



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

The ESTATE of JOSEPH PATERNO;  
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

) Docket No. 2013-2082  
) **EXHIBITS TO BRIEF IN OPPOSITION**  
) **PLAINTIFFS' MOTION FOR LEAVE**  
) **TO FILE UNDER SALE AND TO**  
) **ENFORCE THE COURT'S EARLIER**  
) **PRIVILEGE DETERMINATIONS**  
) **PURSUANT TO THE PROTECTIVE**  
) **ORDER**

) Filed on Behalf of: The Pennsylvania State  
) University and Pepper Hamilton LLP  
) Counsel of record for the Pennsylvania  
) State University:

) Daniel I. Booker, Esq., ID #10319  
) Jack B. Cobetto, Esq., ID # 53444  
) Donna Doblick, Esq., ID # 75394  
) William Sheridan, Esq., ID # 206718  
) REED SMITH LLP, Firm #234  
) 225 Fifth Avenue  
) Pittsburgh, PA 15222  
) (412) 2888-3131  
) (412) 288-3063 (fax)

) Michael T. Scott, Esq., ID # 23882  
) REED SMITH LLP  
) Three Logan Suite, Suite 3100  
) 1717 Arch Street  
) Philadelphia, PA 19103  
) (215) 851-8100  
) (215) 851-1420 (fax)

) Joseph P. Green, Esq., ID #19238  
) LEE, GREEN & REITER, INC.  
) 115 East High Street  
) PO Box 179  
) Bellefonte, PA 16823  
) (814) 355-4769  
) (814) 355-5024 (fax)

FILED FOR RECORD  
2015 SEP -9 AM 9:16  
PROSECUTORY  
CLERK  
CENTRE COUNTY, PA

) Counsel of Record for Pepper  
) Hamilton LLP:  
)  
) Thomas E. Zemaitis  
) PEPPER HAMILTON LLP  
) 3000 Two Logan Square  
) Eighteenth & Arch Streets  
) Philadelphia, PA 19103-2799  
) (215) 981-40000  
) (215) 981-4750 (fax)

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**From:** Doblick, Donna M.  
**Sent:** Monday, July 13, 2015 5:26 PM  
**To:** 'Loveland, Joe'  
**Cc:** tjweber@goldbergkatzman.com; Joseph P. Green Esq. (jgreen@lmgrlaw.com); Sollers, Wick; Maher, Trish; Jensen, Mark; Parrish, Ashley; Doran, Samuel; Booker, Daniel I.; Scott, Michael T.  
**Subject:** RE: Paterno v. NCAA, Case No. 2013-2082 - Clawback Letter

Yes, I just saw it.  
Thanks.  
Donna

**From:** Loveland, Joe [mailto:JLoveland@KSLAW.com]  
**Sent:** Monday, July 13, 2015 5:24 PM  
**To:** Doblick, Donna M.  
**Cc:** tjweber@goldbergkatzman.com; Joseph P. Green Esq. (jgreen@lmgrlaw.com); Sollers, Wick; Maher, Trish; Jensen, Mark; Parrish, Ashley; Doran, Samuel; Booker, Daniel I.; Scott, Michael T.  
**Subject:** RE: Paterno v. NCAA, Case No. 2013-2082 - Clawback Letter

Thanks, Donna, but we have sent the motion to the court for filing based on the original list you provided. I believe you should have a copy in your inbox shortly.

**From:** Doblick, Donna M. [mailto:DDoblick@ReedSmith.com]  
**Sent:** Monday, July 13, 2015 5:17 PM  
**To:** Loveland, Joe  
**Cc:** tjweber@goldbergkatzman.com; Joseph P. Green Esq. (jgreen@lmgrlaw.com); Sollers, Wick; Maher, Trish; Jensen, Mark; Parrish, Ashley; Doran, Samuel; Daniel I. Booker; Scott, Michael T.  
**Subject:** RE: Paterno v. NCAA, Case No. 2013-2082 - Clawback Letter

Joe:

Thanks for the response.

Just to be clear, we're claiming privilege/work product with respect to only the inadvertently produced interview notes only and the draft chapters of the Freeh Report. In the interest of getting the clawback request out promptly, we broadly designated for clawback all of the documents that had been inadvertently produced. Upon closer review, however, I recognize that the population includes University policies, the grand jury presentment, subpoenas, emails among University personnel, and other documents that, although produced inadvertently, plainly are not privileged.

I'll get you a more refined list tomorrow or Wednesday, but I just wanted to clarify this point before you file your motion so that there's no confusion with respect to the University's position.

Let me know if you have any questions.

Thanks.

Donna



**From:** Loveland, Joe [<mailto:JLoveland@KSLAW.com>]

**Sent:** Monday, July 13, 2015 2:12 PM

**To:** Doblack, Donna M.

**Cc:** [tjweber@goldbergkatzman.com](mailto:tjweber@goldbergkatzman.com); Joseph P. Green Esq. ([jgreen@imgrlaw.com](mailto:jgreen@imgrlaw.com)); Sollers, Wick; Maher, Trish; Jensen, Mark; Parrish, Ashley; Doran, Samuel; Booker, Daniel I.; Scott, Michael T.; Loveland, Joe

**Subject:** RE: Paterno v. NCAA, Case No. 2013-2082 - Clawback Letter

**Dear Donna:**

Thank you for your message below. We agree with the timing of filing a motion for leave to file the documents under seal and will send you a copy of our filing by email when made. We are also aware of your after-the-fact designation of the documents as "Highly Confidential" and, without agreeing that the designation is proper for most if not all of the documents at issue, will comply with our obligations in that regard pending any further order of the Court.

Best regards,

Joe

**L. Joseph Loveland** | King & Spalding LLP | 1180 Peachtree Street, Atlanta, GA 30309-3521 | phone: 404.572.4783 | mobile: 404.664.4502 | [jloveland@kslaw.com](mailto:jloveland@kslaw.com)

**From:** Doblack, Donna M. [<mailto:DDoblack@ReedSmith.com>]

**Sent:** Monday, July 13, 2015 12:41 PM

**To:** Loveland, Joe

**Cc:** [tjweber@goldbergkatzman.com](mailto:tjweber@goldbergkatzman.com); Joseph P. Green Esq. ([jgreen@imgrlaw.com](mailto:jgreen@imgrlaw.com)); Sollers, Wick; Maher, Trish; Jensen, Mark; Parrish, Ashley; Doran, Samuel; Daniel I. Booker; Scott, Michael T.

