that his client expected the Report to echo the public position of the Board of Trustees. Based on the Board’s directions, Freeh thus determined before interviewing Dr. Spanier that he was going to issue a

Report accusing Dr. Spanier of actively participating in a cover-up and actively deciding to conceal Sandusky's criminal activities.

118. Freeh also knew that in addition to securing the resignation of Dr. Spanier, the Board of Trustees had also fired Paterno, returned Schultz to retirement, and determined that they would not renew Curley's contract. Freeh knew that by accusing Dr. Spanier of being a "wrongdoer" along with Schultz, Curley, and Paterno, he could release a report that not only justified the Board's actions, but that also reinforced then-Vice Chair Masser's preexisting media narrative. By claiming that Dr. Spanier joined Schultz, Curley, and Paterno in a "cover up" of Sandusky's actions, Freeh knew that he could advance his client's interests by scapegoating a discrete set of individuals and providing a reason — a supposed cover-up — for why the Board should be considered substantively blameless by the public.

119. Freeh also knew that the NCAA expected him to target the University's highest-level officials like Dr. Spanier and Coach Paterno to justify the NCAA's highly dubious claim to have jurisdiction to punish Penn State for Sandusky's actions. Freeh's Report, which claims that the investigation was entirely independent, intentionally omits mention of the facts that Freeh and his investigators held multiple meetings and at least 15 conference calls with NCAA officials, that NCAA officials provided the blueprint for the investigation, and that NCAA officials provided Freeh with 32 questions the NCAA expected Freeh to investigate. The

Report also fails to mention that it was understood that Freeh's "independent" investigation was expected to substitute for an NCAA investigation and the prospect of a separate, additional NCAA investigation loomed unless the NCAA was satisfied with Freeh's conclusions.

120. Although the Board of Trustees still has not authorized any meaningful examination of the credibility of the Freeh Report, others have; it has been the subject of numerous critiques, and many of its claims have since been heavily scrutinized. On June 19, 2014, Hearing Examiner Michael Bangs of the Pennsylvania State Employees Retirement System issued an opinion recommending that Sandusky's state pension be restored. Bangs's findings and conclusions addressed the Freeh Report, and specifically rebutted the Report's claim that "Penn State made 71 separate payments to Sandusky for travel, meals, lodging, speaking engagements, camps and other activities from January 5, 2000 through July 22, 2008."

121. Hearing Examiner Bangs's opinion found that "there is no factual support whatsoever that Penn State made 71 separate payments to [Sandusky] between 2000 and 2008, as set forth in the Freeh Report." Instead, "an examination of [Sandusky's] tax records and the records provided by Penn State's legal counsel reveal[ed] that there were no more than six payments made to [Sandusky], with several being reimbursement for travel expenses." Noting that the Freeh Report was

“based on significant hearsay and was mostly ruled inadmissible,” Bangs found that “[t]he terrifically significant disparity between the findings in the Freeh Report and the actual truth is disturbing.” He went on to opine that “the use of this remarkably incorrect statistic by the Freeh Report, which was then relied upon to form the basis for a number of its other conclusions, calls into question the accuracy and veracity of the entire report.”

122. Former Penn State President Rodney Erickson, who was President during the investigation and when the Report was released, has also stated that aspects of the Freeh Report are “inaccurate and unfortunate,” and that the Report will “never be a complete record in the sense that not everyone who was involved had an opportunity to or was able to be interviewed.”

123. Indeed, even the current President of Penn State, Eric Barron, has recently said that “[t]here are significant problems with the Freeh Report,” “Freeh did not have subpoena power” and thus he did not “interview many of the most salient individuals,” “Freeh expressed his personal opinions and conclusions about the motivation of individuals, rather than simply presenting factual information,” and finally that “*the limitations of the Freeh report prevent it from being the basis of any decision facing Penn State.*” (Emphasis in original.) Of course as this Second Amended Complaint details, the Freeh Report has been and continues to be the basis

for many important decisions made by the Trustees and the NCAA — including the University’s counterclaims against Dr. Spanier filed in this case.

124. In a commentary on ESPN.com following a settlement between Penn State and the NCAA regarding the sanctions that followed the release of the Freeh Report, college football reporter Ivan Maisel stated, “The Freeh Report, as it turned out, carried all the factual gravitas of a high school term paper.”

Penn State Brazenly and Repeatedly Breaches the Separation Agreement by Making False and Negative Statements About Dr. Spanier

125. Penn State has willfully and repeatedly breached the Separation Agreement and caused further harm and damage to Dr. Spanier.

126. Although the Separation Agreement expressly prohibits Penn State and its Board of Trustees from making “any negative comments about Dr. Spanier” to the media or any other members of the public except in limited circumstances, Penn State and certain members of the Board of Trustees have repeatedly done so in breach of the Separation Agreement.

127. Penn State Board of Trustees member Keith Masser stated in a June 2012 interview with the Associated Press that Dr. Spanier was “involved in a cover-up” of Sandusky’s criminal activities. Masser understood that this statement would be published to the general public when he made it.

128. Penn State did not use reasonable efforts to cause Masser not to make this negative comment about Dr. Spanier; in fact, upon information and belief, it made no effort at all to prohibit Masser from making this statement.

129. Masser's statement was false. As set forth above, Dr. Spanier had no knowledge of Sandusky's criminal activities prior to Sandusky's indictment, and therefore categorically was not involved in any cover up of Sandusky's criminal activities.

130. Masser's statement was a voluntary expression of a negative statement about Dr. Spanier to the news media. Masser was not required by law to make the statement, he did not make the statement to comply with any legal obligations, and he did not make the statement in order to provide truthful information in connection with any ongoing or forthcoming investigation.

131. Other members of the Penn State administration and the Board of Trustees have repeatedly and willfully made disparaging comments about Dr. Spanier in breach of the Separation Agreement.

132. In a July 12, 2012 press release issued *after* the publication of the Freeh Report and *after* the conclusion of Freeh's work on behalf of Penn State, Penn State stated: "Today's comprehensive report is sad and sobering in that it concludes that at the moment of truth, people in positions of authority and responsibility did not put the welfare of children first." The press release also states "Judge Freeh's report

concludes that certain people at the University who were in a position to protect children or confront the predator failed to do so. There can be no ambiguity about that.”

133. These statements referred specifically to Dr. Spanier, as well as Messrs. Curley, Schultz, and Paterno.

134. Penn State publicly disseminated this press release on its website at <http://progress.psu.edu/resource-library/story/penn-state-issues-statement-on-freeh-report>.

135. The negative statements about Dr. Spanier in this press release were false. As set forth above, Dr. Spanier had no knowledge of Sandusky’s criminal activities and thus did not fail to put the welfare of children first, did not fail to protect children, and did not fail to confront a predator.

136. Penn State’s dissemination of this press release was a voluntary dissemination of negative statements about Dr. Spanier to the news media and the general public. Penn State was not required by law to issue the press release or the included negative statements about Dr. Spanier, it did not issue the press release to comply with any legal obligations, and it did not issue the press release in order to provide truthful information in connection with any ongoing or forthcoming investigation.

137. Also on July 12, 2012, Board of Trustees members Kenneth Frazier and Karen Peetz held a press conference along with Penn State President Rodney Erickson *after* the release of the Freeh Report. During that press conference, Penn State permitted Frazier and Peetz to make numerous negative and untrue statements about Dr. Spanier, including:

- “Judge Freeh’s Report is both sad and sobering... Our administrative leadership also failed. Judge Freeh’s Report concludes that at the moment of truth, people who are in a position to protect children, and to confront a predator – including people at the highest levels of responsibility in the University – specifically, Graham Spanier, Joe Paterno, Tim Curley, and Gary Schultz, did not put the welfare of children first.” (Kenneth Frazier)
- In response to a question about whether the Board felt misled by Dr. Spanier: “I would say that we feel concerned and misled in the entire situation. Though we’re taking responsibility... And so each of the individuals I would say have let us down significantly.” (Peetz)
- In response to questioning about what Frazier wishes he had asked Spanier: “I can’t answer that question because I don’t think it was a question of asking the wrong questions. I think it was a reticence about sharing the information. It’s not a question of, if we’d asked a magic question, these folks would have said, ‘Ok, we’re not going to conceal what’s going on, now that you asked it

that way we'll answer it a different way.'" (Frazier)

- In response to questioning about why the Board didn't rally behind attempts to get more information from Dr. Spanier: "I'll make the point again for everybody to understand. In retrospect, we wish that we had pressed upon someone that we had complete trust in. The questions were asked, the answers were given, they were not complete, thorough, open answers. We could have asked more questions but again I want to say it's not simply a question of us finding a magic formulation of the question. We asked enough questions that if someone wanted to share what was going on they could have shared what was going on. Am I clear?" (Frazier)
- In response to a question about whether the Board had too much trust in Spanier: "There is a distinction between board oversight and management. The president of the school has an obligation to make sure that the school is run in an appropriate way and before this issue arose I think Graham Spanier was one of the most respected college presidents in the United States. I would say that we were delighted as a Board to have Graham Spanier as our president. We trusted him based on all external appearances, we believed what we were being told was accurate. In retrospect, we were not told what was being accurate [sic]." (Frazier)

138. Penn State did not use reasonable efforts to cause Frazier and Peetz not to make these negative comments about Dr. Spanier. In fact, on information and belief, Penn State organized the July 12, 2012 press conference with full knowledge that Frazier and Peetz would make negative comments about Dr. Spanier. Penn State's President was present for and participated in the press conference and made no effort to cause Frazier and Peetz not to make these negative statements about Dr. Spanier.

139. Frazier and Peetz's statements about Dr. Spanier during the July 12, 2012 press conference were false. As set forth above, Dr. Spanier had no knowledge of Sandusky's criminal activities, and he did not fail to protect children, did not fail to confront a predator, and did not fail to put the welfare of children first.

140. Moreover, Dr. Spanier did not mislead the Board in any way, he was not reticent about providing information regarding Sandusky to the Board, he did not conceal information he possessed about Sandusky from the Board, and he did not provide inaccurate information to the Board.

141. In fact, within 24 hours of his own testimony before the Grand Jury investigating Sandusky in April 2011, Dr. Spanier and then-Penn State General Counsel Cynthia Baldwin set up a conference call with Steve Garban, the Chair of the Board of Trustees, to brief Garban on the matter.

142. Following that discussion and an inquiry from another trustee, Dr. Spanier participated in arranging a briefing to the full Board regarding the Grand Jury's inquiry into Sandusky's activities. Ms. Baldwin presented this briefing before an executive session of the Board on May 12, 2011, and all members of the Board were given the opportunity to ask questions.

143. Dr. Spanier kept the Chair of the Board informed of the limited information Dr. Spanier learned from Cynthia Baldwin regarding the Sandusky investigation throughout the following months, and Dr. Spanier briefed individual members of the Board over dinners at the time of the May, July, and September 2011 Board meetings. Dr. Spanier informed Board members of all the information he learned from Baldwin and did not withhold any relevant information.

144. Upon hearing from Baldwin the leaked information that Sandusky, Curley, and Schultz were to be criminally charged, Dr. Spanier informed the Chair of the Board within an hour of learning this information. From then until his separation from Penn State, Dr. Spanier was involved in constant discussions with the Chair and Vice Chair of the Board regarding the information available respecting Sandusky and how the University should respond to the unfolding situation.

145. Frazier and Peetz's negative comments about Dr. Spanier during the July 12, 2012 press conference were made voluntarily. Neither Penn State nor its Board members were required by law to make these negative statements about Dr.

Spanier, they were not made to comply with any legal obligations, and they were not made in order to provide truthful information in connection with any ongoing or forthcoming investigation.

146. Frazier and Peetz held another press conference on the following day, July 13, 2012, again to discuss the already-released Freeh Report. At that press conference, Frazier said of Dr. Spanier: “I think the Report shows that there was a breakdown or gap in terms of some of our oversight as a Board. I think it also says that some people, in a particular instance, because they wanted to avoid bad publicity, might have concealed the criminal acts of Jerry Sandusky.”

147. Frazier’s negative comments at the July 13, 2012 press conference were intended to refer to Dr. Spanier, and they were understood by the public to refer to Dr. Spanier.

148. Penn State did not use reasonable efforts to cause Frazier not to make these negative comments about Dr. Spanier. Rather, on information and belief, Penn State organized the July 13, 2012 press conference with full knowledge that Frazier and Peetz would make negative comments about Dr. Spanier.

149. As set forth above, Frazier’s statements about Dr. Spanier during the July 13, 2012 press conference were false. Dr. Spanier had no knowledge of Sandusky’s criminal activities, he did not conceal any criminal activities by Sandusky, and he did not do so in order to avoid bad publicity.

150. Frazier's negative comments about Dr. Spanier during the July 13, 2012 press conference were made voluntarily. Frazier was not required by law to make these negative statements about Dr. Spanier, they were not made to comply with any legal obligations, and they were not made in order to provide truthful information in connection with any ongoing or forthcoming investigation.

151. During a pre-planned, in-person, group interview with a New York Times reporter in New Jersey on January 18, 2012, a group of thirteen members of the Board of Trustees made the following statements about Dr. Spanier, all of which breach the Separation Agreement:

- “The trustees, over three hours, described how they had felt blindsided by Spanier’s failure to keep them informed of the nature and scope of the Pennsylvania attorney general’s investigation of Sandusky, along with the investigation of university officials.”
- “The trustees on [a Saturday, November 5, 2011 conference call] who had read the details of the charges against Sandusky and the two senior university officials felt a distinct lack of urgency by the university. Many were irked that Spanier had released a statement in full support of Curley and Schultz, who were indicted for perjury. The trustees were floored, they said, that Spanier did not seem to recognize the severity of the situation.”
- “The trustees quickly realized that Spanier had chosen not to keep them

informed.”

- “The trustees said this week that they were disappointed that Spanier, who was legally allowed to speak about his grand jury testimony, did not brief the board on the nature of the questions by the grand jury about the 2002 episode. ‘He should have told us a lot more,’ [Trustee] Lubert said. ‘He should have let us know much more of the background. He was able to legally share his testimony and I think that he had an obligation to do that with the board so we could get more engaged with the problem.’”
- “Part of being a leader at this level is to be a risk manager and to think through what might happen,’ the trustee Karen B. Peetz, an executive with Bank of New York Mellon, said of Spanier.”
- “The Sunday meeting ended with the trustees eager to issue a news release, expressing a commitment to a full internal investigation and sympathy for any victims. In the interviews this week, they accused Spanier of having altered the release.”

152. On information and belief, Penn State was aware of this planned group interview before it occurred. Penn State did not undertake reasonable efforts to cause the thirteen Trustees not to make these negative and untrue comments about Dr. Spanier to the media.

153. The Trustees' negative statements about Dr. Spanier to the New York Times are demonstrably false. As set forth above, Dr. Spanier had no knowledge of Sandusky's criminal activities.

154. As set forth above, Dr. Spanier did not fail to keep the Board informed of information regarding Sandusky's criminal activities, the Attorney General's investigation into Sandusky's criminal activities, or the Grand Jury investigation into Sandusky's criminal activities. Dr. Spanier shared all of the limited information he had regarding these matters with the Board in a forthcoming and timely manner.

