



0000RC9N CCGPRO 201503

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

ESTATE of JOSEPH PATERNO;
AL CLEMENS, member of the Board of Trustees of
Pennsylvania State University;

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,

Defendants,

and

THE PENNSYLVANIA STATE UNIVERSITY,

Nominal Defendant.

) **Docket No.:** 2013-2082

) **Type of Case:**

) Declaratory Judgment Injunction

) Breach of Contract

) Tortious Interference with

) Contract

) Defamation

) Commercial Disparagement

) Conspiracy

) **Type of Pleading:**

) Certificate Prerequisite to

) Service of a Subpoena Upon

) Fred S. Berlin, Pursuant to Rule

) 4009.22 with Notice of Intent to

) Serve a Subpoena to Fred S.

) Berlin to Produce Documents

) and Things for Discovery

) Pursuant to Rule 4009.21

) **Filed on Behalf of:**

) National Collegiate Athletic

) Association, Mark Emmert,

) Edward Ray

) **Counsel of Record for this**

) **Party:**

) Thomas W. Scott, Esquire

) Killian & Gephart, LLP

) 218 Pine Street

) P.O. Box 886

) Harrisburg, PA 17108-0886

) TEL: (717) 232-1851

) FAX: (717) 238-0592

) tscott@killiangephart.com

) PA I.D. Number: 15681

FILED
CENTRE COUNTY
CLERK OF COURT
2015 MAY 13 PM 3:38
PAUL J. GARDNER

IN THE COURT OF COMMON PLEAS OF CENTRE COUNTY, PENNSYLVANIA

ESTATE of JOSEPH PATERNO;
AL CLEMENS, member of the Board of Trustees of
Pennsylvania State University;

and

WILLIAM KENNEY and JOSEPH V. ("JAY")
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NATIONAL COLLEGIATE ATHLETIC
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MARK EMMERT, individually and as President of the
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the Executive committee of the NCAA,

Defendants,

and

THE PENNSYLVANIA STATE UNIVERSITY,

Nominal Defendant.

Civil Division

Docket No.: 2013-2082

FILED TO RECORD
2015 MAY 13 PM 3:39
PROthonARY
CENTRE COUNTY, PA

**CERTIFICATE PREREQUISITE TO SERVICE OF A SUBPOENA
UPON FRED S. BERLIN, PURSUANT TO RULE 4009.22**

As a prerequisite to service of a subpoena for documents and things upon

Fred S. Berlin, pursuant to Rule 4009.22, Defendants certify that:

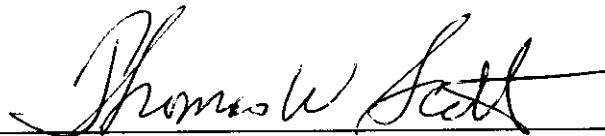
(1) a notice of intent to serve the subpoena with a copy of the subpoena attached thereto was mailed or delivered to each party at least twenty days prior to the date on which the subpoena is sought to be served,

(2) a copy of the notice of intent, including the proposed subpoena, is attached to this certificate,

(3) no objection to the subpoena has been received, and

(4) the subpoena which will be served is identical to the subpoena which is attached to the notice of intent to serve the subpoena.

Respectfully submitted,



Thomas W. Scott, Esquire
Attorney I.D. #15681
KILLIAN & GEPHART, LLP
218 Pine Street
P.O. Box 886
Harrisburg, PA 17108-0886

Date: May 13, 2015

Attorneys for Defendants

IN THE COURT OF COMMON PLEAS OF CENTRE COUNTY, PENNSYLVANIA

GEORGE SCOTT PATERNO, as duly appointed representative of the ESTATE and FAMILY of JOSEPH PATERNO;

AL CLEMENS, member of the Board of Trustees of Pennsylvania State University; 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, Defendants,

and

THE PENNSYLVANIA STATE UNIVERSITY, Defendant.

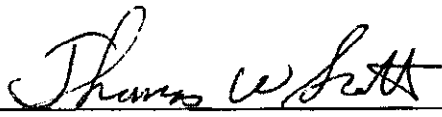
Civil Division

Docket No. 2013-2082

THE NATIONAL COLLEGIATE ATHLETIC ASSOCIATION'S NOTICE OF INTENT TO SERVE A SUBPOENA TO FRED S. BERLIN TO PRODUCE DOCUMENTS AND THINGS FOR DISCOVERY PURSUANT TO RULE 4009.21

The National Collegiate Athletic Association intends to serve a subpoena identical to the one that is attached to this notice. You have twenty (20) days from the date listed below in which to file of record and serve upon the undersigned an objection to the subpoena. If no objection is made, the subpoena may be served.