**Subject:** RE: Paterno v. NCAA, Case No. 2013-2082 - Clawback Letter

Dear Joe:

Thank you for your response.

We, of course, disagree with your assertion that the documents are not protected by the claimed privileges. As you are also aware, Penn State and Pepper Hamilton filed an application for reconsideration / reargument en banc of the Superior Court's decision not to grant a stay pending appeal, and that application is still pending.

In any event, however, section 14 of the Protective Order provides plaintiffs with only one option if they disagree with these privilege assertions: to seek leave of Court to file the documents under seal and request in camera review. If plaintiffs do not intend to return or destroy the documents in question, we therefore expect that you file such a request with Judge Leete on or before July 14.

We also remind you that in my June 7 letter, Penn State specifically asserted (pursuant to section 8 of the Protective Order) that all of the documents listed in Appendix A thereto are to be treated as if they had been stamped "Highly Confidential" at the time they were inadvertently produced, which means that the documents (or the information contained therein) cannot be disclosed to your clients or to any other person who is not an attorney of record for your client with "responsibility for the preparation and trial" of this case. Section 8 also requires you to retrieve any documents you may have distributed to persons other than the aforesaid counsel. If you are unable to obtain the return of "all such documents or information," we hereby formally request (also pursuant to section 8) that you inform us to whom the Highly Confidential Documents were disclosed.

Similarly, section 14 of the Protective Order also mandates that a party not "use or disclose" these documents or the information in them in any way pending the Court's determination and that it take reasonable steps to retrieve any such information that was disclosed or distributed before my June 7 letter.

Sincerely,  
Donna Doblick

**From:** Loveland, Joe [<mailto:JLoveland@KSLAW.com>]

**Sent:** Friday, July 10, 2015 8:46 AM

**To:** Doblick, Donna M.; [jgreen@lmgrlaw.com](mailto:jgreen@lmgrlaw.com)

**Cc:** 'tjw@goldbergkatzman.com'; 'wsollers@kslaw.com'; 'pmaher@kslaw.com'; 'jloveland@kslaw.com'; 'mjensen@kslaw.com'; 'aparrish@kslaw.com'; 'sdoran@kslaw.com'; 'Everett.johnson@lw.com'; 'Brian.kowalski@lw.com'; 'Sarah.gragert@lw.com'; 'tscott@killiangephart.com'; Sheridan, William J.; Loveland, Joe

**Subject:** RE: Paterno v. NCAA, Case No. 2013-2082 - Clawback Letter

**Dear Donna,**

**This is to acknowledge receipt of your July 7 letter regarding a clawback of certain documents produced by Penn State on June 29. We will comply with our obligations under the Stipulated Confidentiality Agreement and Protective Order in this matter, but note that your letter does not fully describe the procedures for doing so included in the Protective Order. We do not agree with your characterization of the documents as properly protected by the attorney-client privilege or work product doctrine and note that the documents were produced after the Superior Court denied your motion for a stay of Judge Leete's Order requiring production of these and other documents.**

**Best regards,**

**Joe**

**L. Joseph Loveland | King & Spalding LLP | 1180 Peachtree Street, Atlanta, GA 30309-3521 | phone: 404.572.4783 | mobile: 404.664.4502 | [jloveland@kslaw.com](mailto:jloveland@kslaw.com)**

**From:** Sheridan, William J. [mailto:WSheridan@ReedSmith.com]  
**Sent:** Tuesday, July 07, 2015 4:58 PM  
**To:** 'tjw@goldbergkatzman.com'; 'wsollers@kslaw.com'; 'pmaher@kslaw.com';  
'jloveland@kslaw.com'; 'mjensen@kslaw.com'; 'aparrish@kslaw.com'; 'sdoran@kslaw.com';  
'Everett.johnson@lw.com'; 'Brian.kowalski@lw.com'; 'Sarah.gragert@lw.com';  
'tscott@killiangephart.com'  
**Subject:** Paterno v. NCAA, Case No. 2013-2082 - Clawback Letter

Counsel,

Please see the attached clawback letter regarding privileged documents inadvertently produced in the above referenced matter.

Best,  
Will

**William J. Sheridan**  
+1 412.288.3156  
[wsheridan@reedsmith.com](mailto:wsheridan@reedsmith.com)

**Reed Smith LLP**  
Reed Smith Centre  
225 Fifth Avenue  
Pittsburgh, PA 15222

Tel +1 412.288.3131  
Fax +1 412.288.3063

\* \* \*

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**From:** Maher, Trish <PMaher@KSLAW.com>  
**Sent:** Thursday, August 27, 2015 4:10 PM  
**To:** Doblack, Donna M.; Booker, Daniel I.; Scott, Michael T.; Sheridan, William J.  
**Cc:** Sollers, Wick; Loveland, Joe; Parrish, Ashley  
**Subject:** RE: Paterno - Plaintiffs' Request For In Camera Review

Donna,

Thank you for notifying us which documents Penn State no longer contends are privileged and has re-designated as "Confidential."

With respect to the remainder of the documents that were the subject of your July 7, 2015 clawback letter, you have requested that we not pursue our motion for leave to file under seal on grounds that we have received the same documents from another source, i.e. Pepper Hamilton. In fact, we do not have the documents from either source to the extent we are entitled pursuant to the courts' orders because both Penn State and Pepper Hamilton have designated all the documents produced as "Highly Confidential – Attorneys Eyes Only – Information." These blanket confidentiality designations do not comply with the standards set forth in the Protective Order, and we have asked Judge Leete to strike that designation on the Pepper Hamilton documents. We will ask Judge Leete to make a similar determination on that "claim of protection" by Penn State pursuant to paragraph 14 of the Protective Order. As you know, Judge Leete has listed our motion for leave to file under seal in the Scheduling Order issued yesterday, and we intend to proceed with the motion.

The in camera review is necessitated by Penn State's continued refusal to produce documents as to which its privilege objections have been overruled. We have followed the procedure established in the Protective Order that the parties negotiated and Judge Leete entered a year ago for resolution of a clawback demand. Whether Judge Leete simply reinforces his earlier privilege rulings, or conducts a document-by-document review is up to him. In the meantime, we have complied with Penn State's directive not to use or distribute the documents that are the subject of your clawback demand pending his determination.