155. Moreover, Dr. Spanier did not fail to recognize the severity of the situation regarding Sandusky's indictment nor did he act with a lack of urgency in response to the unfolding situation.

156. Dr. Spanier was never informed, officially or unofficially, by the Office of the Attorney General that charges would be forthcoming against any University employees. In fact, the University's then-General Counsel repeatedly assured Dr. Spanier that "there was nothing there" and that there was little likelihood that the University would be implicated or affected by the allegations regarding Sandusky. Although he was aware that Curley, Schultz, and Paterno had been called to testify before the Grand Jury investigating Sandusky, Dr. Spanier was not even made aware of the other subpoenas that had been issued to Penn State.

157. However, upon learning the leaked information that Sandusky, Curley, and Schultz would be charged criminally, Dr. Spanier felt and acted with an immense sense of urgency. He immediately informed the Chair of the Board, and he met daily or near-daily with the Chair of the Board in the days leading up to the issuance of the Grand Jury presentment. He took part in a series of emergency meetings that followed.

158. In fact, after the release of the Grand Jury presentment on November 5, 2011, the Chair of the Board determined that a meeting of the Board could wait until Monday, November 7. Dr. Spanier insisted that emergency Board meetings be held on Saturday, November 5, and Sunday, November 6, in order to quickly address the unfolding crisis.

159. Dr. Spanier was also under orders from John Surma, Vice Chair of the Board, not to make any public statements or hold a press conference, because the Board would be handling the crisis management rather than University officials.

160. The Trustees' accusation that Dr. Spanier altered a University press release regarding the Sandusky indictment is also demonstrably false and untrue. The press release in question was drafted in consultation with board leadership and the University's Office of Public Information, and the Board of Trustees revised it on the evening of Sunday, November 6, 2011. Dr. Spanier sent the final draft of the press release to the Chair of the Board of Trustees for review before it was issued.

He did not substantively alter the planned release in any way before it was disseminated on Monday, November 7, 2011.

161. The negative comments about Dr. Spanier made by the Trustees in January 2012 were made voluntarily to the news media. The statements were not made to comply with any legal requirement or obligation, and they were not made for the purpose of providing truthful information in connection with any ongoing or forthcoming investigations.

162. Each of the foregoing comments by Penn State and its Board members regarding Dr. Spanier are negative and false.

163. During his tenure as President of Penn State, Dr. Spanier never received any information that Sandusky had abused a child, and Dr. Spanier was never provided information that would lead him to conclude that Sandusky had ever committed a criminal act directed at a child until *after* Sandusky's criminal indictment. Dr. Spanier did not seek to, nor did he, conceal or cover up any information regarding Sandusky's criminal activities from the Board of Trustees or anyone else.

Dr. Spanier Has Suffered Significant Reputational, Emotional, and Economic Harm as a Result of Penn State's and the Board Members' Statements

164. Penn State's and its Board Members' disparaging statements regarding Dr. Spanier have caused him severe damage.

165. Dr. Spanier has suffered severe reputational harm as a result of these negative statements. The false, malicious, and disparaging statements regarding Spanier impugn his well-earned reputation as an educator, university administrator, civic leader, advocate for child and family welfare, and national security expert. They undermine public confidence in his competence, ethics, and abilities in these areas. Dr. Spanier has spent a lifetime building his reputation, and Penn State's and the Board Members' statements falsely and wrongfully tarnished his strong reputation in these and other areas.

166. These false, malicious, and disparaging statements regarding Dr. Spanier have caused him to endure humiliation and verbal and written personal attacks.

167. Moreover, using the Freeh Report as justification, the University has also taken a broad range of punitive actions against Dr. Spanier, in blatant breach of the Separation Agreement.

168. Penn State, with the acquiescence of the Board of Trustees, initiated proceedings to revoke Dr. Spanier's tenure.

169. Penn State prohibited Dr. Spanier from representing the University in any capacity.

170. Penn State cancelled a course Dr. Spanier was scheduled to teach.

171. Penn State revoked Dr. Spanier's assignment of an office at the University.

172. Penn State revoked any and all of Dr. Spanier's access to the University and its systems, including cutting him off from the University network and email.

173. Penn State confiscated Dr. Spanier's computer, laptop, iPad, and printer.

174. On July 13, 2012 — the day after the Freeh Report was released — an individual at Penn State arranged to have a "request no contact" code placed on Dr. Spanier's file in the Penn State Alumni Association database, barring Dr. Spanier from receiving communications and mailings from the Alumni Association.

175. Because of the Penn State's actions, Dr. Spanier has been the subject of excoriation by reporters, activists, columnists, editorial writers, and bloggers.

176. The disparaging statements regarding Dr. Spanier have caused him economic harm. Because of the narrative spoken and written by Freeh and Penn State, Dr. Spanier has lost a number of rewarding employment opportunities, including being forced to resign from a position on the board of directors of a corporation that paid Dr. Spanier handsomely.

177. The disparaging statements have caused Dr. Spanier to suffer emotionally and physically.

Penn State Breaches the Separation Agreement by Failing to Provide Required Administrative Support

178. Penn State has also breached the Separation Agreement by failing to allow Dr. Spanier to teach any courses and by failing to provide administrative support commensurate with that received by other tenured faculty members and former presidents.

179. In preparation for the 2012 fall semester posting of spring semester courses, Dr. Spanier developed a new course. In May 2012 he identified an office location and prepared the paperwork necessary to hire a secretary. President Erickson and Acting Provost Pangborn did not respond to Dr. Spanier's emails about these matters, did not assign Dr. Spanier an office location, and did not allow him to hire a secretary. When the spring course list was posted, Dr. Spanier's name was not on it. On November 2, 2012, Provost Pangborn sent Dr. Spanier a letter notifying Dr. Spanier that he was being placed on an indefinite suspension from any and all duties.

180. On November 14, 2012, Penn State sent individuals to Dr. Spanier's home to confiscate and remove his desktop computer, laptop, iPad, and all associated electronics and means of accessing the Penn State network. IT support personnel were directed to have no contact with Dr. Spanier.

181. Despite the fact that the Separation Agreement expressly requires that the University provide Dr. Spanier with the same administrative support as other faculty members, as well as an office on campus and a staff assistant, Penn State has breached the Separation Agreement by knowingly and intentionally failing to do so.

Penn State Breaches the Separation Agreement by Repeatedly Refusing to Indemnify Dr. Spanier and Hold Him Harmless Against Legal Fees and Related Covered Costs

182. Penn State has willfully and repeatedly breached the Separation Agreement and caused further harm and damage to Dr. Spanier by failing to hold him harmless, reimburse him, and indemnify him for \$857,351.01 in Covered Costs.

183. Under the parties' contracts, Penn State is required to (1) "indemnify Dr. Spanier and hold him harmless against legal fees, expenses, judgments and other financial amounts incurred . . . with respect to acts or omissions" that occurred during his tenure as President (Employment Agreement, Section J) *and* (2) reimburse Dr. Spanier for the attorneys' fees and expenses he has incurred in connection with matters relating to the grand jury presentment and his termination from the position of the President of the University." (Separation Agreement, Section 4(f).)

184. In spite of Dr. Spanier's repeated demands that Penn State pay for Covered Costs, Penn State has refused to do so, in breach of the Separation Agreement. The invoices totaling \$857,351.01 in Covered Costs that Penn State has failed to pay are detailed in the table below:

Company	Invoice Date	Amount Due
Sullivan & Cromwell LLP	9/2/2015	\$573,523.61
Sullivan & Cromwell LLP	1/28/2016	\$5,781.25
Sullivan & Cromwell LLP	3/18/2016	\$44,928.00
Sullivan & Cromwell LLP	10/13/2016	\$13,514.08
Schnader Harrison Segal & Lewis	7/11/2012	\$8,665.00
Schnader Harrison Segal & Lewis	8/2/2012	\$4,446.14
Schnader Harrison Segal & Lewis	1/16/2013	\$14,689.50
Schnader Harrison Segal & Lewis	2/8/2013	\$15,727.09
Schnader Harrison Segal & Lewis	3/4/2013	\$4,676.34
Hiltzik Strategies, LLC	11/22/2011	\$12,500.00
Hiltzik Strategies, LLC	6/30/2012	\$3,500.00
Hiltzik Strategies, LLC	7/31/2012	\$16,700.00
Hiltzik Strategies, LLC	9/5/2012	\$61,700.00
Hiltzik Strategies, LLC	2/28/2015- 11/30/2016	\$77,000.00
	Total:	\$857,351.01

185. Shortly after executing the Separation Agreement, Penn State—through its Vice President and General Counsel Stephen S. Dunham (“Dunham”)—notified Dr. Spanier that the University intended to pay Dr. Spanier’s Covered Costs through

its D&O policy with National Union Fire Insurance Company of Pittsburgh, Pa. (“National Union”).

186. Importantly, the University’s contractual obligations to pay for Covered Costs exist independent of the coverage available under its D&O policy. Correspondence with National Union’s counsel at the law firm Peabody & Arnold LLP makes clear that, unlike Penn State’s broad and mandatory indemnification and reimbursement obligations, the D&O policy is limited to costs that Dr. Spanier incurs in *defense* of claims made against him.

187. Through his counsel, Dr. Spanier has provided a number of invoices to Penn State and National Union and requested payment for the Covered Costs the invoices charge. In accordance with the Separation Agreement, Penn State has paid some of these invoices. However, Penn State refuses to pay for Covered Costs that are not payable by its insurer.

188. Specifically, Penn State has refused to pay for nearly \$1 million in Covered Costs that Dr. Spanier has incurred. These unpaid invoices were issued by Sullivan & Cromwell LLP (“Sullivan & Cromwell”), Schnader Harrison Segal & Lewis (“Schnader Harrison”), and Hiltzik Strategies, LLC (“Hiltzik Strategies”).

189. Penn State has refused to pay for \$637,746.94 related to legal services rendered by Sullivan & Cromwell for Covered Costs, as follows: (1) September 2, 2015 Invoice No. 0571938 totaling \$573,523.61; (2) January 28, 2016 Invoice No.

0579053 totaling \$5,781.25; (3) March 18, 2016 Invoice No. 0581046 totaling \$44,928.00; and (4) October 13, 2016 Invoice No. 0590164 totaling \$13,514.08 (collectively, the “Sullivan & Cromwell Invoices”). The Sullivan & Cromwell Invoices became due and owing upon receipt.

190. The Sullivan & Cromwell Invoices charge for legal services provided to reverse rulings made against Dr. Spanier in the ongoing criminal case related to the grand jury presentment. Specifically, Sullivan & Cromwell appealed the trial court’s rulings that improperly allowed Cynthia Baldwin, former General Counsel for Penn State, to testify against Dr. Spanier before the grand jury even though Baldwin’s testimony was based on conversations she had with Dr. Spanier in her capacity as his legal counsel. Dr. Spanier’s attorneys at Sullivan & Cromwell argued that conversations between Baldwin and Dr. Spanier were protected by attorney-client privilege. After extensive briefing and oral arguments, the Superior Court of Pennsylvania agreed and reversed the trial court’s decision. As a result of the appeal, the court dismissed the charges against Dr. Spanier alleging perjury, obstruction of justice, and conspiracy.

191. Pursuant to Penn State’s instructions, Dr. Spanier’s counsel at Schnader Harrison requested that National Union remit payment for the invoices from Sullivan & Cromwell dated September 2, 2015 and January 28, 2016. On February 3, 2016, Sullivan & Cromwell attorney Brent McIntosh sent the same two invoices to Ms.

Margaret Janowiak, who serves as Claims Manager in the University's Risk Management Office, and demanded payment.

192. Subsequently, Ms. Janowiak forwarded the letter to National Union and included the two invoices from Sullivan & Cromwell for payment by the insurer.

193. Several days later, Stephanie Kao, counsel for National Union, emailed Schnader Harrison attorney Elizabeth Ainslie and stated that "National Union will not reimburse the legal fees or costs incurred by Sullivan Cromwell on behalf of [Dr.] Spanier." (S. Kao Feb. 11, 2016 Email to E. Ainslie.)

194. Understanding that National Union's coverage under its insurance policy with Penn State is not co-extensive with the University's obligations to pay for Covered Costs, on February 26, 2016, Dr. Spanier wrote a letter to Keith Masser, then-Chairman of the Penn State Board of Trustees. Dr. Spanier attached the two invoices from Sullivan & Cromwell and the related correspondence from National Union and demanded that the University pay the past due invoices.

195. In his February 26, 2016 letter, Dr. Spanier stated that Penn State's "insurance coverage is irrelevant given the University's contractual obligation to pay for [the Sullivan & Cromwell] charges." He explained that National Union's denial of coverage did not relieve Penn State of its obligation to indemnify him.

196. In spite of Dr. Spanier's demand, in March of 2016 Penn State doubled down on its refusal to reimburse Dr. Spanier or pay the outstanding and overdue

Covered Costs. In a letter dated March 14, 2016, Daniel Booker acknowledged the University's obligation to *advance* expenses to Dr. Spanier pursuant to its bylaws. However, he made no mention of Penn State's requirement under the Separation Agreement to pay for the invoices and hold Dr. Spanier harmless against his indebtedness to Sullivan & Cromwell in relation to the grand jury presentment.

197. Subsequently, Sullivan & Cromwell provided the March 18, 2016 and October 13, 2016 Invoices to National Union for payment just a few days after each invoice was issued. Upon information and belief, National Union provided these invoices to Penn State.

198. Most recently, Dr. Spanier renewed his demand for payment of the Sullivan & Cromwell Invoices to Penn State's counsel on January 3, 2017. Penn State has ignored Dr. Spanier's latest demand and failed to respond.

199. To date, Penn State refuses to pay *any* of the Sullivan & Cromwell Invoices, in spite of its legal obligation to do so. The Sullivan & Cromwell Invoices total \$637,746.94 and are past due and owing.

200. Similarly, Penn State has refused to pay for \$48,204.07 related to legal services rendered by Schnader Harrison for Covered Costs: (1) July 11, 2012 Invoice No. 2333268 totaling \$8,665.00; (2) August 2, 2012 Invoice No. 2334501 totaling \$4,446.14; (3) January 16, 2013 Invoice No. 2343167 totaling \$14,689.50; (4) March 4, 2013 Invoice No. 2345686 totaling \$4,676.34; and (5) February 8, 2013

Invoice No. 2344082 totaling \$15,727.09 (collectively, the “Schnader Harrison Invoices”). The Schnader Harrison Invoices became due and owing upon receipt.

201. The first two invoices issued by Schnader Harrison (dated July 11, 2012 and August 2, 2012) charge for legal services provided to Dr. Spanier in a suit he filed after the University refused to provide him with documents in its possession that would allow him to adequately prepare and cooperate with the Freeh Investigation. Although Penn State provided Dr. Spanier’s documents to Freeh, it rejected Dr. Spanier’s requests to obtain documents that belonged to him. The action was filed at the invitation of Penn State’s outside counsel, Michael Mustokoff.