Date: April 22, 2015


Thomas W. Scott (No. 15681)
KILLIAN & GEPHART, LLP
218 Pine Street
P.O. Box 886
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Telephone: (717) 232-1851
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Everett C. Johnson, Jr. (admitted *Pro Hac Vice*,
DC No. 358446)

Brian E. Kowalski (admitted *Pro Hac Vice*, DC
No. 500064)

Sarah M. Gragert (admitted *Pro Hac Vice*, DC
No. 977097)

LATHAM & WATKINS LLP

555 Eleventh Street NW

Suite 1000

Washington, DC 20004-1304

Telephone: (202) 637-2200

Email: Everett.Johnson@lw.com

Brian.Kowalski@lw.com

Sarah.Gragert@lw.com

*Counsel for Defendants the NCAA, Dr. Emmert,
and Dr. Ray*

COMMONWEALTH OF PENNSYLVANIA
COUNTY OF CENTRE

GEORGE SCOTT PATERNO ET AL.

VS

NATIONAL COLLEGIATE ATHLETIC ASSOCIATION ET AL.

File No. 2013-2082

SUBPOENA TO PRODUCE DOCUMENTS OR THINGS
FOR DISCOVERY PURSUANT TO RULE 4009.22

TO: FRED S. BERLIN

(Name of Person or Entity)

Within twenty (20) days after service of this subpoena, you are ordered by the court to produce the following documents or things: See Exhibit A, attached.

at Killian & Gephart, LLP, 218 Pine St., PO Box 886, Harrisburg, PA 17108-0886

(Address)

You may deliver or mail legible copies of the documents or produce things requested by this subpoena, together with the certificate of compliance, to the party making this request at the address listed above. You have the right to seek in advance the reasonable cost of preparing the copies or producing the things sought.

If you fail to produce the documents or things required by this subpoena within twenty (20) days after its service, the party serving this subpoena may seek a court order compelling you to comply with it.

THIS SUBPOENA WAS ISSUED AT THE REQUEST OF THE FOLLOWING PERSON:

NAME: Thomas W. Scott

ADDRESS: 218 Pine St., PO Box 886
Harrisburg, PA 17108-0886

TELEPHONE: (717) 232-1851

SUPREME COURT ID # 15681

ATTORNEY FOR: National Collegiate Athletic Association

DATE: _____
Seal of the Court

EXHIBIT A

DEFINITIONS

1. "You," "your," and "yours" shall refer to Fred S. Berlin, and all other persons acting on behalf of Fred S. Berlin, including but not limited to, attorneys and their associates, investigators, agents, directors, officers, employees, representatives, and others who may have obtained information for or on behalf of Fred S. Berlin.
2. "Plaintiffs" shall mean each of the individuals identified in the caption above, any representative of those individuals, and any representatives of the Estate and Family of Joseph Paterno.
3. "All" or "any" shall mean "each and every."
4. "And" and "or" shall mean either disjunctively or conjunctively as necessary to bring within the scope of discovery request all responses that might otherwise be construed outside of its scope.
5. "Document" or "documents" is defined as broadly as possible, and is defined to include originals and copies (including all non-identical copies or photocopies) as well as all draft and final versions of, without limitation: (a) All writings of any kind (including the originals and all non-identical copies, whether different from the originals by reason of any notation made on such copies or otherwise), including, without limitation, correspondence, notes, statements, transcripts, books, diaries, intra-office communications, notations of any sort of conversations or interviews; (b) All graphic representations of any kind, including, without limitation, photographs, charts, graphs, plans, drawings, videos, and recordings; and (c) All electronically generated and/or stored correspondence, memoranda, communications, data compilations, or

records of any sort.