Trish

Trish Maher | King & Spalding LLP  
1700 Pennsylvania Ave., N.W. | Washington, D.C. 20006  
[pmaher@kslaw.com](mailto:pmaher@kslaw.com) | 202-626-5504

**From:** Doblack, Donna M. [mailto:DDoblack@ReedSmith.com]  
**Sent:** Tuesday, August 18, 2015 1:37 PM  
**To:** Maher, Trish  
**Cc:** Daniel I. Booker; Scott, Michael T.; Sheridan, William J.  
**Subject:** Paterno - Plaintiffs' Request For In Camera Review

Trish:

Attached is a list of documents that the University inadvertently produced on June 29 that the University **does not** contend are privileged. The University reserves the right to supplement this list as warranted, but this provides a good start. The University also hereby re-designates the documents on the attached list as "Confidential," not "Highly Confidential-Attorneys' Eyes Only."



I want to also take this opportunity to raise a few matters with respect to the plaintiffs' request for an in camera review of the documents the University **does** contend are privileged.

**First, with respect to the 120+ interview notes and draft chapters of the Freeh report.** All of these materials are contained within the documents Pepper Hamilton produced (or will be producing shortly) in compliance with Judge Leete's order. Later this week, we will provide you with a cross-reference showing where in the Pepper Hamilton productions these materials appear. Given that the plaintiffs now have these materials from another source (Pepper Hamilton), we see no legitimate reason why plaintiffs *also* need to keep the copies that the University produced inadvertently. Accordingly, we ask that the plaintiffs reconsider their position with respect to these materials and promptly return or destroy them.

**Second, with respect to the assorted emails that appear at Bates #'s PSUPAT130136-132202.** These emails don't have any conceivable relevance to the plaintiffs' claims in this litigation. To the contrary, the vast majority of them deal with completely ancillary matters (the Board of Trustees 2012 election, Coach Paterno's death and funeral, etc., etc.). This collection of documents, however, contains hundreds upon hundreds of communications between University representatives (including Trustees) and the University's lawyers (including but not limited to Frank Guadagnino and Lanny Davis, et al). Those communications plainly are protected by the attorney-client privilege and/or the attorney work product doctrine. Indeed, the plaintiffs have never even *argued* that such communications are *not* privileged, and Judge Leete has never issued a ruling to that effect. In short, we simply see no basis whatsoever for plaintiffs' contention that they are entitled to keep these inadvertently-produced privileged documents. Moreover, any in camera review of these documents necessarily would need to be done on a document-by-document basis, which would be extremely time-consuming. Given that the documents plainly are not relevant in the first place, we see no reason why the court should be asked to spend a considerable amount of time reviewing them in camera. For this reason, we ask that the plaintiffs reconsider their position with respect to these materials as well, and promptly return or destroy them. If there are individual documents within this Bates range that plaintiffs believe are relevant, responsive to their document requests, and not privileged, we are amenable to discussing those documents with you. By and large, however, we believe these documents should be returned or destroyed.

In closing, it is the University's position that that a full-blown in camera review of the June 29 production under these circumstances would be a highly inappropriate use of the Court's resources. The University does not believe that any in camera review is warranted. At the very least, any such effort should be very circumscribed and limited to perhaps a handful of documents.

Please let us know your position at your earliest opportunity.

Thanks and regards,  
Donna

\* \* \*

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**DOCUMENTS LISTED IN CLAWBACK LETTER FOR WHICH PENN  
STATE/PEPPER HAMILTON DO NOT CLAIM A PRIVILEGE**

**August 18, 2015**

129056-129078

129085-129157

129158-129159

129160

129161-129194

129195-129207

129226-129252

129263-129264

129282-129286

129287

129288-129378

129379-129448

129449-120452

129454-129455

129591-129597

129606-129610

129681-129690

129713-129719

129730-129819

129820-129885

129956-129957

129964-129983

129992-129994

129995-129999

130005-130008

130009-130013

130019-130021

130088

130089

130094-130104

130105-130119

132203-132204

132205-132213

132343-132344

## **NON-PRIVILEGED EMAILS**

130137-38

130140-130151

130153-130163

130165-130168

130172-130176

130185-130186

130190

130194

130198-130199

130203-130205

130217-130218

130221

1302230

130230-130239

130241-130242

130249-130255

130261-130262

130264-130268

130272-130276

130281

130291-130300

130307-130327

130331-130336

130340-130342

130346-130347

130351-130354

130361

130364

130367-130374

130379-130381

130385-130387

130390-130393

130396-130430

130436-130450

130453-130457

130459-130465

130467-130471

130487-130497

130500-130501

130506

130511

130516-130519

130526-130543

1305450-130550

130553-130563

130565-130567

130570-130574

130577

130580-130586

130589-130594

130596-130604

130606-130638

130640-130643

130645-130654

130657-130667

130669-130677

130679-130688

130690-130695

130699-130700

130703

130706-130708

130711-130713

130715-130723

130727-130728

130733

130735-130736

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130748-130751

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130807-130817  
130819-130821  
130825-130830  
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130842-130848  
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130868-130874  
130876-130881  
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130895-130896  
130898-130901  
130903-130909  
130911-130918  
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131021-131022

131024

131026-131030

131041-131044

131047-131052

131055-131057

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131064-131065

131067

131073-131074

131077

131083-131084

131094-131096

131098

131099-131100

131103-131109

131112-131114

131116-131125

131129

131134

131136-131138

131142

131144-131146

131150

131152

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131159-131161

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131168-131169

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131193-131195

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131202-131203

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131457-131471

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131862-131895  
131903-131905  
131907-131949  
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131985-131988  
132005-132006  
132040-132043  
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132075  
132083-132084  
132093

132101

132103-132106

132108-132202



PRIVILEGED AND CONFIDENTIAL

November 18, 2011

Steve A. Garban  
Chairman, Board of Trustees  
and  
Paula R. Ammerman  
Director, Office of the Board of Trustees  
The Pennsylvania State University  
205 Old Main  
University Park, PA 16802

Re: Engagement to Perform Legal Services

Dear Mr. Garban and Ms. Ammerman:

*Investigative Task Force*

*Task Force*

We are pleased that the Board of Trustees of The Pennsylvania State University ("Trustees", "you" or "your"), on behalf of the Special Committee established by the Trustees (the "Special Committee"), has engaged us to represent the Special Committee. This is a new engagement for Freeh Sporkin & Sullivan, LLP ("FSS"). Accordingly, this is to set forth the basic terms upon which FSS has been engaged to represent the Special Committee, including the anticipated scope of our services and billing policies and practices that will apply to the engagement. Although our services are limited at this time to the specific matter described herein, the general terms of this letter will apply to any other matters that FSS may hereafter undertake to handle for the Trustees or the Special Committee.