202. Subsequently, Elizabeth Ainslie provided the July 11, 2012 and August 2, 2012 Invoices to Dunham for payment just a few days after each invoice was issued. For more than one year, Penn State refused to pay for the July 11, 2012 and August 2, 2012 Invoices.

203. The three remaining invoices issued by Schnader Harrison (dated January 16, 2013; March 4, 2013; and February 8, 2013) charge for legal services provided to Dr. Spanier after the University attempted to revoke his tenure as a professor in the aftermath of the grand jury presentment. Schnader Harrison addressed each invoice to Dunham and demanded payment from Penn State on the date each invoice was issued.

204. In spite of Dr. Spanier's requests, Penn State has refused to pay the invoices issued by Schnader Harrison that charge legal fees for services provided related to Dr. Spanier's tenure. Two of Dunham's refusals are memorialized in emails he sent to attorneys at Schnader Harrison dated February 4, 2013 and February 5, 2013 respectively. Dunham made clear that "Penn State will not pay these fees, and [its insurer] will not either."

205. Most recently, Dr. Spanier renewed his demand for payment of the Schnader Harrison Invoices to Penn State's counsel on January 3, 2017. Penn State has ignored Dr. Spanier's latest demand and failed to respond.

206. To date, Penn State refuses to pay *any* of the Schnader Harrison Invoices, in spite of its legal obligation to do so. The Schnader Harrison Invoices total \$48,204.07 and are past due and owing.

207. Penn State has also refused to pay \$171,400.00 in services rendered by Hiltzik Strategies to the law firms Vaira & Riley PC ("Vaira & Riley) and Schnader Harrison for Covered Costs: (1) November 22, 2011 Invoice No. 1012-1 totaling \$12,500.00; (2) June 30, 2012 Invoice No. 1012-6 totaling \$3,500.00; (3) July 31, 2012 Invoice No. 1012-7 totaling \$16,700.00; (4) September 5, 2012 Invoice No. 1012-8 totaling \$61,700.00; and (5) twenty-two invoices (each in the amount of \$3,500.00) issued each month between February 28, 2015 and November 30, 2016

Nos. 1012-38 through 1012-59 totaling \$77,000.00 (collectively, the “Hiltzik Strategies Invoices”). The Hiltzik Invoices became due and owing upon receipt.

208. The Hiltzik Strategies Invoices charge for services provided to Vaira & Riley and Schnader Harrison to manage the legal and public relations damage to Dr. Spanier’s reputation resulting from the grand jury presentment, Dr. Spanier’s termination from the position of University President, and alleged acts or omissions that occurred while Dr. Spanier served as President.

209. Although Penn State has paid for several invoices issued by Hiltzik Strategies, it has refused to pay for the Hiltzik Strategies Invoices that Dr. Spanier’s attorneys at Schnader Harrison sent.

210. In December of 2011, Dr. Spanier’s counsel at Vaira & Riley provided Dunham with the November 22, 2011 Invoice and demanded payment for the Covered Costs reflected in the invoice. In spite of this demand, Penn State refused to pay the November 22, 2011 Invoice.

211. Hiltzik Strategies billed Schnader Harrison for the invoices dated June 30, 2012; July 31, 2012; and September 5, 2012. Upon receiving these invoices, Schnader Harrison attorneys submitted the invoices to National Union and Dunham for payment. After receiving the invoices, both National Union and Stephen Dunham repeatedly refused to pay for services Hiltzik Strategies provided to Dr. Spanier.

212. Elizabeth Ainslie memorialized the University's refusals in a February 7, 2013 letter to Stephen Dunham in which she stated that Penn State's failure to pay Covered Costs past due and owing to Hiltzik Strategies breached the parties' Separation Agreement.

213. In August of 2013, Dunham informed Dr. Spanier's counsel that the University would not indemnify Dr. Spanier for invoices issued by Hiltzik Strategies. Dunham specifically refused to pay for work of Attorney Tim Lewis, who acted on Dr. Spanier's behalf to present a formal critique of the conclusions in the Freeh Report.

214. In January of 2015, Kao notified Elizabeth Ainslie that National Union would discontinue paying for Covered Costs Dr. Spanier incurred for services provided by Hiltzik Strategies. After the University and its insurer made clear that they would not pay for Covered Costs due and owing to Hiltzik Strategies, Dr. Spanier's counsel stopped sending monthly statements to the University for payment.

215. However, Dr. Spanier renewed his demand for payment of the Hiltzik Strategies Invoices to Penn State's counsel on January 3, 2017. Penn State has ignored Dr. Spanier's latest demand and failed to respond.

216. To date, Penn State refuses to pay *any* of the Hiltzik Strategies Invoices, in spite of its legal obligation to do so. The Hiltzik Strategies Invoices total \$171,400.00 and are past due and owing.

217. The Separation Agreement affords Dr. Spanier broad and mandatory indemnification and reimbursement rights from Penn State.

218. Penn State has materially breached the Separation Agreement and refused to indemnify and pay Dr. Spanier for past-due Covered Costs.

219. As set forth above, Penn State's refusal to indemnify, reimburse, or pay Dr. Spanier for Covered Costs is a material breach of the Separation Agreement, and Dr. Spanier has been injured by Penn State's breach.

**COUNT I: BREACH OF CONTRACT FOR NEGATIVE AND UNTRUE
COMMENTS BY PENN STATE AND BOARD MEMBERS KENNETH
FRAZIER AND KAREN PEETZ**

220. Plaintiff incorporates by reference paragraphs 1 through 219 of this Second Amended Complaint as if fully set forth herein.

221. The Separation Agreement between Dr. Spanier and Penn State is a valid and enforceable contract.

222. A copy of the Separation Agreement is attached to this Second Amended Complaint as Exhibit A.

223. The Separation Agreement prohibits Penn State from making any negative comments about Dr. Spanier to the media, to his professional colleagues, or to any other members of the public except in limited circumstances.

224. The Separation Agreement requires Penn State to use reasonable efforts to cause the members of the Board of Trustees not to make any negative comments about Dr. Spanier to the media, to his professional colleagues, or to any other members of the public.

225. Penn State has materially breached the Separation Agreement.

226. Penn State breached the Separation Agreement by holding Penn State-organized and sponsored press conferences on July 12, 2012, and July 13, 2012, in which President Erickson, Trustee Kenneth Frazier, and Trustee Karen Peetz made numerous negative and untrue comments about Dr. Spanier, including:

- “Judge Freeh’s Report is both sad and sobering.... Our administrative leadership also failed. Judge Freeh’s Report concludes that the moment of truth, people who are in a position to protect children, and to confront a predator – including people at the highest levels of responsibility in the University – specifically, Graham Spanier, Joe Paterno, Tim Curley, and Gary Schultz, did not put the welfare of children first.” (Kenneth Frazier)
- In response to a question about whether the Board felt misled by Dr. Spanier: “I would say that we feel concerned and misled in the entire situation. Though

we're taking responsibility... And so each of the individuals I would say have let us down significantly." (Peetz)

- In response to questioning about what Frazier wishes he had asked Spanier: "I can't answer that question because I don't think it was a question of asking the wrong questions. I think it was a reticence about sharing the information. It's not a question of, if we'd asked a magic question, these folks would have said, 'Ok, we're not going to conceal what's going on, now that you asked it that way we'll answer it a different way.'" (Frazier)
- In response to questioning about why the Board didn't rally behind attempts to get more information from Dr. Spanier: "I'll make the point again for everybody to understand. In retrospect, we wish that we had pressed upon someone that we had complete trust in. The questions were asked, the answers were given, they were not complete, thorough, open answers. We could have asked more questions but again I want to say it's not simply a question of us finding a magic formulation of the question. We asked enough questions that if someone wanted to share what was going on they could have shared what was going on. Am I clear?" (Frazier)
- In response to a question about whether the Board had too much trust in Spanier, Frazier said: "There is a distinction between board oversight and management. The president of the school has an obligation to make sure that

the school is run in an appropriate way and before this issue arose I think Graham Spanier was one of the most respected college presidents in the United States. I would say that we were delighted as a Board to have Graham Spanier as our president. We trusted him based on all external appearances, we believed what we were being told was accurate. In retrospect, we were not told what was being accurate [sic].”

- Frazier further said that, “I think the Report shows that there was a breakdown or gap in terms of some of our oversight as a Board. I think it also says that some people, in a particular instance, because they wanted to avoid bad publicity, might have concealed the criminal acts of Jerry Sandusky.”

227. Penn State breached the Separation Agreement by publishing a July 12, 2012 press release on its website in which Penn State stated “Today’s comprehensive report is sad and sobering in that it concludes that at the moment of truth, people in positions of authority and responsibility did not put the welfare of children first,” and that “Judge Freeh’s report concludes that certain people at the University who were in a position to protect children or confront the predator failed to do so. There can be no ambiguity about that.” A copy of this press release is attached to this Second Amended Complaint as Exhibit B.

228. These negative statements are demonstrably false. Dr. Spanier was unaware of Sandusky’s criminal activities until after Sandusky was indicted, and

thus he did not fail to confront Sandusky or fail to protect children. Dr. Spanier never concealed sexual child abuse by Sandusky. At no time did he take actions to conceal Sandusky's deviant and criminal conduct from the Board.

229. These negative comments about Dr. Spanier were made voluntarily. Neither Penn State nor its Board members were required by law to make these negative statements about Dr. Spanier, they were not made to comply with any legal obligations, and they were not made in order to provide truthful information in connection with any ongoing or forthcoming investigation.

230. Penn State and its Board members knowingly published these negative and untrue statements to the media and general public, despite the Separation Agreement's prohibition on making such statements.

231. Penn State failed to use reasonable efforts to cause Frazier and Peetz not to make negative and untrue comments about Dr. Spanier to the media, his professional colleagues, and the public.

232. Dr. Spanier has performed all of his obligations under the Separation Agreement.

233. Dr. Spanier has been damaged by Penn State's contractual breach by, among other things, having his reputation tarnished, by having negative and untrue statements about him widely published and disseminated, by loss of employment opportunities, by having to hire a professional media relations firm to attempt to

repair the damage to his reputation, and by having to incur the substantial burden and expense of bringing and pursuing this action in order to enforce his rights under the Separation Agreement.

**COUNT II: BREACH OF CONTRACT FOR NEGATIVE AND UNTRUE
COMMENTS OF TRUSTEE KEITH MASSER**

234. Plaintiff incorporates by reference paragraphs 1 through 233 of this Complaint as if fully set forth herein.

235. The Separation Agreement between Dr. Spanier and Penn State is a valid and enforceable contract.

236. A copy of the Separation Agreement is attached to this Second Amended Complaint as Exhibit A.

237. The Separation Agreement prohibits Penn State from making any negative and untrue comments about Dr. Spanier to the media, to his professional colleagues, or to any other members of the public.

238. The Separation Agreement requires Penn State to use reasonable efforts to cause the members of the Board of Trustees not to make any negative comments about Dr. Spanier to the media, to his professional colleagues, or to any other members of the public.

239. Penn State has materially breached the Separation Agreement.

240. Penn State breached the Separation Agreement by failing to use reasonable efforts to cause Trustee Keith Masser not to make negative and untrue comments about Dr. Spanier to the media.

241. Trustee Masser stated in a June 2012 interview with the Associated Press that Dr. Spanier was “involved in a cover-up” of Sandusky’s criminal activities. A copy of this interview is attached to this Second Amended Complaint as Exhibit C.

242. Penn State undertook no efforts to cause Trustee Masser not to make this negative and untrue comment about Dr. Spanier to the media, despite the Separation Agreement’s prohibition on making such statements.

243. This negative statement is demonstrably false and aimed to damage Dr. Spanier’s reputation. Dr. Spanier was unaware of Sandusky’s misconduct until after Sandusky was indicted, and at no time was Dr. Spanier involved in any cover-up of Sandusky’s criminal activities.

244. Masser made this statement to the media voluntarily. He was not required by law to make the statement, he did not make the statement to comply with legal obligations, and he did not make the statement for the purpose of providing truthful information in connection with any ongoing or forthcoming investigations.

245. Dr. Spanier has performed all of his obligations under the Separation Agreement.

246. Dr. Spanier has been damaged by Penn State's contractual breach by, among other things, having his reputation tarnished, by having Trustee Masser's statement widely published and disseminated in the media, by loss of employment opportunities, by having to hire a professional media relations firm to attempt to repair the damage to his reputation, and by having to incur the substantial burden and expense of bringing and pursuing this action in order to enforce his rights under the Separation Agreement.

**COUNT III: BREACH OF CONTRACT FOR NEGATIVE AND UNTRUE
COMMENTS OF TRUSTEES TO THE NEW YORK TIMES**

247. Plaintiff incorporates by reference paragraphs 1 through 246 of this Second Amended Complaint as if fully set forth herein.

248. The Separation Agreement between Dr. Spanier and Penn State is a valid and enforceable contract.

249. A copy of the Separation Agreement is attached to this Second Amended Complaint as Exhibit A.

250. The Separation Agreement prohibits Penn State from making any negative and untrue comments about Dr. Spanier to the media, to his professional colleagues, or to any other members of the public.

251. The Separation Agreement requires Penn State to use reasonable efforts to cause the members of the Board of Trustees not to make any negative and untrue

comments about Dr. Spanier to the media, to his professional colleagues, or to any other members of the public.

252. Penn State has materially breached the Separation Agreement.

253. Penn State breached the Separation Agreement by failing to use reasonable efforts to cause thirteen members of the Board of Trustees not to meet with the New York Times in January 2012 and make numerous negative and untrue comments about Dr. Spanier. A copy of the January 2012 New York Times story is attached to this Second Amended Complaint as Exhibit D.

254. During a pre-planned, in-person, group interview with a New York Times reporter in New Jersey on January 18, 2012, the Trustees made the following statements about Dr. Spanier, all of which breach the Separation Agreement:

- “The trustees, over three hours, described how they had felt blindsided by Spanier’s failure to keep them informed of the nature and scope of the Pennsylvania attorney general’s investigation of Sandusky, along with the investigation of university officials.”
- “The trustees on [a Saturday, November 5, 2011 conference call] who had read the details of the charges against Sandusky and the two senior university officials felt a distinct lack of urgency by the university. Many were irked that Spanier had released a statement in full support of Curley and Schultz, who were indicted for perjury. The trustees were floored, they said, that

Spanier did not seem to recognize the severity of the situation.”

- “The trustees quickly realized that Spanier had chosen not to keep them informed.”
- “The trustees said this week that they were disappointed that Spanier, who was legally allowed to speak about his grand jury testimony, did not brief the board on the nature of the questions by the grand jury about the 2002 episode. ‘He should have told us a lot more,’ [Trustee] Lubert said. ‘He should have let us know much more of the background. He was able to legally share his testimony and I think that he had an obligation to do that with the board so we could get more engaged with the problem.’”
- “‘Part of being a leader at this level is to be a risk manager and to think through what might happen,’ the trustee Karen B. Peetz, an executive with Bank of New York Mellon, said of Spanier.”
- “The Sunday meeting ended with the trustees eager to issue a news release, expressing a commitment to a full internal investigation and sympathy for any victims. In the interviews this week, they accused Spanier of having altered the release.”