6. "Communication(s)" means any act, action, oral speech, written correspondence, contact, expression of words, thoughts, ideas or transmission or exchange of data or other information to another person, whether orally, person-to-person, in a group, by telephone, letter, personal delivery, telex, facsimile, or any other process, electric, electronic or otherwise.
7. "Concerning" shall mean, without limitation, comprising, containing, embodying, referring to, relating to, regarding, alluding to, responding to, in connection with, commenting on, in response to, about, announcing, explaining, discussing, showing, describing, studying, supporting, reflecting, analyzing, or constituting.
8. "Person" shall mean any natural person or any business, legal or governmental entity, or association.
9. The "Paterno Family" shall refer to the family of Joseph Paterno, the decedent represented in this Action by George Scott Paterno, including but not limited to George Scott Paterno and Joseph V. ("Jay") Paterno, Jr.
10. "FSS" shall mean the firm of Freeh, Sporkin & Sullivan LLP.
11. The "Freeh Report" shall mean the July 12, 2012 Report of the Special Investigative Counsel Regarding the Actions of The Pennsylvania State University Related to the Child Sexual Abuse Committed by Gerald A. Sandusky, prepared by FSS.
12. The "Consent Decree" shall mean the July 23, 2012 Binding Consent Decree Imposed by the National Collegiate Athletic Association and Accepted by The Pennsylvania State University.
13. The "Berlin Report" shall mean Your February 6, 2013 letter to J. Sedwick Sollers, III

RE: Joseph Paterno.

INSTRUCTIONS

1. In accordance with the Maryland Rules of Civil Procedure, in producing the requested Documents, furnish all Documents in Your actual or constructive possession, custody, or control including, without limitation, those Documents in the custody of any advisors, attorneys, investigators, agents, associates, representatives, and other person(s) or entities acting or purporting to act on Your behalf.
2. Documents shall be produced in the manner in which they are maintained in the ordinary course of business or shall be organized and labeled with a designation of the request for production to which they respond and produced along with any file folders or other bindings in which such Documents were found.
3. These Requests shall be deemed to be continuing in nature. If at any time additional responsive Documents come into Your possession, custody or control, then the responses to these Requests shall be promptly supplemented.
4. Any Document or portion of any Document withheld from production based on a claim of privilege shall be identified by (1) the type of Document, (2) the general subject matter of the Document, (3) the date of the Document, and (4) such other information as is sufficient to identify the Document including the author of the Document, the addressee(s) and any copyee(s) or other recipients of the Document, and, where not apparent, the relationship of the author and addressee(s) and copyee(s) to each other. The nature of each claim of privilege shall be set forth.
 - a. Notwithstanding the assertion of any objection, any requested Document that contains non-objectionable information responsive to this Request should be

produced, but that portion of the Document for which the objection is asserted may be redacted, provided that the redacted portion is identified and described consistently according to the requirements listed herein.

5. Except as otherwise noted, this Request seeks the production of Documents created, used, sent or received during the period from January 1, 2011 through present.
6. Any request for "Communications" shall be construed to include written or tangible Communications, as well as Documents referencing or reflecting oral or person-to-person Communications.
7. The fact that another witness or that a party produces a Document or the availability or production of similar or identical Documents from another source does not relieve You of Your obligation to produce Your copy of the same Document, even if the two Documents are identical.
8. Any Document that cannot be produced in full shall be produced to the fullest extent possible.
9. Each paragraph, subparagraph, clause and word herein should be construed independently and not by reference to any other paragraph, subparagraph, clause or word herein for purposes of limitation.
10. Except as specifically provided herein, words imparting the singular shall include the plural and vice versa, where appropriate.

REQUESTS FOR PRODUCTION

REQUEST NO. 1:

All Communications Concerning the Freeh Report.

REQUEST NO. 2:

All Documents Concerning, and Communications with, Louis Freeh, FSS, Pepper Hamilton LLP, or FSS' current or former principals, representatives and/or employees.

REQUEST NO. 3:

All Documents Concerning the Berlin Report.

REQUEST NO. 4:

All drafts of the Berlin Report, including electronic versions of such drafts maintained on any computer.

REQUEST NO. 5:

All Documents contained in Your client file or equivalent for Your work Concerning the Berlin Report.

REQUEST NO. 6:

All Documents used in the course of Your work on the Berlin Report, including, without limitation, all correspondence, agreements, exhibits, physical evidence, and expert reports.

REQUEST NO. 7:

All Documents Concerning preparation of the Berlin Report including, without limitation, comments to, revisions of, outlines for, research for, and/or possible content of the February 2013 Analysis.

REQUEST NO. 8:

All Documents relied upon in drafting the Berlin Report.

REQUEST NO. 9:

All Documents and Communications Concerning questions, concerns, or criticism of any aspect of the Berlin Report, including the conclusions contained therein.