1. Scope of Engagement. FSS has been engaged to serve as independent, external legal counsel to the Special Committee to perform an independent, full and complete investigation of 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 results of FSS's investigation will be provided in a written report to the Special Committee and other parties as so directed by the Special Committee. The report will contain FSS's 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. FSS's report also will provide recommendations to the Special Committee and Trustees for actions to be taken to attempt to ensure that those and similar failures do not occur again.

EXHIBIT

3

Task Force  
It is understood by FSS, the Trustees and the ~~Special Committee~~ that FSS will act under the sole direction of the ~~Special Committee~~ in performing the services hereunder. It also is understood by FSS, the Trustees and the ~~Special Committee~~ that FSS's investigation will be completed in parallel to, but independent of, any other investigation that is conducted by any policy agencies, governmental authorities or agencies, or other organizations within or outside of (e.g., The Second Mile) PSU, and will not interfere with any such other investigations.

Task Force  
It also is understood by FSS, the Trustees and the ~~Special Committee~~ that during the course of FSS's independent investigation performed hereunder, FSS will immediately report any discovered evidence of criminality to the appropriate law enforcement authorities, and provide notice of such reporting to the ~~Special Committee~~. If FSS's investigation identifies any victims of sexual crimes or exploitation, FSS will immediately report such information to the appropriate law enforcement authorities, and provide notice of such reporting to the ~~Special Committee~~.

FSS also will communicate regarding its independent investigation performed hereunder with media, police agencies, governmental authorities and agencies, and any other parties, as directed by the ~~Special Committee~~. However, it also is understood by FSS, the Trustees and the ~~Special Committee~~ that neither the Trustees nor the ~~Special Committee~~ will interfere with FSS's reporting of evidence of criminality or identities of any victims of sexual crimes or exploitation discovered throughout the course of FSS's independent investigation performed hereunder, as discussed in the paragraph immediately above.

The precise time frame in which FSS's services will be performed cannot presently be determined. However, FSS, the Trustees and the ~~Special Committee~~ all recognize that the investigation must be completed in a thorough manner, but also as expeditiously as possible.

2. Rates. It is anticipated that Louis J. Freeh will be the lead and billing attorney on this engagement. Other FSS, and other non-FSS professionals, will be assigned from time to time to assist in the representation. FSS will charge you for the services provided under the terms of this engagement letter based on the hourly rates of the professionals working on this matter, plus reasonable expenses as described below in the "Disbursements" section of this engagement letter. The hourly rates that will be charged in connection with this matter are as follows: Mr. Freeh -- [REDACTED] USD per hour; other FSS partners -- [REDACTED] USD per hour; investigators and FSS non-partner lawyers -- [REDACTED] USD per hour; and paraprofessional support staff -- [REDACTED] USD per hour. We reassess our hourly rates from time to time and adjustments are made when we believe such adjustments are appropriate. These adjustments may be reflected in the billing rates utilized to determine our charges to you during the course of our engagement. FSS bills in quarter of an hour increments.

3. Disbursements. In addition to fees for our services, we also charge separately for certain costs incurred on the ~~Special Committee's~~<sup>Third Party</sup> behalf, such as travel related expenses. Our invoices also will include costs incurred on the ~~Special Committee's~~<sup>Third Party</sup> behalf for services and materials provided by third-party vendors, including but not limited to courier and messenger service, airfreight service, outside copy service, shipping and express mail, filing fees, deposition transcripts, and court reporters. Under certain circumstances, for certain large disbursements, we may either bill you directly or ask you to advance funds outside our normal billing cycle. In addition to the third-party disbursements noted above, other charges that will be reflected on our invoices include the following:

- International calling costs will be charged at the standard provider rates.
- Computerized research costs will be charged at the standard provider rates.
- Office supply costs are not passed on to a client unless a purchase is specifically required for a particular engagement.

We make every effort to include disbursements in the invoice covering the month in which they are incurred. However, there may be occasions when disbursements may not be posted in the billing system until the following month. If the required payment of our invoices is based on the completion of a specific assignment, pursuant to any alternative timing arrangements that have been established and are described in the "Rates" section of this engagement letter, an estimate of unposted disbursements in addition to an estimate of unposted charges for services will be included in our invoice payable at completion.

4. Payment Terms. Generally, our invoices are prepared and forwarded to our clients monthly covering fees and costs incurred for the prior month. Any alternative timing arrangements for invoicing that have been established are described in the "Rates" section of this engagement letter.

Unless stated differently in the "Rates" section of this engagement letter, our invoices for service are due and payable within thirty (30) days of receipt. Clients whose invoices are not paid within this period may have a late charge assessed on their unpaid balance at the rate of 1% per month. The intent of the late charge is to assess on an equitable basis additional costs incurred by FSS in carrying past-due balances.

FSS requires payment at the conclusion of this engagement of all accrued and unpaid fees and disbursements to the extent invoiced, plus such additional amounts of fees and disbursements as shall constitute our reasonable estimate of fees and disbursements incurred or to be incurred by us through the conclusion of this engagement (though such estimate shall not thereafter preclude a final settling of accounts between us when final detailed billing information is available).

During this engagement, the Trustees and the ~~Special Committee~~<sup>Task Force</sup> may request from us an estimate of fees and/or costs that we anticipate incurring on the ~~Special Committee's~~<sup>Task Force's</sup> behalf. While we may provide an estimate for your or the ~~Special Committee's~~<sup>Task Force's</sup> general planning purposes, our estimate is only a preliminary approximation based on facts that are currently available and the currently anticipated level of work required to complete the engagement. In no event is an estimate to be construed as a commitment of FSS to render services at a minimum or maximum cost.

Unless otherwise agreed, our invoice will be presented in our standard format. If this format is not sufficient for your needs, we will work with you to find one that is. FSS will review individually any requests to use a third party vendor for electronic billing. Depending on the vendor requested, we might provide alternative recommendations in order to insure that electronic billing through a third party is both practical and efficient. All charges related to using a third party vendor for this purpose, including initial start-up costs and maintenance fees, will be payable by the Trustees directly.

Where required, your billing statement may include applicable international taxes such as VAT, GST, and consumption tax, etc.

Upon request, we will forward our billing statements to a third party designated by you who is assuming payment responsibility for your or the ~~Special Committee's~~<sup>Task Force's</sup> legal expenses, e.g., an insurance carrier who holds your liability coverage. In the event that timely payment is not received from the third party, we will look to the Trustees for payment of our legal fees and costs and you agree that you are responsible for prompt payment in that event.