255. On information and belief, Penn State was aware of this planned group interview before it occurred. Penn State undertook no efforts to cause the Trustees

not to make these negative and untrue comments about Dr. Spanier to the media, despite the Separation Agreement's prohibition on making such statements.

256. These negative statements are demonstrably false. Dr. Spanier had no knowledge of Sandusky's criminal activities. He did not fail to recognize the severity of the situation regarding Sandusky's indictment, he did not choose not to keep the Board informed regarding Sandusky's indictment or Sandusky's prior criminal activities, he did not fail to keep the Board informed of information regarding Sandusky's indictment and Sandusky's prior criminal activities, and he did not alter a press release regarding the Sandusky indictment.

257. The negative comments about Dr. Spanier made by these Board members in January 2012 were made voluntarily to the news media. The statements were not made to comply with any legal requirement or obligation, and they were not made for the purpose of providing truthful information in connection with any ongoing or forthcoming investigations.

258. Dr. Spanier has performed all of his obligations under the Separation Agreement.

259. Dr. Spanier has been damaged by Penn State's contractual breach by, among other things, having his reputation tarnished, by having the Trustee's statements widely published and disseminated in the media, by loss of employment opportunities, by having to hire a professional media relations firm to attempt to

repair the damage to his reputation, and by having to incur the substantial burden and expense of bringing and pursuing this action in order to enforce his rights under the Separation Agreement.

**COUNT IV: BREACH OF CONTRACT FOR FAILURE TO PROVIDE
ADMINISTRATIVE SUPPORT**

260. Plaintiff incorporates by reference paragraphs 1 through 259 of this Second Amended Complaint as if fully set forth herein.

261. The Separation Agreement between Dr. Spanier and Penn State is a valid and enforceable contract.

262. A copy of the Separation Agreement is attached to this Second Amended Complaint as Exhibit A.

263. The Separation Agreement requires Penn State to provide Dr. Spanier computer access, IT support, administrative support commensurate with that provided to other tenured faculty members and University Professors, an office, and a staff assistant.

264. Penn State has materially breached the Separation Agreement.

265. Penn State has not provided Dr. Spanier with computer access or IT support. Penn State in fact confiscated from Dr. Spanier his University-issued desktop computer, laptop computer, and iPad, and cut off his ability to access the Penn State network.

266. Penn State has not provided Dr. Spanier with administrative support commensurate with that provided to other faculty members and former presidents. Penn State in fact has not provided Dr. Spanier with any administrative support.

267. Penn State has not provided Dr. Spanier with an office or a staff assistant. Penn State has knowingly and intentionally ignored Dr. Spanier's requests for an assigned office space and a staff assistant.

268. Dr. Spanier has performed all of his obligations under the Separation Agreement.

269. Dr. Spanier has been damaged by Penn State's contractual breach by, among other things, having no access to the University network, by having no ability to teach courses or otherwise work as a tenured University Professor as required by the Separation Agreement, and by having to incur the substantial burden and expense of bringing and pursuing this action in order to enforce his rights under the Separation Agreement.

COUNT V: BREACH OF CONTRACT FOR FAILURE TO PAY LEGAL FEES AND RELATED EXPENSES

270. Plaintiff incorporates by reference paragraphs 1 through 269 of this Second Amended Complaint as if fully set forth herein.

271. The Separation Agreement between Dr. Spanier and Penn State is a valid and enforceable contract.

272. A copy of the Separation Agreement is attached to this Second Amended Complaint as Exhibit A.

273. The Separation Agreement requires Penn State to reimburse Dr. Spanier and hold him harmless against all attorneys' fees and all expenses he incurs in connection with "matters relating to the grand jury presentment and his termination from the position of President of the University." The Separation Agreement further provides that Penn State will continue to indemnify Dr. Spanier in accordance with the terms of Section J of the 2010 Employment Agreement.

274. A copy of the 2010 Employment Agreement is attached to this Second Amended Complaint as Exhibit E.

275. Section J of the 2010 Employment Agreement establishes broad and mandatory indemnification and requires Penn State to hold Dr. Spanier "harmless against legal fees, expenses, judgments, and other financial amounts incurred . . . with respect to acts or omissions occurring while he was serving as President."

276. In spite of these obligations, Penn State has failed to pay \$857,351.01 in Covered Costs.

277. Dr. Spanier has submitted each invoice for Covered Costs to Penn State and requested that the University remit payment for the same. In spite of Dr. Spanier's demands and its obligations under the Separation Agreement, Penn State has refused to pay for the invoices Dr. Spanier has submitted.

278. Each invoice for Covered Costs became due upon receipt. Every Covered Cost that has not been paid by Penn State is past due.

279. Penn State has refused to pay the Sullivan & Cromwell Invoices totaling \$637,745.94 for Covered Costs: (1) September 2, 2015 Invoice No. 0571938 totaling \$573,523.61; (2) January 28, 2016 Invoice No. 0579053 totaling \$5,781.25; (3) March 18, 2016 Invoice No. 0581046 totaling \$44,928.00; and (4) October 13, 2016 Invoice No. 0590164 totaling \$13,514.08. The Sullivan & Cromwell Invoices became due and owing upon receipt.

280. Dr. Spanier has demanded that Penn State pay the Sullivan & Cromwell Invoices to no avail. To date, Penn State has refused to pay *any* of the Sullivan & Cromwell Invoices, in spite of its legal obligation to do so.

281. Penn State has refused to pay the Schnader Harrison Invoices totaling \$48,204.07 for Covered Costs: (1) July 11, 2012 Invoice No. 2333268 totaling \$8,665.00; (2) August 2, 2012 Invoice No. 2334501 totaling \$4,446.14; (3) January 16, 2013 Invoice No. 2343167 totaling \$14,689.50; (4) March 4, 2013 Invoice No. 2345686 totaling \$4,676.34; and (5) February 8, 2013 Invoice No. 2344082 totaling \$15,727.09. The Schnader Harrison Invoices became due and owing upon receipt.

282. Dr. Spanier has demanded that Penn State pay the Schnader Harrison Invoices, to no avail. To date, Penn State has refused to pay *any* of the Schnader Harrison Invoices, in spite of its legal obligation to do so.

283. Penn State has also refused to pay the Hiltzik Strategies Invoices totaling Vaira & Riley PC (“Vaira & Riley) and Schnader Harrison for Covered Costs: (1) November 22, 2011 Invoice No. 1012-1 totaling \$12,500.00; (2) June 30, 2012 Invoice No. 1012-6 totaling \$3,500.00; (3) July 31, 2012 Invoice No. 1012-7 totaling \$16,700.00; (4) September 5, 2012 Invoice No. 1012-8 totaling \$61,700.00; and (5) twenty-two invoices (each in the amount of \$3,500.00) issued each month between February 28, 2015 and November 30, 2016 Nos. 1012-38 through 1012-59 totaling \$77,000.00. The Hiltzik Invoices became due and owing upon receipt.

284. Dr. Spanier has demanded that Penn State pay the Hiltzik Strategies Invoices, to no avail. To date, Penn State has refused to pay *any* of the Hiltzik Strategies Invoices, in spite of its legal obligation to do so.

285. As set forth above, the Sullivan & Cromwell Invoices, the Schnader Harrison Invoices, and the Hiltzik Strategies Invoices (collectively totaling \$857,351.01) all charge for services that were provided on Dr. Spanier’s behalf in relation to (1) acts or omissions that allegedly took place during his time as President of Penn State and/or (2) “matters relating to the grand jury presentment and his termination from the position of President of the University.”

286. As such, Penn State is contractually obligated to indemnify Dr. Spanier, hold him harmless, and reimburse him for these Covered Costs. The University has

repeatedly refused to perform its obligations under the Separation Agreement, and this has substantially damaged Dr. Spanier.

287. Dr. Spanier has been damaged by Penn State's contractual breach by, among other things, having to expend funds to defend himself from the false, negative, and damaging statements made by University representatives, having to expend funds to initiate and prosecute the lawsuit to obtain his own emails that Penn State provided to Freeh but refused to provide to Dr. Spanier, incurring and paying expenses and fees that Penn State was contractually obligated to reimburse, and by having to incur the substantial burden and expense of bringing and pursuing this action in order to enforce his rights under the Separation Agreement.

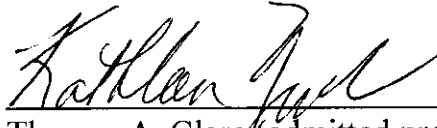
PRAYER FOR RELIEF

288. Plaintiff prays that this Court provide the following relief:

- (a) Damages for Penn State's breach of contract;
- (b) Costs and fees incurred in the prosecution of this action;
and
- (c) Further relief as this Court shall deem just and proper.

JURY TRIAL DEMAND

289. Plaintiff demands a trial by jury on all issues so triable.



Thomas A. Clare (admitted pro hac vice)

(Va 39299)

Elizabeth M. Locke (admitted pro hac vice)

(Va 71784)

Andrew C. Phillips (admitted pro hac vice)

(VA 88880)

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Fax: (814) 237-1497

Attorneys for Plaintiff Graham B. Spanier

Dated: January 12, 2017

VERIFICATION

I verify that the statements made in the foregoing Second Amended Complaint are true and correct to the best of my knowledge, information, and belief. I understand that any false statements herein are made subject to the penalties of 18 Pa. C.S. § 4904, relating to unsworn falsification to authorities.

Date: 1/9/17

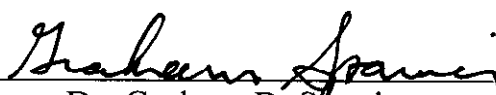

Dr. Graham B. Spanier

Exhibit A

Execution counterpart

CONFIDENTIAL SEPARATION AGREEMENT

This Confidential Separation Agreement ("Agreement") is entered into by and between The Pennsylvania State University ("University") and Graham B. Spanier, Ph.D. ("Dr. Spanier"). The University and Dr. Spanier, each intending to be legally bound and in consideration of the following mutual promises and covenants, do agree as follows.

1. Effective November 9, 2011, Dr. Spanier was terminated from the position of President of the University without cause pursuant to Section H.2 of his Employment Agreement dated July 1, 2010 ("Employment Agreement"). By virtue of Dr. Spanier's termination from the position of President, it is understood and agreed that he likewise relinquishes his position on the University's Board of Trustees, the presidency of The Corporation for Penn State (the "Corporation"), all ex-officio positions held with respect to any board of any subsidiary of the Corporation and all other ex-officio positions tied to the Presidency of the University, except that in the case of Dr. Spanier's membership on the National Security Higher Education Advisory Board, Dr. Spanier shall resign as soon as practicable under the policies and practices of such Advisory Board.

2. By virtue of Dr. Spanier's termination from the position of President of the University, it is also understood and agreed that except as otherwise provided below, Dr. Spanier's Employment Agreement was terminated as of November 9, 2011. Dr. Spanier may remain employed by the University, however, as a tenured member of the faculty in the Department of Human Development and Family Studies of the College of Health and Human Development, with the titles of President Emeritus, University Professor and Professor of Human Development and Family Studies, Sociology, Demography, and Family and Community Medicine.

3. Pursuant to the Employment Agreement and in return for Dr. Spanier agreeing to the terms of this Agreement, Dr. Spanier shall be provided with the following:

(a) A lump sum payment equal to Dr. Spanier's current base salary for a period of eighteen (18) months, with payment to be made on December 15, 2011. This payment is subject to tax withholdings required by federal, state and local laws. Dr. Spanier shall also be eligible to continue to participate in all of the employee benefit plans of the University applicable to senior executives for a period of 18 months from November 9, 2011 pursuant to Section E(1) of the Employment Agreement, and he shall be eligible to continue to receive for a period of 18 months from November 9, 2011 the supplemental life insurance, supplemental health insurance, and disability coverage as provided in Sections E(2), E(3) and E(4) respectively of the Employment Agreement. The University will also comply with the provisions in Section E.2 of the Employment Agreement regarding life insurance at the conclusion of the Term of the Employment Agreement (other than the provision with respect to continued escalation of the death benefit) and in Section E.3 regarding health insurance coverage at the conclusion of his presidency.

(b) The Retirement Plan Equivalency payment (referenced in Section C(5) of the Employment Agreement) in the gross amount of \$1,248,204.60 payable in two installments: (1) an amount equal to the applicable federal, state and local tax withholding amount due on the Retirement Plan Equivalency gross payment amount shall be payable to Dr. Spanier on December 15, 2011, and remitted to the applicable taxing authorities; and (2) the remainder shall be paid to Dr. Spanier on June 30, 2017. No taxes shall be withheld from the payment of the second installment and the second installment shall not be reported as taxable income, since the first installment is intended to satisfy the entire tax liability with respect to the Retirement Plan Equivalency payment.

(c) For as long as Dr. Spanier remains employed by the University, the University will continue to contribute, at its normal Alternate Retirement Plan contribution rate (currently 9.29%), as it does for all employees under such Plan, to the purchase of an annuity contract within the meaning of Section 403(b) of the Internal Revenue Code. In addition, the University shall make the 2011 payment to Dr. Spanier as provided in Section C.4(b) of the Employment Agreement, at the time such payments have been made in the past, with the amount of such payment prorated to cover the period from January 1, 2011 to November 9, 2011.

(d) Pursuant to Section E(6) of the Employment Agreement, a paid one-year post-presidency transition period during which Dr. Spanier will be paid his current annual salary of \$700,000 (subject

to tax withholdings required by law) and receive the benefits described in Sections E(1) through E(4) of the Employment Agreement. Dr. Spanier agrees to provide substantial services to the University as required by Section 457(f) of the Internal Revenue Code during such period.

(e) Following completion of the one-year post-presidency transition period, Dr. Spanier may continue as a tenured member of the faculty, with a salary of \$600,000 annually for a period of five years, with all provisions of Section E(6) of the Employment Agreement being applicable. Thereafter, Dr. Spanier's employment and compensation as a tenured faculty member shall be governed by the University's policies, rules and regulations applicable to other tenured members of the faculty of the University.

(f) With respect to the contents of Schreyer House, as has been the case with prior presidents, it is agreed that all furniture purchased by the University in the public spaces of the house belong to the University and will remain the property of the University. Furniture and contents purchased by the Spanier family will remain the property of the Spanier family. Furniture and contents purchased by the University for the private family spaces of Schreyer House may, at the discretion of the Spanier family, be purchased by the Spanier family at a fair market value to be determined according to existing property inventory unit procedures under the purview of the Corporate Controller. Payment for such any such furniture or contents will be made within 30 days of departure from the residence.

4. In exchange for Dr. Spanier waiving the 90-day notice period described in Section H(2) of the Employment Agreement, the University shall provide the following to Dr. Spanier:

(a) Dr. Spanier shall be paid a lump sum payment equal to ninety (90) days pay at the rate of his current annual salary of \$700,000 (subject to tax withholdings required by law), in lieu of the ninety days' notice required by Section H.2 of his Employment Agreement, with payment to be made on December 15, 2011.

(b) Dr. Spanier and his family may remain in the President's Residence for up to seventy-five (75) days from November 9, 2011. The University shall reimburse Dr. Spanier for the reasonable expenses of moving his personal property from the President's Residence as provided in Section F of the Employment Agreement.