REQUEST NO. 10:

All Documents Concerning any compensation or benefits, financial or otherwise, you were offered and/or received from the Paterno Family or any of its agents from January 1, 2005 to present.

REQUEST NO. 11:

All invoices You submitted for Your work Concerning the Berlin Report, including all backup and supporting documentation.

REQUEST NO. 12:

All Communications, and Documents Concerning Your Communications, with Dr. Graham Spanier, Gary C. Schultz, Timothy M. Curley, and/or Joseph Paterno, including but not limited to Communications with counsel for any of the aforementioned persons.

REQUEST NO. 13:

All Communications, and Documents Concerning Communications, involving You and any member of the Paterno Family, including but not limited to the Plaintiffs in this action.

REQUEST NO. 14:

All Documents Concerning Communications involving You and James T. Clemente, regarding the Paterno Family or any of its members, the Freeh Report and/or the Berlin Report.

REQUEST NO. 15:

All Documents Concerning Communications involving You and K&L Gates LLP, including but not limited to current or former principals, representatives and/or employees of K&L Gates LLP, regarding the Paterno Family or any of its members, the Freeh Report and/or the Berlin Report.

REQUEST NO. 16:

All Documents Concerning Communications involving You and King & Spalding LLP,

including but not limited to current or former principals, representatives and/or employees of King & Spalding LLP, regarding the Paterno Family or any of its members, the Freeh Report and/or the Berlin Report.

REQUEST NO. 17:

Any engagement letter, or reasonably equivalent contract, agreement, or other Document containing the terms by which You would prepare the Berlin Report.

IN THE COURT OF COMMON PLEAS OF CENTRE COUNTY, PENNSYLVANIA

GEORGE SCOTT PATERNO, as duly appointed representative of the ESTATE and FAMILY of JOSEPH PATERNO;

AL CLEMENS, member of the Board of Trustees of Pennsylvania State University; 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,

Defendants,

and

THE PENNSYLVANIA STATE UNIVERSITY,

Defendant.

Civil Division

Docket No. 2013-2082

TO: FRED S. BERLIN

You are required to complete the following Certificate of Compliance with producing documents or things pursuant to the Subpoena. Send the documents or things, along with this Certificate of Compliance (with your original signature), to the person at whose request the subpoena was issued (see address on the reverse).

Do not send the documents or things, or the Certificate of Compliance, to the Prothonotary's Office.

Certificate of Compliance with Subpoena to Produce Documents or Things Pursuant to Rule 4009.23

I, _____

certify to the best of my knowledge, information and belief that all documents or things required

to be produced pursuant to the subpoena issued on _____ have been produced.

Date: _____

(Signature of Person Served with Subpoena)

NOTE: STAMPED SUBPOENA IS NOT TO BE USED TO OBTAIN MEDICAL RECORDS FROM HOSPITALS

Circuit Court for Baltimore City

Frank M. Conaway, Clerk

111 N. Calvert Street - Room 482

Baltimore, MD 21202

GEORGE SCOTT PATERNO, as duly appointed representative of the ESTATE and FAMILY of JOSEPH PATERNO, et al.

Case Number: _____

vs.

NATIONAL COLLEGIATE ATHLETIC ASSOCIATION, et al.

TO:

Fred S. Berlin

SUBPOENA

YOU ARE HEREBY COMMANDED TO:

- Personally appear;
- Produce documents and/or objects only;
- Personally appear and produce documents and/or objects;

at: Killian & Gephart, LLP

218 Pine Street, Harrisburg, PA 17101

on: _____

YOU ARE COMMANDED to produce the following documents or objects:

See Exhibit A, attached

Subpoena requested by Plaintiff; Defendant, and any questions should be referred to:

Thomas W. Scott
Killian & Gephart, LLP, P.O. Box 886, Harrisburg, PA 17108-0886
Telephone: (717) 232-1851

Date Issued: _____

Frank M. Conaway, Clerk

NOTICE:

1. YOU ARE LIABLE TO BODY ATTACHMENT AND FINE FOR FAILURE TO OBEY THIS SUBPOENA
2. This subpoena shall remain in effect until you are granted leave to depart by the Court or by an officer acting on behalf of the Court.
3. If this subpoena is for attendance at a deposition and the party served is an organization, notice is hereby given that the organization must designate a person to testify pursuant to Md. Rule 2-412(d).