All payments should be sent directly to: 3711 Kennett Pike, Suit 130, Wilmington, Delaware 19807. If you choose to pay by wire transfer, wire transfer instructions are as follows:

Account Holder: Fresh Sporkin & Sullivan, LLP

Bank:

Account No.:

ABA/Routing No.:  
(For Domestic Payments)

SWIFT Code:  
(For International Payments)

The billing attorney assigned to this matter will review your billing statement before it is sent to you and make any adjustments he or she views as appropriate. If you have

any questions concerning any invoice item, please do not hesitate to contact the billing attorney.

5. Retention of Third Parties. We may determine that it is necessary to involve third parties to assist us in performing services in connection with this engagement. If that determination is made, we will notify the ~~Special Committee~~ <sup>Task Force</sup> promptly to discuss the proposed third parties, the expected scope of the services to be provided by the third parties and the related fees and costs expected to be charged by those third parties. FSS will consult with the ~~Special Committee~~ <sup>Task Force</sup> about any changes to the third parties' scope of services or related fees and costs that may occur throughout the course of this engagement.

For the purpose of providing legal services to the ~~Special Committee~~ <sup>Task Force</sup>, FSS will retain Freeh Group International Solutions, LLC ("FGIS") to assist in this engagement. It should be noted that Louis J. Freeh is a partner and member in FSS and FGIS, respectively, and has a controlling interest in both. FSS is a law firm and FGIS is a separate investigative and consulting group.

As described in the "Disbursements" section of this engagement letter, our invoices will include fees and costs incurred on the ~~Special Committee's~~ <sup>Task Force's</sup> behalf for services and materials provided by third parties, unless stated otherwise in the "Rates" section of this engagement letter, or in a separate writing signed by FSS and the Trustees.

6. Confidentiality and Responding to Subpoenas and Other Requests for Information. The work and advice which is provided to the ~~Special Committee~~ <sup>Task Force</sup> under this engagement by FSS, and any third party working on behalf of FSS to perform services in connection with this engagement, is subject to the confidentiality and privilege protection of the attorney-client and attorney work product privileges, unless appropriately waived by the parties or otherwise determined by law. In the event that FSS, or any third party working on behalf of FSS to perform services in connection with this engagement, is required to respond to a subpoena or other formal request from a third party or a governmental agency for our records or other information relating to services we have performed for the ~~Special Committee~~ <sup>Task Force</sup>, or to testify by deposition or otherwise concerning such services, to the extent permitted by law, we will provide you and the ~~Special Committee~~ <sup>Task Force</sup> notice of such a request and give you and the ~~Special Committee~~ <sup>Task Force</sup> a reasonable opportunity to object to such disclosure or testimony. It is understood that you will reimburse us for our time and expense incurred in responding to any such demand, including, but not limited to, time and expense incurred in search and photocopying costs, reviewing documents, appearing at depositions or hearings, and otherwise litigating issues raised by the request.
7. General Responsibilities of Attorney and Client. FSS will provide the above-described legal services for the ~~Special Committee's~~ <sup>Task Force's</sup> benefit, for which the Trustees will be billed in the manner set forth above. We will keep the ~~Special Committee~~ <sup>Task Force</sup>

apprised of developments as necessary to perform our services and will consult with the ~~Special Committee~~ <sup>Task Force</sup> as necessary to ensure the timely, effective and efficient completion of our work. However, although we will make every reasonable effort to do so, we cannot guarantee that we will be able to provide specific results and the Trustees and the ~~Special Committee~~ <sup>Task Force</sup> acknowledge that FSS does not promise any result.

We understand that the ~~Special Committee~~ <sup>Task Force</sup> will provide us with such factual information and documents as we require to perform the services, will make any business or technical decisions and determinations as are appropriate to facilitate the completion of our services, and will remit payment of our invoices when due, pursuant to the terms of this engagement letter.

Moreover in connection with any investigation, civil or criminal action, administrative proceeding or any other action arising out of this matter, the Trustees have agreed to indemnify FSS, its partners, employees, agents and third-party vendors who have provided or are providing services in connection with this engagement, for all costs, expenses, attorney's fees (to be paid as accrued and billed) and judgments, including any amounts paid in settlement of any claims. This obligation shall survive the termination of this engagement.

8. Waiver of Future Conflicts. Our agreement to represent the ~~Special Committee~~ <sup>Task Force</sup> is conditioned upon our mutual understanding that FSS is free to represent any clients (including your adversaries) and to take positions adverse to either you or an affiliate in any matters (whether involving the same substantive areas of law for which you have retained us on behalf of the ~~Special Committee~~ <sup>Task Force</sup> or some other unrelated areas, and whether involving business transactions, counseling, litigation or otherwise), which do not involve the same factual and legal issues as matters for which you have retained us on behalf of the ~~Special Committee~~ <sup>Task Force</sup> or may hereafter retain us. In this connection, you and the ~~Special Committee~~ <sup>Task Force</sup> should be aware that we provide services on a wide variety of legal subjects, to a number of clients, some of whom are or may in the future operate in the same areas of business in which you are operating or may operate. Subject to our ethical and professional obligations, we reserve the right to withdraw from representing the ~~Special Committee~~ <sup>Task Force</sup> should we determine that a conflict of interest has developed for us.
9. Engagement Limited to Identified Client. This will also confirm that, unless we otherwise agree in writing, our engagement is solely related to the ~~Special Committee~~ <sup>Task Force</sup> established by The Pennsylvania State University Board of Trustees and the specific matter described above. By entering into this engagement, we do not represent any individuals or entities not named as clients herein, nor do we represent any owner, officer, director, founder, manager, general or limited partner, employee, member, shareholder or other constituent of any entity named as a client in this letter, in their individual capacities or with respect to their individual affairs.

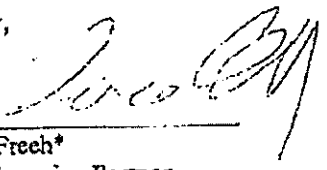
10. Termination. Our engagement may be terminated at any time by FSS or the Special Committee upon written notice and, with respect to FSS, subject to our ethical and professional obligations. In addition to other reasons, the Trustees and the Special Committee agree that FSS may terminate its legal services and withdraw from this engagement in the event our invoices are not paid in a timely manner, pursuant to the terms of this engagement letter. Upon termination, all fees and expenses due and owing shall be paid promptly. Your and the Special Committee's acceptance of this engagement letter constitutes your and the Special Committee's understanding of, and consent to, the particular terms, conditions, and disclosure herein.