(c) Dr. Spanier may retain the automobile provided under Section C(9) of the Employment Agreement for up to sixty (60) days from November 9, 2011.

(d) During the post-Presidency transition period referred to in Section E.5 of the Employment Agreement, the University will provide Dr. Spanier with administrative support to assist him with his responsibilities, including computer access and IT support, in the manner previously provided to past presidents of the University, in addition to all support referred to in the last paragraph of Section E.6 of the Employment Agreement. Following the post-Presidency transition, the University will provide Dr. Spanier with administrative support commensurate with that provided with other tenured faculty members and University Professors, and will continue to provide the administrative support referred to in the last paragraph of Section E.6 of the Employment Agreement.

(e) Dr. Spanier shall be reimbursed promptly for reasonable travel and business expenses incurred up to November 9, 2011 and not submitted prior to the execution of this Agreement as provided in Section E.7 of the Employment Agreement.

(f) In addition to its obligations under paragraph 6 below, the University shall reimburse Dr. Spanier for the attorneys' fees and expenses he has incurred in connection with matters relating to the grand jury presentment and his termination from the position of President of the University.

5. The parties shall cooperate in obtaining an opinion of mutually acceptable independent compensation counsel to the effect that the terms and conditions of this Agreement result in "reasonable compensation" for Dr. Spanier, meaning that the total compensation hereunder is comparable to that paid to similarly situated university officials in similar circumstances. The parties agree to negotiate in good faith to modify the terms of this Agreement if necessary to obtain such opinion. The University shall pay the fees and costs of such compensation counsel.

6. The University agrees to indemnify Dr. Spanier in accordance with the terms of Section J of the Employment Agreement and with the by-laws of the University.

7. Dr. Spanier, on behalf of himself, his heirs, representatives, estates, successors and assigns, does hereby irrevocably and unconditionally remise, release and forever discharge The Pennsylvania State University, its predecessors, parents, subsidiaries, affiliates, constituent organizations, benefits plans, and any successor

thereto, and their past, present and future trustees, officers, directors, administrators, agents, attorneys, insurance carriers, consultants or employees, as well as the heirs, successors and assigns of any such persons or such entities (severally and collectively called "Releasees"), jointly and individually, from any and all claims, known and unknown, that Dr. Spanier has or may have against any of the Releasees for any acts, omissions, practices or events up to and including the effective date of this Agreement and the continuing effects thereof, it being the intention of Dr. Spanier to effect a general release of all such claims. This release includes any and all claims under any possible legal, equitable, tort, contract, common law, statutory, or constitutional theory, including, but not limited to, any claims under 42 U.S.C. Section 1983, Title VII of the Civil Rights Act of 1964, the Pennsylvania Human Relations Act, the Age Discrimination in Employment Act, the Older Workers Benefit Protection Act, the Americans With Disabilities Act, and other federal, state, and local statutes, ordinances, executive orders, regulations and other laws prohibiting discrimination in employment or benefits, and federal, state or local law claims of any kind whatsoever arising out of or in any way related to Dr. Spanier's employment as President of the University and his termination from the position of President of the University.

8. The University, on behalf of itself and the Board of Trustees, does hereby irrevocably and unconditionally remise, release and forever discharge Dr. Spanier from any and all claims, known and unknown, that the University has or may have against Dr. Spanier for any acts, omissions, practices or events up to and including the effective date of this Agreement and the continuing effects thereof, to the extent such acts or omissions relate to his position as President of the University, it being the intention of the University to effect a general release of all such claims.

9. It is expressly understood and agreed that by entering into this Agreement, the University in no way admits that it has treated Dr. Spanier unlawfully or wrongfully in any way.

10. Dr. Spanier agrees, and shall use reasonable efforts to cause his attorneys to agree that, except as required by law or to comply with legal obligations, they shall keep the terms and conditions of this Agreement **COMPLETELY CONFIDENTIAL** and they will not discuss, disclose, or reveal those terms and conditions, directly or indirectly, to the media or to any person, corporation, or other entity, other than to Dr. Spanier's attorneys, spouse, accountants and financial advisors or to any government agency or entity with jurisdiction over matters relating to this Agreement.

11. Dr. Spanier acknowledges that the University may be required to make the terms and conditions of this Agreement public in accordance with its policies and procedures or as required by applicable law or regulatory authority. If the University makes the terms and conditions of this Agreement public in accordance with this paragraph, Dr. Spanier will be relieved of his obligations in paragraph 10, but only to the extent of the provisions of this Agreement that are made public by the University.

12. Dr. Spanier will not make any negative comments to the media, to his professional colleagues or to any other members of the public regarding the University, its Board of Trustees or any member of the Board of Trustees, unless required by law or to comply with legal obligations and/or to provide truthful information in connection with ongoing or forthcoming investigations.

13. The University will not, and will use reasonable efforts to cause the members of the Board of Trustees not to, make any negative comments about Dr. Spanier to the media, to their professional colleagues or to any other members of the

public, unless required by law or to comply with legal obligations and/or to provide truthful information in connection with ongoing or forthcoming investigations.

14. In the event of any breach of any provision of this Agreement, the prevailing party in any litigation over such breach shall be entitled, in addition to all relief otherwise available under law, to an award of reasonable counsel fees and expenses incurred in investigating and litigating such breach.

15. Dr. Spanier acknowledges that he has been given the opportunity to consider this Agreement for at least 21 calendar days, which is a reasonable period of time, and that he has been advised to consult with his attorneys about this Agreement prior to executing it. Dr. Spanier further acknowledges that he has had a full and fair opportunity to consult with his attorneys, that he has carefully read and fully understands all of the provisions of this Agreement, and that he is voluntarily executing and entering into this Agreement, intending to be legally bound by it. If Dr. Spanier executes this Agreement in less than 21 days, he acknowledges that he has thereby waived his right to the full 21-day period.

16. For a period of seven calendar days following Dr. Spanier's execution of this Agreement, he may revoke it by delivery of a written notice of revocation to the office of Cynthia A. Baldwin, Esq., Vice President and General Counsel, The Pennsylvania State University, 108 Old Main, University Park, PA 16802. This Agreement shall not become effective or enforceable before the seven-day revocation period has expired.

17. The parties hereto further understand and agree that the terms and conditions of this Agreement constitute the full and complete understandings and arrangements of the parties with respect to the terms of Dr. Spanier's termination from

the position of President of the University and that there are no agreements, covenants, promises or arrangements other than those set forth herein with respect to that subject.

18. This Agreement shall be governed by and construed in accordance with the laws of the Commonwealth of Pennsylvania.

19. If any of the provisions of this Agreement are declared or determined by any court to be invalid or unenforceable for any reason, the remaining provisions and portions of this Agreement shall be unaffected thereby and shall remain in full force to the fullest extent permitted by law.


20. This Agreement may be executed in counterparts, each of which shall be deemed to be an original, but all of which, taken together, shall constitute one and the same agreement.

IN WITNESS WHEREOF, the aforesaid parties, having read this Confidential Separation Agreement and intending to be legally bound hereby, have read, signed, sealed and delivered it, voluntarily, without coercion and with knowledge of the nature and consequences thereof.

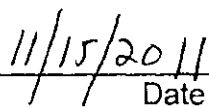
THE PENNSYLVANIA STATE
UNIVERSITY

By: _____
Steve A. Garban
President, Board of Trustees

Date



Graham B. Spanier



Date

Exhibit B

HOME	PROGRESS	PRESS & MEDIA	LEGAL MATTERS	RESOURCE LIBRARY
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Jul 12, 2012

Penn State issues statement on Freeh Report



July 12, 2012, SCRANTON, PA - Today's comprehensive report is sad and sobering in that it concludes that at the moment of truth, people in positions of authority and responsibility did not put the welfare of children first. The Board of Trustees, as the group that has paramount accountability for overseeing and ensuring the proper functioning and governance of the University, accepts full responsibility for the failures that occurred. The Board, in cooperation with the Administration, will take every action to ensure that events like these never happen again in our

university community.

The focus of all of our actions going forward will be on driving a culture of honesty, integrity, responsible leadership and accountability at all levels and within all units of our institution.

Judge Freeh's report concludes that certain people at the University who were in a position to protect children or confront the predator failed to do so. There can be no ambiguity about that. The defenseless victims and their families are at the forefront of our thoughts and prayers. We are deeply sorry for the failure to protect these vulnerable young boys from the pain and anguish they suffered. At the same time, we are filled with admiration for the bravery shown by the young men and their families who came forward to ensure that justice will be done.

While today's issuance of the Freeh Report provides some level of clarity for our community, it does not undo the pain that the victims of Jerry Sandusky have experienced, and continue to experience. We will continue to offer counseling to Mr. Sandusky's victims, listen to them and take affirmative steps to address the harm they have suffered.

Beyond our campuses, the University is undertaking a number of actions to help build greater awareness of the societal issue of child sexual abuse. We are partnering with the Pennsylvania Coalition Against Rape (PCAR) and have also created the Center for the Protection of Children at the Hershey Medical Center. Penn State University intends to be a constructive leader in preventing, reporting and responding to such abuse. This is a problem that plagues our nation, and we have a special duty to increase awareness, prevention and treatment of child sexual abuse.

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Judge Freeh's investigation was intended to identify where failures occurred and what changes should be made for the future. As the Freeh report noted, the University has already taken steps to begin addressing some of the shortcomings.

The Board of Trustees acknowledges that it failed to create an environment of accountability and transparency and did not have optimal reporting procedures or committee structures. Beginning in March 2011 and continuing until the publication of the Grand Jury presentment in November 2011, the Board failed to make proper inquiry of President Spanier and others regarding the Sandusky matter. As a result, the Board was unprepared to deal with the events that occurred in November 2011.

The Board has begun taking a more active oversight role and has implemented specific oversight committees, focused on Risk, Audit, Legal, Compliance, Academic Excellence, Governance and Human Resources. Furthermore, the Board is committed to greater transparency and communications with the entire University community.

Additionally, the University Administration has strengthened policies and programs involving minors, child abuse and mandated reporter training; ensuring a process for prompt reporting of abuse and sexual misconduct; hiring a new, full-time Clery Compliance Coordinator and providing Clery Act training for employees; and establishing a position of, and commencing a national search for, a director of University Compliance. Further information can be found here: www.progress.psu.edu.

In the weeks ahead, the University will carefully review and consider each of the report's recommendations. Tomorrow at its regularly scheduled meeting, the Board of Trustees will consider a series of immediate next steps. President Rodney Erickson has appointed three members of his senior leadership team to coordinate and implement operational changes suggested by the Freeh Report.

As the Freeh Report notes Penn State "is an outstanding institution, nationally renowned for its excellence in academics and research." Nothing in this report detracts from the many significant accomplishments of our faculty, staff, students and alumni. We also remain proud of the accomplishments of Penn State's student athletes over many years, and we reaffirm the fundamental premise that academic excellence and athletic achievement are wholly consistent and complementary goals.

With the release of the Freeh Report we are beginning to correct our failures, promote healing and build a stronger tomorrow for Penn State. We are continuing the process of addressing the most painful chapter in the University's history so that we can heal and move forward.

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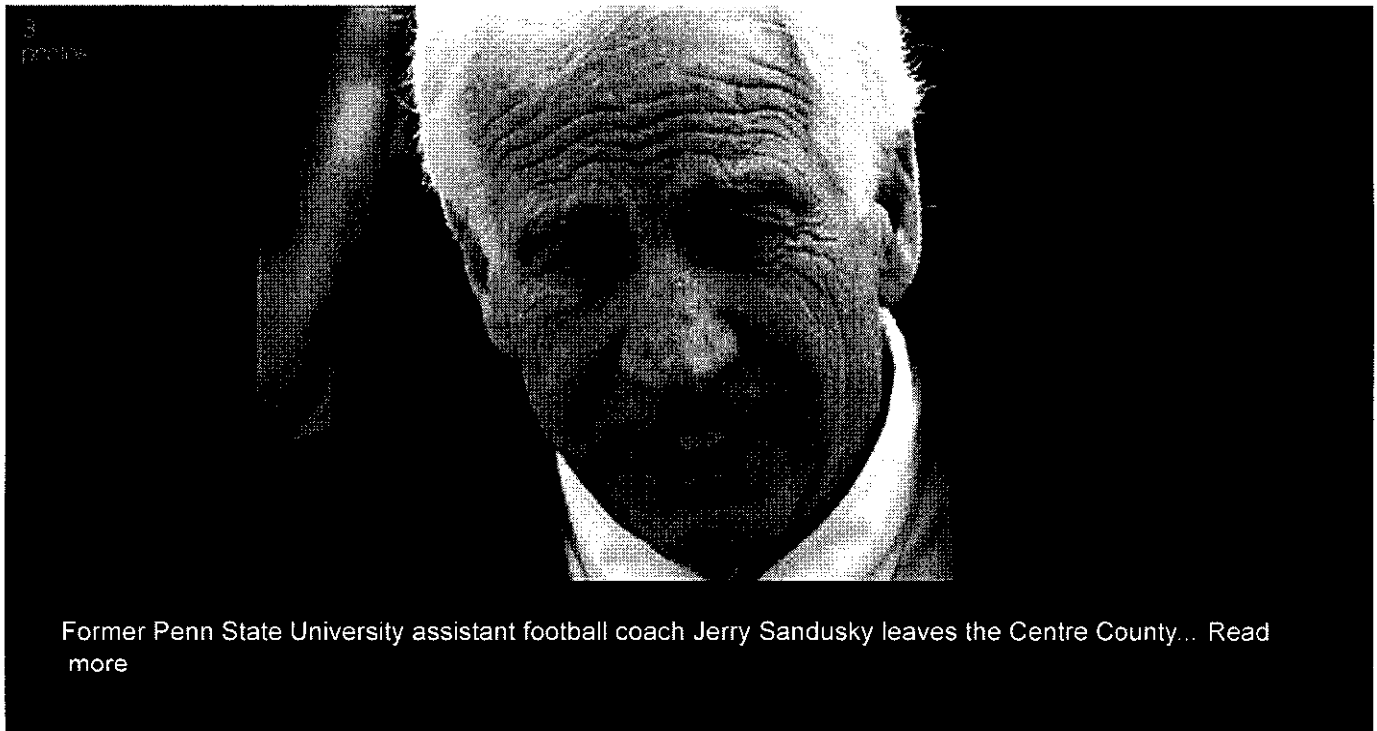
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Exhibit C

Testimony at Sandusky trial shows missed chances

BY JEFFREY RUDIN | Jun. 16, 2012 12:14 PM EDT



The eyewitness testimony that confronted jurors in Jerry Sandusky's child-molestation trial this week was disturbing not only for its graphic descriptions of sex with boys, but for what it said about the people who surrounded and maybe even protected the once-revered Penn State assistant coach.

Eight accusers took the witness stand and described how Sandusky molested them in campus showers, hotel bathrooms, a basement bedroom, a sauna used by the football team — right under the noses of his friends, colleagues, family members and acquaintances.

The Sandusky story, the way authorities have framed it, is one littered with missed chances to stop a rapist who preyed on children for years.