SHERIFF'S RETURN

() Served and copy delivered on the date indicated below.

() Unserved, by reason of: _____

Date: _____ Fee: _____ By: _____

Sheriff / Deputy Sheriff

CERTIFICATE OF SERVICE

I, Thomas W. Scott, hereby certify that I am serving the *National Collegiate Athletic Association's Notice of Intent to Serve a Subpoena to Fred S. Berlin* on the following by First Class Mail and email:

Thomas J. Weber, Esquire
GOLDBERG KATZMAN, P.C.
4250 Crums Mill Road, Suite 301
P.O. Box 6991
Harrisburg, PA 17112
Telephone: (717) 234-4161
Email: tjw@goldbergkatzman.com

Wick Sollers, Esquire
L. Joseph Loveland, Esquire
Mark A. Jensen, Esquire
Patricia L. Maher, Esquire
Ashley C. Parrish, Esquire
KING & SPALDING LLP
1700 Pennsylvania Avenue, NW
Washington, DC 20006
Telephone: (202) 737-0500
Email: wsollers@kslaw.com
jloveland@kslaw.com
mjensen@kslaw.com
pmaher@kslaw.com
aparrish@kslaw.com

Counsel for Plaintiffs

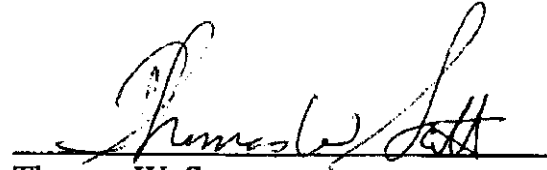
Daniel I. Booker, Esquire
Jack B. Cobetto, Esquire
Donna M. Doblack, Esquire
William J. Sheridan, Esquire
REED SMITH LLP
Reed Smith Centre
225 Fifth Avenue, Suite 1200
Pittsburgh, PA 15222
Telephone: (412) 288-3131
Email: dbooker@reedsmith.com
[jacobetto@reedsmith.com](mailto:jcobetto@reedsmith.com)
ddoblack@reedsmith.com
wsheridan@reedsmith.com

Michael T. Scott, Esquire
REED SMITH LLP
Three Logan Square
Suite 3100
1717 Arch Street
Philadelphia, PA 19103
Telephone: (215) 851-8100
Email: miscott@reedsmith.com

Joseph P. Green, Esquire
LEE, GREEN & REITER, INC.
115 East High Street
P.O. Box 179
Bellefonte, PA 16823-0179
Telephone: (814) 355-4769
Email: jgreen@lm2rlaw.com

*Counsel for The Pennsylvania State
University*

Dated: April 22, 2015

A handwritten signature in black ink, appearing to read "Thomas W. Scott", is written over a horizontal line.

Thomas W. Scott
KILLIAN & GEPHART, LLP
218 Pine Street
P.O. Box 886
Harrisburg, PA 17108-0886
Telephone: (717) 232-1851
Email: tscott@killiangephart.com

*Counsel for Defendants the NCAA,
Dr. Emmert, and Dr. Ray*

CERTIFICATE OF SERVICE

I, Thomas W. Scott, hereby certify that I am serving *The National Collegiate Athletic Association's Certificate Prerequisite to Service of a Subpoena Pursuant to Rule 4009.22*, by First Class Mail and email to:

Thomas J. Weber, Esquire
GOLDBERG KATZMAN, P.C.
4250 Crums Mill Road, Suite 301
P.O. Box 6991
Harrisburg, PA 17112
Telephone: (717) 234-4161
Email: tjw@goldbergkatzman.com

Wick Sollers, Esquire
L. Joseph Loveland, Esquire
Mark A. Jensen, Esquire
Patricia L. Maher, Esquire
Ashley C. Parrish, Esquire
Alan R. Dial, Esquire
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jloveland@kslaw.com
mjensen@kslaw.com
pmaher@kslaw.com
aparrish@kslaw.com
adial@kslaw.com

Counsel for Plaintiffs

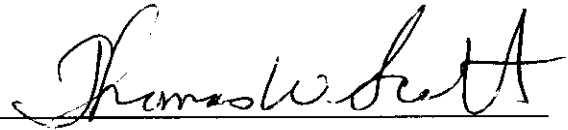
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*Counsel for The Pennsylvania State
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Dated: May 13, 2015



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*Counsel for Defendants the NCAA, Dr.
Emmert, and Dr. Ray*