11. Client Files. In the course of our representation of the Special Committee, we will maintain a file containing, for example, correspondence, pleadings, agreements, deposition transcripts, exhibits, physical evidence, expert reports, and other items reasonably necessary for the Special Committee's representation ("Client File"). We may also place in such file documents containing our attorney work product, mental impressions or notes, drafts of documents, and internal accounting records ("Work Product"). The Special Committee is entitled upon written request to take possession of its Client File, subject to our right to make copies of any files delivered to the Special Committee. The Trustees and the Special Committee agree that the Work Product is and shall remain our property. Under our document retention policy, we normally destroy files ten years after a matter is closed, unless other arrangements are made with the client.

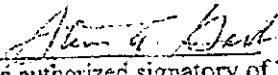
FSS, of course, is delighted to be asked to provide legal services to the Special Committee, and we are looking forward to working with the Special Committee on this engagement. While ordinarily we might prefer to choose a less formal method of confirming the terms of our engagement than a written statement such as this, it has been our experience that a letter such as this is useful both to FSS and to the client. Moreover, in certain instances, FSS is required by law to memorialize these matters in writing. In any event, we would request that the Trustees and the Special Committee review this letter and, if it comports with your and the Special Committee's understanding of our respective responsibilities, so indicate by returning a signed copy to me at your earliest convenience so as not to impede the commencement of work on behalf of the Special Committee. If you or the Special Committee have any questions concerning this engagement letter, or should the Special Committee ever wish to discuss any matter relating to our legal representation, please do not hesitate to call me directly, or to speak to one of our other attorneys who is familiar with the engagement.

Task Force  
Again, we look forward to serving the Special Committee and thank the Special Committee and the Trustees for looking to PSS to assist the Special Committee in this matter.

Sincerely,

  
Louis J. Frech\*  
Senior Managing Partner  
Frech Sporkin & Sullivan, LLP

APPROVED AND AGREED TO ON BEHALF OF  
The Board of Trustees of The Pennsylvania State University:

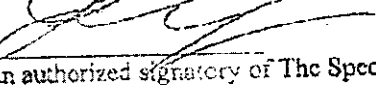
By:   
an authorized signatory of The Board of Trustees of The Pennsylvania State University

Printed Name: Steve A. Garban

Title: Chair, Board of Trustees  
The Pennsylvania State University

Date: 12/2/11

Investigation Task Force  
APPROVED AND AGREED TO ON BEHALF OF  
The Special Committee established by  
The Board of Trustees of The Pennsylvania State University:

By:   
an authorized signatory of The Special Committee established by  
The Board of Trustees of The Pennsylvania State University

Printed Name: K.C. Frazier

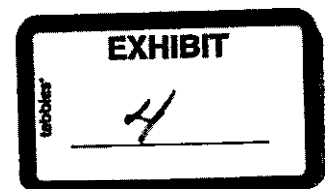
Title: Chair, Special Investigations Task Force

Date: 12/2/11

\* Licensed to practice law in New York, New Jersey and Washington, DC only.

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

Freeh Sporkin & Sullivan, LLP  
July 12, 2012



particular regard to institutional governance, decision making, oversight and culture.

- Identify any failures and their causes on the part of individuals associated with the University at any level or in any office, or gaps in administrative processes that precluded the timely and accurate reporting of, or response to, reports of these incidents.

The Special Investigative Counsel implemented the investigative plan by:

- Conducting over 430 interviews of key University personnel and other knowledgeable individuals to include: current and former University Trustees and Emeritus Trustees; current and former University administrators, faculty, and staff, including coaches; former University student-athletes; law enforcement officials; and members of the State College community at the University Park, Behrend, Altoona, Harrisburg and Wilkes-Barre campuses, and at other locations in Delaware, Pennsylvania, New York, Maryland and the District of Columbia, and by telephone;
- Analyzing over 3.5 million pieces of pertinent electronic data and documents;
- Reviewing applicable University policies, guidelines, practices and procedures;
- Establishing a toll-free hotline and dedicated email address to receive information relevant to the investigation, and reviewing the information provided from telephone calls and emails received between November 21, 2011 and July 1, 2012;
- Cooperating with law enforcement, government and non-profit agencies, including the National Center for Missing and Exploited Children (NCMEC), and athletic program governing bodies;
- Benchmarking applicable University policies, practices and procedures against those of other large, public and private universities and youth-serving organizations; and
- Providing interim recommendations to the Board in January 2012 for the immediate protection of children.

The information in this report was gathered under the applicable attorney-client privilege and attorney work product doctrine, and with due regard for the privacy of the interviewees and the documents reviewed. All materials were handled and

maintained in a secure and confidential manner. This report sets forth the essential findings of the investigation, pursuant to the appropriate waiver of the attorney-client privilege by the Board.

Citations in this report have been redacted to protect the identity of people who spoke with the Special Investigative Council. Citations also include references to the internal database maintained by the Special Investigative Council to collect and analyze documents and emails. The references include citation to a unique identifying number assigned to each individual piece of information and are located in the endnotes and footnotes of this report.

IN THE COURT OF COMMON PLEAS OF CENTRE COUNTY, PENNSYLVANIA

The ESTATE of JOSEPH PATERNÒ, et al.,

Plaintiffs,

vs.

NATIONAL COLLEGIATE ATHLETIC  
ASSOCIATION ("NCAA"), et al.,

Defendants.

Docket No. 2013-2082

Type of Case: Commercial

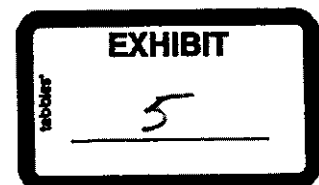
**DECLARATION OF OMAR Y. MCNEILL**

I, Omar Y. McNeill, do hereby declare and say as follows based on personal knowledge:

1. I am an adult citizen of Delaware and have been admitted to practice law in Delaware since 1992. I am currently on inactive status because I am not engaged in the practice of law at this time.

2. From 2009 to 2012, I was an attorney with Freck Sporkin & Sullivan, LLP ("FSS"), a partnership engaged in the practice of law, ultimately holding the title of Partner and General Counsel. In late 2011, I began work on an investigation at The Pennsylvania State University and served for the next eight months as the lead project manager of this engagement. I was a practicing attorney during the entire course of the investigation.

3. On or about December 2, 2011, the Board of Trustees (the "Board") of The Pennsylvania State University ("Penn State" or the "University"), on behalf of a Special Investigations Task Force (the "Task Force") created by the Board, engaged FSS as counsel to perform an independent investigation, as set forth in an engagement letter.