Prosecutors have hinted that top university officials knew far more about Sandusky's alleged proclivities than they

EXHIBIT C

have let on, submitting a document Monday that says Penn State's former vice president — himself facing charges related to the scandal — maintained a file on Sandusky a decade ago. A Penn State trustee told The Associated Press he now suspects a cover-up.

Yet evidence and testimony from the trial also show there were plenty of people, not just those at the highest levels of the university, who had ample opportunity to stop a man accused of violating 10 boys over 15 years:

- A janitor failed to tell authorities he allegedly caught Sandusky performing oral sex on a boy in a campus shower a dozen years ago.

- A district attorney with a reputation for prosecuting cases involving children and sexual abuse victims declined to charge Sandusky over a 1998 molestation allegation even though the detective who investigated thought it was a solid case. The DA, Ray Gricar, disappeared in 2005 and was declared legally dead last year.

- School district officials were skeptical of abuse claims brought by the young man known in court papers as Victim 1 because, the accuser testified, Sandusky was considered to have a "heart of gold." Victim 1's allegations eventually triggered the state investigation that produced charges.

- One accuser testified he screamed out for help at least once when Sandusky's wife, Dotte, was in the house. He doesn't know whether she heard his cries.

- And, famously, coaching assistant Mike McQueary saw Sandusky having what he believed to be anal sex with a young boy in 2001. But his report to Athletic Director Tim Curley and Vice President Gary Schultz went nowhere. McQueary's dad testified that during a conversation, Schultz said he was suspicious of Sandusky, and NBC reported this week that emails between former university President Graham Spanier and Schultz aiming to keep McQueary's allegation from going further were turned over to the attorney general.

- Others also saw Sandusky engaging in behavior that was at least odd, if not criminal. Longtime assistant coach Tom Bradley walked into the shower when one boy was with Sandusky, the accuser testified, and a wrestling coach told jurors he saw Sandusky and a child rolling on the floor.

- Several accusers said their parents or caregivers failed to grasp what was happening to them. Victim 4 testified that one weekend he did not want to go with Sandusky and told his mother, "I'm pretty sure he's gay," but she dismissed the idea. "She said, oh, whatever, this is just one of your lies," he told jurors. He also said at one point he told his grandmother to tell Sandusky he wasn't home when he called.

Victim 1 testified that when he asked his mother about "a website for people who do things to children," and she asked why, he said it was "to see if Jerry was on there." He said he didn't think she totally understood. And Victim 9 told jurors he described Sandusky to his mother as "a touchy-feely type of a person," but she pressured him to spend time with the former coach.

Keith Masser, a Penn State trustee, said in an interview that he initially thought the scandal was about a failure of administrative oversight of the football program. Now he suspects it goes deeper.

When the board of trustees ousted Spanier on Nov. 9, four days after Sandusky's arrest, it was "because we didn't have confidence in his ability to lead us through this crisis," Masser said. "We had no idea (at the time) he

would be involved in a cover-up."

Masser stressed he was speaking for himself and not the board at large, and said he wants to be careful not to draw premature conclusions. But he said it now appears like "top administration officials and top athletic officials were involved in making the decision to not inform the proper authorities."

With prosecutors focused on the sex-abuse allegations against Sandusky, the trial isn't intended to yield evidence of a possible cover-up. That's the job of Louis Freeh, the former FBI director hired by the board of trustees to investigate the scandal. His report could be released in late summer.

Spanier, who has not been charged with any crime, did not respond to email and phone messages. His attorney did not return a phone call.

The law firm defending Curley and Schultz against charges they lied in their grand jury testimony and failed to report suspect abuse said in a statement this week they "conscientiously considered" McQueary's account and "deliberated about how to responsibly deal with the conduct and handle the situation properly." They did not respond to follow-up questions posed by the AP.

Masser said the Freeh investigation is helping Penn State get to the bottom of the scandal.

"I hope the truth comes out, and from a board standpoint it was Judge Freeh's investigation that found these emails that relate Spanier, Curley and Schultz to the suspected cover-up," he said. "I want the alumni to understand and the stakeholders to understand that the independent investigation is uncovering this information."

Sandusky was charged in November and December with more than 50 counts of abuse. The scandal brought disgrace to Penn State and led to the ousters of both Spanier and Paterno, the Hall of Fame coach who died in January at age 85.

The testimony of eight of the 10 alleged victims named in a grand jury report prompted disgust and revulsion from Penn State alumni and others who took to Twitter last week to express their dismay — and to call for the heads of anyone involved in concealing abuse. "Anyone who knew and didn't report should burn!" tweeted one.

The grim depictions of abuse also hit at least one former player hard.

The accuser known as Victim 4 told jurors that Sandusky let him wear star linebacker LeVar Arrington's jersey and gave him a magazine autographed by the former NFL All-Pro, who played at Penn State in the late 1990s.

Arrington apologized to the man a day after his testimony, writing in *The Washington Post* that he felt awful for having missed the warning signs.

"He always seemed mad or kind of distant. I remember distinctly asking him: 'Why are you always walking around all mad, like a tough guy?'" Arrington wrote. "I guess with everything that I had going on, it certainly wasn't a priority for me to try to figure him out."

Arrington continued, "I hate everything that has happened, and now I must admit I feel even worse, knowing what allegedly was happening so close to me, and that I was unaware."

Ann Tenbrunsel, a professor of business ethics at the University of Notre Dame, attributes the failure to stop

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Sandusky to a phenomenon she calls "motivated blindness," a tendency, whether subconscious or deliberate or sometimes both, to ignore unethical or even criminal behavior by others when you perceive it to be in your best interest to do so. Motivated blindness "means I don't probe, I don't ask, I don't believe," Tenbrunsel said. "I have evidence in front of me but choose to disregard facts."

Some people could have kept quiet about their suspicions because they wanted to protect Penn State and its beloved — and highly lucrative — football program, or their own jobs, she said. Others might not have wanted to believe the sainted Sandusky capable of the abuse he's now charged with.

"You have all kinds of examples of people who either did not notice, or when they did notice didn't engage in behaviors that would have stopped it because it wasn't in their best interests to do so," said Tenbrunsel, co-author of "Blind Spots," a book that explores why otherwise decent people sometimes fail to do the right thing.

Some of the alleged assaults appear to have been interrupted, if unwittingly. One young man said Sandusky coerced him into engaging in oral sex in a hotel bathroom in Texas around the time of the 1999 Alamo Bowl — Sandusky's last game before retiring — stopping only when the coach's wife entered the hotel room. The same accuser, Victim 4, testified about another occasion in which Bradley was showering in the team headquarters while the alleged victim and Sandusky were behind a curtain in another stall.

"I can't say what (Bradley's) thoughts were, but I think he was suspicious of something because he stayed in the shower until everything was done," the man testified without elaborating.

Bradley did not return several messages from The Associated Press.

A wrestling coach told jurors that he found Victim 1 and Sandusky rolling around on the floor in the high school weight room one evening.

Joseph Miller said that while he found it odd, he gave the famed coach a pass. "It was Jerry, Jerry Sandusky. He's a saint. What he's doing with kids, it's fantastic," Miller recalled thinking. "So I didn't think anything of it."

The trial is scheduled to enter its fifth day Monday as prosecutors near the end of their case. Sandusky denies all the charges, saying that while he showered with boys, he never touched them sexually. His attorney has suggested the accusers are twisting the truth because they intend to sue.

Associated Press writers Mark Sciforo and Genaro C. Armas in Bellefonte, Pa., contributed to this report.

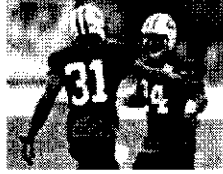
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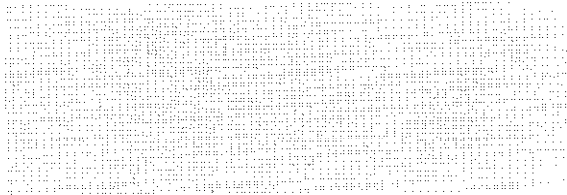
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Exhibit D

The New York Times



COLLEGE FOOTBALL

Penn State's Trustees Recount Painful Decision to Fire Paterno

By PETE THAMEL and MARK VIERA JAN. 18, 2012

It was growing late on the night of Nov. 9, 2011. John P. Surma, the chief executive of U.S. Steel and the vice chairman of Penn State University's board of trustees, sat at a rectangular table at the Penn Stater Hotel. Gov. Tom Corbett of Pennsylvania was on the speaker phone. Other trustees were present, many emotionally spent.

The board, scrambling to address the child sexual abuse scandal involving the university and its football program, had already decided to remove Graham B. Spanier as president. Then, many of those present recalled this week, the tension in the room mounted. Joe Paterno's future was next up. Surma announced that an agreement appeared to have been reached to fire Paterno, too — the trustees having determined that he had failed to take adequate action when he was told that one of his longtime assistants had been seen molesting a 10-year-old boy in Paterno's football facility.

Surma, those present recalled, surveyed the other trustees — there are 32 — for their opinions and emotions before asking one last question: “Does anyone have any objections? If you have an objection, we're open to it.”

No one in the room spoke. There was silence from the phone speakers. Paterno's 46-year tenure as head coach of one of the country's storied college football programs was over, and the gravity of the action began to sink in.

“It was hard for us to want to get to the point where we were going to say that,” said Ira M. Lubert, a board member who works in private equity. “I was laying in bed that night shaking. And I couldn't sleep — thinking: We just terminated Joe Paterno.”

The 100 or so hours beginning with the arrest of Jerry Sandusky, a former defensive coordinator for the football team, had built to a crescendo by that Wednesday night's meeting of the trustees. By then, the campus was aflame with discontent. Penn State students and faculty, its alumni and its growing number of outside critics had been roiled by anger and confusion, embarrassment and sorrow. Reporters had inundated State College. It was, plainly put, the most trying time in Penn State's 156-year history.

On Wednesday, in a conference room in New Jersey, a group of 13 trustees spoke to The New York Times in detail about that week — a somewhat frantic, certainly exhausting week that led to the firings of Paterno and Spanier and to the disturbances on campus that those dismissals set off.

The board decided to share its story because it grew weary of hearing criticism, which included calls from alumni who started a group known as Penn Staters for Responsible Stewardship in an effort to replace the current board members. The trustees, over three hours, described how they had felt blindsided by Spanier's failure to keep them informed of the nature and scope of the Pennsylvania attorney general's investigation of Sandusky, along with the investigation of university officials.

Spanier, two other senior university administrators and Paterno had all given testimony before a criminal grand jury by late spring of 2011. They had been questioned extensively about what they had done after learning of a report in 2002 that said Sandusky had molested a young boy in the showers of the football building. According to the trustees, Spanier never informed them of any of that before Sandusky's arrest on Nov. 5.

The trustees also laid out what they said were three key reasons for firing Paterno: his failure to do more when told about the suspected sexual assault in 2002; what they regarded as his questioning of the board's authority in the days after Sandusky's arrest; and what they determined to be his inability to effectively continue coaching in the face of continuing questions surrounding the program.

The trustees, who had not spoken publicly in any detail since the firings, also disclosed that, while having fired Paterno, they were still honoring the terms of his contract and are treating him financially as if he had retired at the end of the 2011

season.

To some trustees, Paterno failed in not reporting to the police what he had been told of Sandusky's suspected assault. Some of the trustees were also upset that Paterno was seen leading "We are Penn State" cheers on his lawn with students and fans who had gathered after Sandusky's arrest, which some board members viewed as insensitive.

That Paterno knew of the nature of the suspected 2002 assault, which he stated in his grand jury testimony, was enough for some to decide that he had not acted appropriately in simply informing the university's athletic director, Tim Curley, and another top official, Gary Schultz. Both of them have been charged with failure to report to the authorities what they knew about the incident and for subsequently lying to a grand jury.

"To me, it wasn't about guilt or innocence in a legal sense," the trustee Kenneth C. Frazier, the chief executive at Merck, said of Paterno's decision not to go to police. "It was about these norms of society that I'm talking about: that every adult has a responsibility for every other child in our community. And that we have a responsibility not to do the minimum, the legal requirement. We have a responsibility for ensuring that we can take every effort that's within our power not only to prevent further harm to that child, but to every other child."

Saturday, Nov. 5

At 5 p.m., the trustees met via telephone for an emergency session.

The trustees on the conference call who had read the details of the charges against Sandusky and the two senior university officials felt a distinct lack of urgency by the university. Many were irked that Spanier had released a statement in full support of Curley and Schultz, who were indicted for perjury. The trustees were floored, they said, that Spanier did not seem to recognize the severity of the situation.

"We deal with crisis every day at this university," they recalled Spanier saying. "We won't have a problem with this."

The trustees, meanwhile, were shocked by the charges — and caught completely unaware. There had been reports in The Patriot News of Harrisburg that a grand jury was investigating a claim that Sandusky had molested a local high

school boy. But Sandusky had been retired from Penn State for years.

“There was a lack of information being provided to us,” said Mark H. Dambly, a trustee and the president of a real estate development company. “We found out about it when the rest of the world found out about it.”

Lubert, for his part, had just dropped off his son and daughter-in-law after brunch when he got a call from his son while driving home to Philadelphia. His son told him that Curley and Schultz had just been indicted on perjury charges.

“That’s impossible,” Lubert said. “If they were, I would know that.”

His son responded: “Do yourself a favor and when you get home turn on the television. It doesn’t matter what channel.”

Anne Riley, another trustee, said she would always remember being at the opera, sitting in seat 15, Row B, of the balcony, when she heard the news. The trustee Keith E. Masser was playing golf in Naples, Fla., and found out by peeking at his phone. Frazier heard about the severity of the situation while sitting in his car outside a burger place.

The trustees quickly realized that Spanier had chosen not to keep them informed.

During a board meeting last May, after Spanier had testified before the grand jury, the board received a short briefing — the trustees estimated it was 5 to 10 minutes — on Sandusky’s being under investigation by a grand jury.

The briefing, which took place during a “seminar” session not open to the public, included an explanation of what a grand jury investigation was by the university counsel Cynthia Baldwin. (Baldwin had sat in on the grand jury testimony but was not legally allowed to speak to the trustees about the contents of the testimony, according to Lanny J. Davis, external counsel and crisis management adviser to the office of the Penn State president and to the board of trustees.)

The trustees this week said that they were disappointed that Spanier, who was legally allowed to speak about his grand jury testimony, did not brief the board on the nature of the questions by the grand jury about the 2002 episode.

“He should have told us a lot more,” Lubert said. “He should have let us know much more of the background. He was able to legally share his testimony and I

think that he had an obligation to do that with the board so we could get more engaged with the problem.”

The mention of the grand jury investigation by Baldwin and Spanier was so brief that Surma barely remembered it. No one asked questions.

“Part of being a leader at that level is to be a risk manager and to think through what might happen,” the trustee Karen B. Peetz, an executive with Bank of New York Mellon, said of Spanier.

Spanier has not been charged in the perjury case. He told the grand jury he was never told that Sandusky’s encounter with the young boy in the showers in 2002 involved sexual assault.

