

IN THE COURT OF COMMON PLEAS OF CENTRE COUNTY, PENNSYLVANIA

The ESTATE of JOSEPH PATERNO;

and

WILLIAM KENNEY and JOSEPH V. ("JAY")
PATERNO,
former football coaches at Pennsylvania State
University,

Plaintiffs,

v.

NATIONAL COLLEGIATE ATHLETIC
ASSOCIATION ("NCAA");

MARK EMMERT, individually and as
President of the NCAA;

And

EDWARD RAY, individually and as former
Chairman of the
Executive Committee of the NCAA,

Defendant

s,

And

PENNSYLVANIA STATE UNIVERSITY,

Defendant.

) Civil Division

) Docket No. 2013-2082

) **PLAINTIFFS' RESPONSE TO**
) **DEFENDANT NCAA'S NEW MATTER**
) Filed on Behalf of the Plaintiffs

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DEBRA C. JAMES
PROTHONOTARY
CENTRE COUNTY, PA

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**PLAINTIFFS' RESPONSE TO THE AMENDED NEW MATTER OF
DEFENDANT NATIONAL COLLEGIATE ATHLETIC ASSOCIATION**

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DEBRA C. HIGEL
PROTHONOTARY
CENTRE COUNTY, PA

Plaintiffs Estate of Joseph Paterno, William Kenney and Joseph V. (“Jay”) Paterno (collectively “Plaintiffs”)¹, by and through their undersigned counsel, submit the following response to the New Matter of Defendant National Collegiate Athletic Association (“NCAA”).

Ratification (Count I)

180. On information and belief, Penn State University President Rodney Erickson executed the “Binding Consent Decree Imposed by The National Collegiate Athletic Association and Accepted By the Pennsylvania State University” (the “Consent Decree”) as of July 23, 2012.

181. Plaintiffs admit that the Consent Decree identified certain “findings and conclusions” and quoted certain “key findings” from the Freeh Report. Plaintiffs further admit that the Consent Decree states that Penn State accepted the findings of the Freeh Report “for purposes of this resolution and acknowledges that the facts constitute violations of the Constitution and Bylaw principles described” in a November 17, 2011 letter from NCAA President Mark Emmert to Penn State President Erickson.

182. Plaintiffs admit the allegations of paragraph 182.

¹ By praecipe filed with the Court on May 18, 2015, former Plaintiff Al Clemens voluntarily withdrew as a plaintiff.

183. Plaintiffs admit the allegations of paragraph 183.

184. Plaintiffs admit the allegations of paragraph 184.

185. Plaintiffs admit that after entering into the Consent Decree and while the Consent Decree remained in effect, Penn State confirmed its commitment to performing its obligations under the Consent Decree, including in this litigation. Plaintiffs lack information regarding Penn State's position with respect to the Consent Decree in other court proceedings, or whether Penn State ever sought to avoid or annul the Consent Decree.

186. Plaintiffs state in response to the allegations of paragraph 186 that, on information and belief, the Penn State Board of Trustees was never asked to and never did formally consider, ratify, or approve the Consent Decree.

187. Plaintiffs state in response to the allegations of paragraph 187 that former Penn State Trustee Al Clemens is no longer a plaintiff in this action. Plaintiffs further state that Penn State could not and did not agree to the NCAA's violations of their rights.

Consent and/or Absolute Privilege, Estoppel (Plaintiff Clemens)

188-193. The allegations in paragraphs 188-193 of Defendant's New Matter expressly pertain to "Plaintiff Clemens," who is no longer a party to this

action, and therefore no response is required. To the extent a response is required, Plaintiffs' answers to paragraphs 180-187 are incorporated herein by reference in response to paragraph 188. The allegations of paragraphs 189-190 are denied and Plaintiffs' allegations in paragraphs 66, 68-70, 104-105 of the Second Amended Complaint are incorporated herein as though set forth in their entirety. The allegations of paragraph 191 of Defendant's New Matter are conclusions of law to which no response is required. Plaintiffs' answers to paragraphs 180-191 are incorporated herein by reference in response to paragraph 192. The allegations of paragraph 193 of Defendant's New Matter are conclusions of law to which no response is required.

Truth or Substantial Truth (Counts II, III, IV, and V)

194. Plaintiffs' answers to paragraphs 180-193 are incorporated herein as though set forth in their entirety.

195. The allegations of paragraph 195 of Defendant's New Matter are conclusions of law to which no response is required. To the extent a response is required, it is specifically denied that the statements alleged to be defamatory or disparaging were true or substantially true. By way of further answer, Plaintiffs' allegations in paragraphs 60, 69-71, 84-92, 96 of the Second Amended Complaint are incorporated herein as though set forth in their entirety.

196. The allegations of paragraph 196 of Defendant's New Matter are conclusions of law to which no response is required.

WHEREFORE, Plaintiffs respectfully requests that judgment be entered in their favor and against Defendant NCAA.

Respectfully submitted,



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Dated: July 27, 2015

Counsel for Plaintiffs

CERTIFICATE OF SERVICE

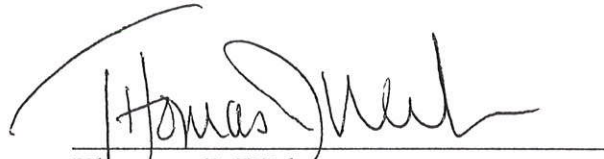
I HEREBY CERTIFY that a true and correct copy of the foregoing
PLAINTIFFS' RESPONSE TO THE AMENDED NEW MATTER OF
DEFENDANT NATIONAL COLLEGIATE ATHLETIC ASSOCIATION was
served this 27th day of July, 2015 by email and first class mail to the following:

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A handwritten signature in black ink, appearing to read "Thomas J. Weber", written over a horizontal line.

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