4. As part of its engagement as legal counsel, FSS was to provide the results of the investigation in a written report to the Task Force and to other parties as the Task Force may direct. Pursuant to the engagement letter, FSS was also engaged to "provide recommendations to the Task Force and Trustees for actions to be taken to attempt to ensure that those and similar failures do not occur again."

5. FSS's engagement was conducted in anticipation of litigation. Indeed, as the investigation took place, litigation and criminal investigations were already pending and more litigation was anticipated.

6. The work and advice provided under the engagement by FSS and any third party working on behalf of FSS to perform services in connection with the engagement was, again pursuant to the engagement letter, to be "subject to the confidentiality and privilege protection of the attorney-client and attorney work product privileges, unless appropriately waived by the parties or otherwise determined by law." If FSS were required to respond to a subpoena or other formal request from a third party or governmental agency for FSS records or other information relating to the services performed for the University, or to testify by deposition or otherwise concerning such services, FSS was to provide the University with notice of the request to provide a reasonable opportunity to object to such disclosure or testimony.

7. FSS attorneys and staff communicated with members of the Special Investigative Task Force from time to time in confidence.

8. The Board and FSS understood and expected that FSS's work would be subject to the attorney-client privilege and the work product doctrine, and FSS conducted the investigation accordingly. It was routine practice, for instance, for the investigators to advise Penn State employee witnesses that information they provided in interviews would be protected

by an attorney-client privilege that belonged to the University, and for the investigators to advise witnesses that the interviews were confidential. The notes taken by FSS attorneys, staff, and third parties working on behalf of FSS incorporated those individuals' mental impressions.

9. FSS took other steps to protect the confidentiality and attorney-client and attorney work product privileges of the engagement as well. FSS attorneys, staff, and third parties working on behalf of FSS were advised in writing of confidentiality expectations for the engagement. The attorneys and staff worked within a secured facility with access controlled by electronic locks. Physical evidence was stored in a locked room within the secured facility. The attorneys and staff frequently were briefed on the importance of maintaining confidentiality on the engagement.

10. During the course of the investigation, I participated in telephone conference calls on multiple occasions with Donald Remy, General Counsel of the National Collegiate Athletic Association ("NCAA") at the time, and Jonathan Barrett, outside counsel for the Big Ten Conference ("Big Ten"). I participated in these calls at the direction of the Task Force to cooperate with the NCAA and the Big Ten. These calls did not, however, in any way either compromise the independence of the investigation or result in a waiver of the attorney-client or work product privileges. Although initially scheduled to take place on a weekly basis during the course of the investigation, the conference calls were frequently canceled.

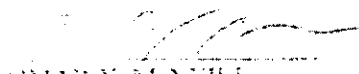
11. During the conference calls with Messrs. Remy and Barrett, which lasted on average approximately fifteen minutes, I informed them in general terms about the progress of the investigation. I did not provide them with detailed information nor did I reveal our work product to them. In particular, to the best of my recollection, I did not provide the names of specific individuals that we interviewed or that we were scheduled to interview. Instead, I

informed Messrs. Remy and Barrett of the general categories of personnel that we were interviewing, but I did not reveal individual names and I did not disclose the substance of any of the interviews we conducted.

12. My only recollection of the discussion of interviews of specific named individuals is that Mr. Remy or Mr. Bartlett inquired whether we intended to interview Graham Spanier, Tim Conley or Gary Schultz and I told them that we were attempting to interview each of these individuals.

13. I hereby state that the facts above set forth are true and correct to the best of my knowledge, information and belief and that I expect to be able to prove the same at a hearing held in this matter. I understand that the statements herein are made subject to the penalties of 18 Pa.C.S. § 4904 relating to unsworn falsification to authorities.

Date: December 1<sup>st</sup>, 2014

  
OMAR Y. MCNELLI

1 IN THE COMMONWEALTH COURT OF PENNSYLVANIA

2 No. 1 M.D. 2013

3 JAKE CORMAN, in his official capacity  
4 as Senator from the 34th Senatorial  
5 District of Pennsylvania and Chair  
6 of the Senate Committee on  
7 Appropriations; and ROBERT M.  
8 McCORD, in his official capacity as  
9 Treasurer of the Commonwealth of  
10 Pennsylvania,

11 Plaintiffs,

12 v.

13 THE NATIONAL COLLEGIATE ATHLETIC  
14 ASSOCIATION,

15 Defendant.

16 v.

17 PENNSYLVANIA STATE UNIVERSITY,  
18 Defendant.

19 X

20 \*\* REVISED \*\*

21 Thursday, November 20, 2014

22 9:01 a.m.

23 Deposition of Donald Remy

24 Job No: 86979

25 Reported by: Randi Garcia



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Thursday, November 20, 2014

9:01 a.m.

Deposition of DONALD REMY, ESQUIRE taken by  
Plaintiff, at the offices of Latham & Watkins, LLP,  
555 Eleventh Street, NW, Washington, D.C.,  
before Randi J. Garcia, Registered Professional  
Reporter, and Notary Public in and for the District  
of Columbia, beginning at approximately 9:01 a.m.,  
when were present on behalf of the respective  
parties:

1 A P P E A R A N C E S:  
2 ATTORNEYS FOR PLAINTIFF.  
CONRAD O'BRIEN  
3 BY: MATTHEW HAVERSTICK, ESQ  
MARK SEIBERLING, ESQ  
4 ANDREW KABNICK GARDEN, ESQ  
1500 Market Street  
5 Philadelphia, PA 19102  
6  
7

8 ATTORNEYS FOR NCAA.  
LATHAM & WATKINS  
9 BY: EVERETT JOHNSON, ESQ  
BRIAN KOWALSKI, ESQ  
10 SARAH GRAGERT, ESQ  
555 Eleventh Street, N.W.  
11 Washington, D.C. 20004  
12  
13

14 and -  
15 SCOTT BEARBY  
ASSOCIATE GENERAL COUNSEL NCAA  
16 P.O. BOX 6222  
Indianapolis, IN 46206  
17

18 and -  
19 KILLIAN & GEPHART  
BY: THOMAS SCOTT, ESQ  
20 218 Pine Street  
Harrisburg, PA 17108  
21  
22  
23  
24

25 ///

1 (Continued)  
 2 ATTORNEYS FOR PENN STATE.  
 REED SMITH  
 3 BY: DONNA DOBLICK, ESQ  
 225 Fifth Avenue  
 4 Pittsburgh, PA 15222