Spanier declined to comment for this article when reached on his cellphone. He listened, but would not respond, when told how the trustees had described his actions.

Paul Suhey, a former football captain for Paterno and an orthopedic surgeon in the State College area, was the only trustee on campus for the 5 p.m. conference call as others dialed in from around the country.

“I was pretty upset,” Suhey said. “I knew we had a problem.”

Steve Garban, the board’s chairman, admitted to not reading the grand jury’s charges until late Sunday night, more than 24 hours after it went public. After he did, he felt that Paterno, his former coach, lifelong friend and occasional drinking buddy, needed to be let go.

But the trustees concluded their call with a deepening skepticism about how the university administrators would handle it.

Peetz, the bank executive, said she came to a simple conclusion: “We are up against the challenge of our lives.”

Sunday, Nov. 6

The trustees met again Sunday night, some of them now on the scene in State College, having arrived by private plane or car. When they met, they realized that Spanier and others had already arranged for lawyers from two firms to be present, as well as representatives from a public relations firm. They were meant to brief the trustees on how to handle the crisis.

“It was indicative of the culture,” Dambly said. “We showed up and it was

already determined what law firm it was going to be.”

The Sunday meeting ended with the trustees eager to issue a news release, expressing a commitment to a full internal investigation and sympathy for any victims.

In the interviews this week, they accused Spanier of having altered the release. It was made to appear as a joint release from Spanier and the board, and diluted the language involving the promised investigation.

“I got up the next morning to read the press release online and it really didn’t reflect what we had come to the conclusion of as a board,” Lubert said. “I remember reading that, and I was sick. I then knew we had a serious problem.”

Surma added: “The big difference that I remember was that we had very explicit comments about the independent investigation and what it would investigate and its freedom of access. What came out was something much different than that.”

Garban said he soon informed Spanier that he could no longer speak for the university on the issue.

“I have to take some blame for this,” Garban said. “I still sort of thought Graham could get us through this or help get us through this. And he participated in writing the press release, and after it came out, I knew it wasn’t right.”

Garban read the grand jury report after the meeting and regretted not reading it sooner: “It was like, ‘Oh my God, Steve, where’ve you been?’ It floored me.”

Tuesday, Nov. 8

On Tuesday, Surma and Garban met to have breakfast at the Nittany Lion Inn around 7:30 a.m. Sandusky’s arrest had been headline news for four days. Paterno was supposed to meet with reporters for his weekly conversation about the team’s next game.

A 1959 Penn State graduate, Garban was a former captain of the football team, and he subsequently had a 33-year career at the university. But several members of the board were upset with his leadership during the days after Sandusky’s arrest. Garban had remained loyal to Spanier for too long, some felt; other trustees wanted Spanier gone.

The trustees, indeed, were clamoring for a change. Garban recognized the

discontent among the board members. So Garban and Surma asked for time alone. Sitting at the breakfast table, Garban broached the subject of changing the board's leadership before Surma could even bring it up.

"John, let's not go there," Garban recalled telling Surma. "You need to take this over. And let's agree — take it over."

Stepping into the power vacuum, Surma joined Garban at Old Main, the central administration building on campus, to meet with university personnel, including Spanier. Surma said that it became clear to him that Spanier was no longer in control of the university. Surma said Spanier seemed to realize as much himself.

"Do I have support of the board?" Spanier asked Garban.

"I can't answer that question," Garban recalled replying.

The trustees promptly canceled Paterno's weekly news conference. It was evidence of how much the board's confidence in Paterno had eroded.

Then Surma said he started making preparations for what might come next with Spanier. He handed out orders to the university's counsel and the public relations firms working on its behalf.

Perhaps the most important moment came when Surma met with Rodney A. Erickson, the university's executive vice president and provost. Erickson explained to Surma that he did not know anything about the allegations until shortly before Sandusky was arrested. Surma believed Erickson was sincere.

Then Surma hinted that Erickson, who had been looking to retire in the near future, might be asked to take over the presidency.

"If it comes to it, we may need you," Surma told Erickson.

Erickson simply replied, "O.K."

Spanier's inquiry about the board's support set the agenda for what would be a conference call among trustees at 7 p.m. The call lasted two to three hours. Surma chaired the discussion and told the trustees that Erickson could be an alternative to Spanier.

That Erickson, who was widely respected by the trustees for his broad understanding of the university, said he would be willing to replace Spanier gave the trustees confidence about firing Spanier. But the trustees still had to make a

final decision on Paterno. The seriousness of the task was not lost on the board members, and it was decided that the board would meet in person the next night.

"I'd like everyone to come together tomorrow and look people in the eyes," Lubert recalled saying during the call.

Wednesday, Nov. 9

The trustees glumly descended on State College for what they knew would be a long and painful day. Lubert said that he had trouble sleeping. Peetz recalled feeling as if she were an executioner going to the guillotine. Stephanie Nolan Deviney, a trustee and a partner at the law firm Fox Rothschild in Exton, Pa., remembered going to the bedroom of her 7-year-old to kiss him before she left for State College.

"I thought of the mothers of all those boys in the presentment," Deviney recalled this week. "And I thought about what they must feel when they kiss their sons good night."

The trustees gathered in a conference room at the Penn Stater at 7 p.m. In a rare occurrence, the governor joined the meeting by telephone for its duration. However, the soberness of the discussion was broken up by the clamor of tool-belted workers crawling around under the table trying to fix the telephone line. "Governor," Surma asked every few minutes, "are you still with us?"

The trustees first discussed Spanier's status. The trustees said that they sensed there was a consensus about Spanier's future as the president. Earlier, Spanier had tried to submit his resignation, but Garban and Surma did not accept it. Garban told Spanier that the board felt it needed to deal with the matter itself. So, instead, the trustees paged through Spanier's contract, and then decided to fire him. They named Erickson the interim president.

Then the trustees decided the fate of Paterno, who had come to Penn State as a young assistant coach in 1950 and who had helped build it into a national university, to which he donated more than \$4 million. The 13 trustees interviewed Wednesday said that Paterno did not reach out to them before the Nov. 9 board meeting, and some said that it would not have mattered, because they did not believe that he could say anything to save his job.

Wick Sollers, Paterno's lawyer, issued a statement Wednesday in response to

the accounts offered by the trustees: “After learning of the alleged incident in 2002, Joe Paterno reported it immediately and fully to his superiors at the university. He believed these officials, who had the authority and responsibility to conduct investigations, would act appropriately. He did what he thought was right with the information he had at the time. Blaming Joe Paterno for the failure of administration officials and the board to properly investigate Jerry Sandusky is unjustified.”

On that Wednesday night in November, though, the only thing left for the board to do was to figure out how to carry out the firing. Could representatives safely show up at Paterno’s home amid the media frenzy? Was it realistic to expect Paterno, then 84, to meet with the trustees? The trustees decided to fire him by telephone, a decision that many board members interviewed expressed as their biggest regret.

Shortly before 10 p.m., Fran Garban, the associate athletic director for football, delivered an envelope to Paterno’s home, just off Penn State’s campus. Inside the envelope was a telephone number. Paterno called the number, and Garban answered. Then he passed the telephone to Surma, who was seated next to him. Surma asked if Paterno could hear him O.K. Paterno said that he could. Then Surma told Paterno of the trustees’ decision. “The board of trustees has determined effective immediately you are no longer the football coach,” Surma recalled saying.

Then he heard a click. Paterno hung up.

Surma and Garban sat at the table for a moment, numb. Then the telephone rang again. Surma answered. It was Paterno’s wife, Sue, who said, during a short conversation: “After 61 years, he deserved better.” Then she hung up on Surma.

Board members at the meeting lingered and eventually decided that they would join Surma at a news conference at a ballroom elsewhere in the Penn State. The ballroom quickly filled as hundreds of onlookers gathered. Trustees sat on a raised dais behind Surma, who sat stoically as Garban turned over the news conference to him.

Then Surma announced to a room full of reporters and television cameras, and to the country watching at home, that Penn State’s board of trustees had fired Joe Paterno.

A version of this article appears in print on January 19, 2012, on page B15 of the New York edition with the

headline: We Just Terminated Joe Paterno.

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Exhibit E

EMPLOYMENT AGREEMENT

THIS EMPLOYMENT AGREEMENT ("Agreement"), entered into by and between The Pennsylvania State University, the only land grant university chartered in the Commonwealth of Pennsylvania, and Graham B. Spanier, Ph.D., is to take effect July 1, 2010.

WITNESS

WHEREAS, Graham B. Spanier, Ph.D. ("Dr. Spanier" or the "President") has been employed by The Pennsylvania State University (the "University") as President of the University since September 1, 1995; and

WHEREAS, the University wishes to continue the employment of Dr. Spanier as President of the University in recognition of his extraordinary achievements, and Dr. Spanier wishes to continue to serve as the President and be its employee, subject to the terms and conditions of this Agreement; and

WHEREAS, The University desires to make further arrangements which will suitably recognize the extraordinary responsibilities and duties of Dr. Spanier and will reward him for his many unique accomplishments thus far during his tenure as President of the University; and

WHEREAS, both the University and Dr. Spanier intend this Agreement to supersede any and all prior agreements with respect to Dr. Spanier's employment relationship, with the exception of Section D.3 of the Employment Agreement effective July 1, 2007 (the "Prior Agreement"); and

WHEREAS, both the University and Dr. Spanier desire to set forth their respective rights

and obligations in this Agreement: and

WHEREAS, by Resolution of January 23, 1982, the Board of Trustees of the University (the "Board of Trustees") authorized the President of the Board of Trustees (the "President of the Board") to enter into employment agreements with certain senior employees in accordance with the terms of said Resolution: and

NOW, THEREFORE, in consideration of the mutual promises, covenants, and conditions contained herein, and other valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties agree as follows:

A. Term.

The University shall continue the employment of Dr. Spanier as its President for a term from July 1, 2010 through June 30, 2015 (the "Term"), except as provided in Section H ("Termination"). Dr. Spanier hereby accepts such employment upon the terms and conditions set forth in this Agreement.

B. Powers and Duties.

During the Term of this Agreement, Dr. Spanier shall serve as President and perform such duties and responsibilities that are consistent with his position as President of the University under the Corporate Charter, the Corporate Bylaws, and the Standing Orders of the Board of Trustees, as may be amended from time to time, or which may be assigned to him by or under the authority of the Board of Trustees consistent with his position as President of the University, including those duties as are set forth in the Resolution of the Board of Trustees adopted on June 11, 1970, as amended on November 19, 1971, May 30, 1975 and September 23, 1977, and as the same may be amended from time to time during the term of this Agreement (collectively, the

“Duties”). Dr. Spanier shall devote his full business time attention, skill and efforts to the faithful performance of the Duties for the University.

Dr. Spanier and the Board of Trustees acknowledge and agree that the Duties hereunder shall be limited to those duties customarily performed by presidents of universities comparable in size and mission to the University, such as educational leadership, faculty and community relations, budgeting, long range planning, fund raising, development, public relations, student services, recruitment and retention of personnel, and such other duties as may be authorized or directed, from time to time, by the Board.

Dr. Spanier shall serve as a member of the Board of Trustees of the University and as a corporate officer of the University so long as such service is provided for in the Corporate Charter or Bylaws of the University.

C. Compensation.

1. Annual Base Salary. As compensation for the services to be performed by Dr. Spanier pursuant to this Agreement and in accordance with industry norms, the University shall pay to Dr. Spanier an annualized base salary of \$700,000 from July 1, 2010 through June 30, 2011 (the “Base Salary”), less applicable deductions. Any increases in Base Salary shall be based upon the President’s performance during the preceding fiscal year in connection with the annual evaluation of his performance, set forth in Section D of this Agreement. During the term of this Agreement, Dr. Spanier’s Base Salary may be increased, but not decreased.

2. Signing Bonus. In consideration of executing this Agreement, Dr. Spanier shall receive a one-time signing bonus of \$200,000 within sixty (60) days of the execution of this Agreement by both parties.

3. Retention Incentive. Beginning with the 2011-12 contract year, Dr. Spanier shall be eligible to receive an annual retention incentive provided that he completes service as President to the University through the end of each contract year (June 30). The amount of the retention incentive, if any, shall be at the sole discretion of the Compensation Council in accordance with the 1982 resolution of the Board of Trustees authorizing the Council regarding such compensation matters, but shall not exceed twenty percent (20%) of Dr. Spanier's then-current annual base salary. Any retention incentive awarded to Dr. Spanier shall be paid within sixty (60) days of the conclusion of the contract year to which it relates.

4. Retirement Contribution. In addition, the University shall contribute, at its normal Alternate Retirement Plan (the "Retirement Plan") contribution rate (currently 9.29%), to the purchase of an annuity contract within the meaning of Section 403(b) of the Internal Revenue Code and in accordance with the terms of the Retirement Plan as managed by TIAA-CREF. Further, in the event that:

- a. limitations of the Internal Revenue Code do not permit the University to contribute on a tax-sheltered basis to the Retirement Plan at its normal contribution rate, or
- b. less than fifteen (15%) percent of Dr. Spanier's Base Salary is contributed to Dr. Spanier's Retirement Plan, the University shall pay to Dr. Spanier, as current compensation, an amount equal to the difference between the amount actually contributed to the Retirement Plan and the greater of: (1) the amount that the University cannot contribute to the Retirement Plan because of

Internal Revenue Code limitations; or (2) fifteen (15%) percent of Dr. Spanier's Base Salary.

5. Retirement Plan Equivalency. The Retirement Plan Equivalency referenced in Section D.3 of the Prior Agreement shall continue during this Agreement. The Retirement Plan Equivalency shall be amended such that Dr. Spanier shall be required to remain available to perform services for the University pursuant to Sections B, E.5 and E.6 of this Agreement through June 30, 2017 to vest in the benefits of the plan. Dr. Spanier shall also become vested in the Retirement Plan Equivalency if his employment as President is earlier terminated without Cause, or his death or disability. Dr. Spanier shall not receive the benefits of the Retirement Plan Equivalency if his employment as President is terminated for Cause, or if he voluntarily resigns from his employment as President, or if following the conclusion of his service as President, his faculty appointment is terminated in accordance with the University's rules for tenured members of the faculty. A document separate and apart from this Agreement shall govern the five year extension of the Retirement Plan Equivalency to June 30, 2017.

D. Annual Evaluation.

No later than the week of the May 2011 meeting of the Board of Trustees, and each year thereafter, Dr. Spanier shall provide to the President of the Board of Trustees, the Vice President of the Board, the immediate past President of the Board and the Chairperson of the Committee on Finance and Physical Plant of the Board (the "Review Group") an assessment of his performance as President measured against the goals and objectives for the then-current fiscal year, as well as his proposed goals and objectives for the next fiscal year. The Review Group will review and provide appropriate feedback and direction with respect to Dr. Spanier's past

performance and future goals and objectives. To aid the Review Group in its annual evaluation, Dr. Spanier agrees to furnish to the President of the Board such additional oral or written reports as the Review Group may request.

E. Benefits and Reimbursements.

1. Standard Benefits. Dr. Spanier shall be eligible to participate in all of the employee benefit plans of the University applicable to senior executives.

2. Supplemental Life Insurance.

- a. In addition to life insurance provided as a standard benefit in Section E.1, the University has provided a life insurance death benefit of \$1,000,000 for Dr. Spanier since September 1, 1997. The death benefit of this life insurance policy has escalated, and shall continue to be escalated annually on each July 1 during the Term of this Agreement, by the percentage increase in the Consumer Price Index (CPI-U, All Items, for All Urban Consumers, 1984=100) by multiplying the amount of life insurance in force for the contract year then ending by the sum of: one (1), plus the cumulative percentage increase in the Consumer Price Index between July 1 of the prior year and June 30 of the current year. There will be no diminution of this life insurance benefit at the conclusion of the Term of this Agreement. Provided, however, CPI increases in the death benefit shall cease as of the conclusion of the Term of this Agreement. In all other respects,

this life insurance coverage shall be maintained in accordance with the terms and conditions of the University's plan of life insurance for its senior executives.

3. Supplemental Health Insurance. The University's policy relating to age and service eligibility requirements for continuation of health insurance coverage shall be waived for Dr. Spanier at the conclusion of his presidency.

4. Disability Coverage. In the event of Dr. Spanier's permanent disability during the Term of this Agreement, the University shall provide Dr. Spanier with disability coverage, having a total disability benefit of (a) not less than eighty percent (80%) of his Base Salary for the contract year in which he becomes disabled through the end of the Term of this Agreement, and (b) thereafter not less than sixty-five percent (65%) of his Base Salary for the contract year in which he becomes disabled until age 70. Any amounts received by Dr. Spanier under the terms of any long term disability plan applicable to senior executives shall be offset against the amounts payable to Dr. Spanier pursuant to the disability coverage provided in this Section E.4.

5. Professional Development and Post-Presidency Transition Upon the completion of the Term of this Agreement (June 30, 2015) or if this Agreement is terminated without Cause, Dr. Spanier shall be entitled to a paid one year professional development and post-presidency transition period at the level of his then presidential Base Salary plus the benefits provided in Sections E.1, E.2, E.3 and E.4 of this Agreement. The post-presidency transition period shall commence immediately upon the completion of the Term, or the effective date of termination if this Agreement is terminated without Cause. During said period, Dr. Spanier shall

perform scholarly activities in preparation to assume active duties as a tenured member of the University's faculty and shall also be available to assist with various University efforts (such as fundraising and recruiting) as requested by the new President. As a condition of his eligibility for compensation and benefits under this Section E.5, Dr. Spanier shall refrain from performing any type of professional services for any other institution of higher education that will conflict with his duties with Penn State University. Notwithstanding the foregoing, any professional services performed by Dr. Spanier for a non-profit entity, government service, or for-profit boards that do not materially detract from his University responsibilities shall not be considered a conflict with his duties for the University. The Base Salary and benefits that Dr. Spanier receives under this Section E.5 shall not be reduced by the amounts he receives from other earnings. The terms of this Section E.5 shall survive the expiration of this Agreement.

6. Post-Presidency Faculty Position. Following his service as President, Dr. Spanier shall have the title of President Emeritus. In addition, Dr. Spanier shall continue to hold a tenured faculty position as a Professor in the Department of Human Development and Family Studies of the College of Health and Human Development of the University. He may continue to use his current academic title of Professor of Human Development and Family Studies, Sociology, Demography, and Family and Community Medicine. Upon the conclusion of Dr. Spanier's service as President, he may, at his option, elect to assume the title of University Professor. Dr. Spanier's Base Salary following his services as President shall be paid on a twelve month basis and shall be \$600,000 annually. Dr. Spanier's compensation at this level shall be limited to five (5) years following the conclusion of his professional development transition period subsequent to the termination of his presidency on June 30, 2015 or the earlier

termination of his presidency without Cause. Dr. Spanier's employment as Professor subsequent to this period, including his eligibility for annual salary adjustments, shall be governed by the University's policies, rules and regulations applicable to other tenured members of the University faculty and not by this Agreement. Dr. Spanier's office location, academic responsibilities, and salary after the five year post-presidency period shall be determined in consultation with the Provost of the University.

The University shall provide Dr. Spanier with administrative support, including an office and a staff assistant to assist him with his responsibilities following the conclusion of his presidency. The terms of this Section 1.6 shall survive the expiration of this Agreement.

7. Travel and Other Business Expenses. Dr. Spanier's reasonable travel and other business expenses incurred in his capacity as President of the University shall be paid on a cost reimbursement basis through the University's annual operating budget. When Dr. Spanier's spouse accompanies him on travel for University purposes, the University shall cover the costs of her reasonable travel expenses. The expenses of Dr. Spanier and his spouse shall be reviewed on an annual basis by the President of the Board of Trustees or his/her designee who does not report to the President.

8. Professional Memberships. The University shall pay the annual dues and membership fees for the President in professional associations of benefit to the University.

9. Automobile. The University shall continue to provide Dr. Spanier with a recent model automobile suitable for his role as President, to be owned or leased by the University, for his exclusive use. The University shall provide or reimburse Dr. Spanier for

insurance, maintenance, and other operating costs of the vehicle, including but not limited to, the cost of fuel, taxes, licenses, registration, and other similar operating expenses. On an annual basis, Dr. Spanier shall report all personal use in writing to the Senior Vice President for Finance and Business of the University.

F. Housing.

During the Term of this Agreement, for the benefit and convenience of the University in having the functions of the Office of President efficiently discharged and, in order to enable Dr. Spanier to fully perform the extensive duties of his position, he shall, as a condition of his employment as President of the University, continue to reside at the Schreyer House, an on-campus residence owned by the University for this purpose, located at University Park, Centre County, Pennsylvania, or such other residence as may be determined by the University (the "President's Residence"). The University shall pay for all costs of utilities and maintenance of the structures and grounds of the President's Residence.

For the benefit and convenience of the University, the President's residence shall be available, and shall be used, for University-related business on a regular and continuing basis. Costs associated with such University events shall be borne by the University.

In the event of Dr. Spanier's death during the Term of this Agreement (including all renewals and extensions), Dr. Spanier's family shall be permitted to occupy the President's Residence under the same terms and conditions for no less than 90 calendar days from the date of Dr. Spanier's death.

In the event of Dr. Spanier's permanent disability during the Term of this Agreement (including all renewals and extensions), Dr. Spanier and his family shall be permitted to occupy the President's Residence under the same terms and conditions for no less than 90 calendar days from the date of Dr. Spanier's permanent disability.

Dr. Spanier and his family shall vacate the President's Residence no later than thirty (30) calendar days following the effective date of termination or expiration of this Agreement (including all renewals and extensions).

Upon the termination of this Agreement, the University shall reimburse Dr. Spanier for the reasonable and necessary expenses of moving his personal property from State College, Pennsylvania to a location of his choice in the continental United States.

G. Tax Reporting.

The University shall include in the W-2 issued to Dr. Spanier all payments, benefits, allowances, and reimbursements that are defined as income or otherwise required to be reported by federal, state or local governments. Except as provided in this Agreement, Dr. Spanier shall be responsible for the payment of all personal taxes due and shall make such payments on a "when due" basis.

H. Termination.

1. Termination For Cause. The University may terminate this Agreement at any time for cause upon written notice to Dr. Spanier as provided in this Section H.1. For purposes of this Agreement, the term "Cause" shall mean conduct reasonably determined by a two-thirds majority of the Board of Trustees to be: (a) gross negligence or willful malfeasance by Dr. Spanier in the performance of his Duties that materially harm the University; (b) actions or

omissions by Dr. Spanier that are undertaken or omitted knowingly and are criminal or fraudulent and involve material dishonesty or moral turpitude; or (c) Dr. Spanier being formally indicted in a court of law of any felony, or any other crime involving misuse or misappropriation of University funds. In the event the President is terminated for Cause, Dr. Spanier's employment as President shall cease immediately, and he shall not be entitled to any further compensation or benefits as President, except as set forth in the University's various benefit plans with respect to vesting and rights after termination of employment, nor shall he be entitled to continuing employment as a member of the University faculty, including the Post-Presidency Faculty Position set forth in Section E.6 of this Agreement.

2. Termination Without Cause. The University may terminate this Agreement without Cause upon a majority vote by the Board of Trustees at any time for the convenience of the University upon ninety (90) calendar days prior written notice to the President. Termination of this Agreement by virtue of the President's permanent disability or death (as set forth in Sections H.4 and H.5 of this Agreement, respectively) shall not be construed as termination without Cause. If the University terminates this Agreement without Cause prior to the expiration of the Term of this Agreement, Dr. Spanier shall be entitled to receive payments equal to his then existing Base Salary and benefits for eighteen (18) months from the effective date of his termination of employment as President, plus the Equivalency payment referenced in Section C.5 of this Agreement. In the event of such termination without Cause, Dr. Spanier and his family shall vacate the President's Residence no later than thirty (30) calendar days following the effective date of termination.

3. Resignation. Dr. Spanier may resign as President by providing at least ninety (90) calendar days written notice to the President of the Board of Trustees. Dr. Spanier's employment as President shall cease on the effective date of his resignation, and he shall not be entitled to any further compensation or benefits as President, except as set forth in the University's various benefit plans with respect to vesting and rights after termination of employment.

4. Permanent Disability. If Dr. Spanier shall become permanently disabled during his service as President, this Agreement shall terminate effective on the date of permanent disability and he shall receive all benefits to which he is entitled pursuant to the University's disability coverage referenced in Section E.4. plus the Equivalency payment referenced in Section C.5 of this Agreement.

For purposes of this Agreement and based upon Section 409A of the Internal Revenue Code, "Permanent Disability" shall mean Dr. Spanier is (i) unable to engage in any substantial gainful activity by reason of any medically determinable physical or mental impairment which can be expected to result in death or can be expected to last for a continuous period of not less than 12 months or (ii) by reason of any medically determinable physical or mental impairment which can be expected to result in death or can be expected to last for a continuous period of not less than 12 months, receiving income replacement benefits for a period of not less than 3 months under an accident and health plan covering the University's employees.

5. Death. In the event of Dr. Spanier's death during the Term of this Agreement, Dr. Spanier's Base Salary shall cease immediately and this Agreement shall

terminate effective on the date of death, provided however that the Equivalency payment referenced in Section C.5 of this Agreement shall be paid to Dr. Spanier's estate no later than thirty (30) days from the date of death.

I. Outside Activities.

The University recognizes that it is both appropriate and beneficial for Dr. Spanier, in his capacity as President to engage in outside activities, such as serving on for-profit and nonprofit boards of directors, consulting, delivering speeches, and writing. However, the President shall seek prior approval from the President of the Board of Trustees before agreeing to serve on the board of directors of any for-profit entities. Dr. Spanier may not engage in any outside activity that conflicts with his Duties under this Agreement.

All income or other compensation earned by Dr. Spanier in connection with his outside activities shall be paid to and retained by Dr. Spanier and reported in accordance with applicable tax law and established University policy. Such income, if any, shall have no effect on the amount of salary, benefits, or other compensation to which Dr. Spanier may be entitled to under this Agreement.

J. Indemnification. The University shall indemnify Dr. Spanier and hold him harmless against legal fees, expenses, judgments, and other financial amounts incurred while serving in his capacity as President of the University to the extent permitted by law. Dr. Spanier shall continue to be indemnified subsequent to termination of employment as President with

respect to acts or omissions occurring while he was serving as President. The terms of this Section J shall survive the expiration of this Agreement.

K. Mediation. The parties agree that any controversy or claim that either party may have against the other arising out of or relating to the construction, application or enforcement of this Agreement, as well as any controversy or claim based upon the alleged breach of any legal right relating to or arising from Dr. Spanier's employment and/or termination of his employment shall be submitted to non-binding mediation. Within fifteen (15) days after delivery of a written notice of request for mediation from one party to the other, the dispute shall be submitted to a single mediator located in the Commonwealth of Pennsylvania chosen by the parties, and the venue for such mediation shall be in University Park or State College, Pennsylvania, as mutually agreed by the parties. The costs and fees associated with mediation, excluding attorney's fees for Dr. Spanier, shall be borne by the University.

L. Notice.

Any notice or other communication contemplated by this Agreement shall be deemed to be given when given in writing and mailed, registered or certified, postage prepaid with return receipt requested, to a party at the address set forth below or such other address as may hereafter be designated in writing:

To Dr. Spanier:

Dr. Graham B. Spanier
Schreyer House
Pennsylvania State University
University Park, PA 16802

To the University:

The Pennsylvania State University
Office of the Board of Trustees
205 Old Main
University Park, PA 16802
Attention: President of the Board of Trustees

M. Severability and Waivers.

If any portion of this Agreement shall be held to invalid, inoperative, or unenforceable, then, so far as possible, effect shall be given to the intent manifested by the portion held invalid, inoperative, or unenforceable, and the remainder of this Agreement not found invalid, inoperative, or unenforceable shall remain in full force and effect. No waiver or failure to enforce any or all rights under this Agreement by either party on any occasion shall constitute a waiver of that party's right to assert the same or any other rights on that or any other occasion.

N. Governing Law.

This Agreement shall be governed by, construed and enforced in accordance with the laws of the Commonwealth of Pennsylvania, excluding its choice of laws rules.

O. Counterparts.

This Agreement may be executed in one or more counterparts, each of which shall be deemed an original but all of which shall constitute but one of the same instrument. Signatures delivered by facsimile and by email shall be deemed to be an original signature for all purposes, including for purposes of applicable Rules of Evidence.

P. Complete Agreement.

This Agreement fully supersedes any and all prior agreements or understandings, written or oral, with the exception of Section D.3 of the Prior Agreement as amended by Section C.5 of

this Agreement. This Agreement shall not be amended, modified, or changed other than by express written agreement of Dr. Spanier and the President of the Board of Trustees.

Q. Personal Contract.

The obligations and duties of Dr. Spanier shall be personal and not assignable or delegable in any manner whatsoever. This Agreement shall be binding upon and inure to the benefit of Dr. Spanier and his executors, administrators, heirs, successors, and permitted assigns, and upon the University and its successors and assigns.

R. No Trust Fund.

Nothing contained in this Agreement and no action taken pursuant to the provisions of this Agreement shall create or be construed to create a trust of any kind. To the extent that the President acquires a right to receive payments from the University under this Agreement, such rights shall be no greater than the right of any unsecured, general creditor to the University.

S. Miscellaneous.

The headings in this Agreement are for convenience only and shall not be used in construing or interpreting this Agreement. The terms "Board," "Board of Trustees," and "University" as used in this Agreement, where applicable or appropriate, shall be deemed to include or refer to any duly authorized board, committee, officer, or employee of said entity. Whenever the context requires, the masculine shall include the feminine and neuter, the singular shall include the plural, and conversely.

IN WITNESS WHEREOF, the parties have executed this Employment Agreement as of the day and year written below.

ATTEST:

THE PENNSYLVANIA STATE UNIVERSITY

Joseph J. Donasey
Witness

By: Stewart Garban
President, Board of Trustees

June 2, 2010
Date

ATTEST:

Joseph J. Donasey
Witness

Graham Spanier
Graham B. Spanier, Ph.D.

June 2, 2010
Date