5  
 6  
 7 Also Present:  
 8 Kevin M. McKenna, Esquire

9  
 10 I N D E X

|    |                      |      |
|----|----------------------|------|
| 11 | DONALD REMY, ESQUIRE |      |
| 12 | DIRECT EXAMINATION   | PAGE |
| 13 | By Mr. Haverstick    | 6    |

1 can provide you data and information to 12:23:20  
2 understand how we traditionally examine those 12:23:22  
3 types of issues." 12:23:25  
4 Q Freeh Group, as best as you recall, 12:23:29  
5 solicited from you your assistance -- your, 12:23:32  
6 NCAA's assistance -- in educating Freeh Group on 12:23:34  
7 NCAA bylaws issues? 12:23:39  
8 A I don't recall whose idea it was. I 12:23:42  
9 don't recall if it was our idea, if it was their 12:23:44  
10 idea, if it was part of our original thought 12:23:46  
11 process about how we would engage. 12:23:49  
12 But the Freeh Group said, "Okay. We can 12:23:52  
13 receive that information that might be helpful 12:23:55  
14 to us." 12:23:57  
15 Q Was the idea of NCAA participation in 12:23:59  
16 witness interviews -- shadowing as you call 12:24:04  
17 it -- rejected? 12:24:07  
18 A It did not happen. 12:24:09  
19 Q Did any of the elements that you have 12:24:13  
20 described as typical, in your internal 12:24:17  
21 investigative process in which NCAA 12:24:21  
22 participates, get folded into the interaction 12:24:23  
23 between Freeh Group and NCAA? 12:24:27  
24 A Status updates. 12:24:31  
25 Q We'll talk about those. 12:24:32

1           Sharing of documents?           12:24:34

2           A     We gave them educational information.           12:24:38

3     They never shared any documents with us, that I           12:24:40

4     recall of.           12:24:42

5           Q     Did they ever give you the substance of           12:24:43

6     any documents, even if they didn't show you the           12:24:44

7     documents themselves?           12:24:47

8           A     Not that I recall.           12:24:48

9           Q     Did they ever give you, to your           12:24:50

10    recollection, summaries of interviews?           12:24:53

11          A     No. No.           12:24:56

12          Q     No interview notes?           12:24:58

13          A     No.           12:24:59

14          Q     How about during status updates? Any           12:25:04

15    type of preliminary results?           12:25:09

16          A     No.           12:25:12

17          Q     Were the discussions, in what we'll soon           12:25:13

18    talk about are the weekly phone calls, about           12:25:16

19    Freeh Group's assessment of potential NCAA           12:25:25

20    violations?           12:25:29

21          A     Not that I recall, no.           12:25:29

22          Q     Assessments of Freeh Group's opinion on           12:25:32

23    whether there was a lack of institutional           12:25:34

24    control at Penn State?           12:25:35

25          A     No. I mean, let me do it this way.           12:25:37

IN THE COMMONWEALTH COURT  
OF PENNSYLVANIA

JAKE CORMAN, in his :  
official capacity as :  
Senator from the 34th :  
Senatorial District of :  
Pennsylvania and Chair :  
of the Senate Committee :  
on Appropriations; and :  
ROBERT M. McCORD, in his : NO. 1 M.D. 2013  
official capacity as :  
Treasurer of the :  
Commonwealth of :  
Pennsylvania :  
Plaintiffs, :

vs. :

NATIONAL COLLEGIATE :  
ATHLETIC ASSOCIATION, :  
Defendant, :

vs. :

PENNSYLVANIA STATE :  
UNIVERSITY, :

Defendant. :

December 17, 2014

Oral deposition of OMAR MCNEILL,  
taken at the offices of Proctor Heyman LLP,  
300 Delaware Avenue, Wilmington, Delaware  
19103, beginning at 1:00 p.m., before LINDA  
ROSSI RIOS, a Federally Approved RPR, CCR and  
Notary Public.

Job No. 88377

EXHIBIT

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1 A P P E A R A N C E S :

2 For Plaintiff

3 CONRAD O'BRIEN

BY: MATTHEW HAVERSTICK, ESQUIRE

4 MARK SEIBERLING, ESQUIRE

1500 Market Street

5 Philadelphia, PA 19102

6

7

8

9 For Defendant, NCAA

10 LATHAM & WATKINS

BY: EVERETT JOHNSON, ESQUIRE

11 SARAH GRAGERT, ESQUIRE

555 Eleventh Street, NW

12 Washington, D.C. 20004

13

14

15

For Defendant, Penn State

16

REED SMITH

17 BY: DONNA DOBLICK, ESQUIRE

DANIEL BOOKER, ESQUIRE

18 225 Fifth Avenue

Pittsburgh, PA 15222

19

20

21

For the Witness:

22

PEPPER HAMILTON

23 BY: THOMAS ZEMAITIS, ESQUIRE

3000 Two Logan Square

24 Philadelphia, PA 19103

25

1     A L S O     P R E S E N T :  
2

3             KEVIN M. MCKENNA, ESQUIRE

4             JORDAN MUMMERT, Videographer  
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1 discussion of the Big Ten. And that's the 13:48:07  
2 extent of my recollection. 13:48:12

3 Q. What was the attorney-client 13:48:14  
4 privilege issue that you discussed? What was 13:48:16  
5 the concern? 13:48:19

6 A. That we, by sharing information 13:48:20  
7 with the NCAA, would violate the 13:48:23  
8 attorney-client privilege that was owned by 13:48:28  
9 our client. 13:48:30

10 Q. Was there a decision reached on 13:48:30  
11 whether information could be shared with the 13:48:32  
12 NCAA? 13:48:34

13 A. During that meeting, I don't 13:48:35  
14 think that there were any decisions made. I 13:48:39  
15 think that -- I do recall that we left the 13:48:43  
16 meeting with sort of a follow up for us to 13:48:49  
17 sort of consider what we could do, if 13:48:53  
18 anything. I do recall saying we have to go 13:48:56  
19 back to our client and we might have set a 13:48:59  
20 firm date for us to get back, but I don't 13:49:02  
21 recall that. 13:49:05

22 Q. Ultimately was there a decision 13:49:05  
23 about whether you could communicate 13:49:07  
24 information to NCAA and Big Ten? 13:49:10

25 A. Yes. 13:49:12

1 Q. And what was the decision? 13:49:12

2 A. The decision was that at the 13:49:14

3 direction of the task force and with 13:49:18

4 permission of the task force, could provide 13:49:21

5 general updates to the NCAA, but we couldn't 13:49:24

6 go into anything that, again, would in any 13:49:26

7 way undermine the privilege. We couldn't 13:49:29

8 share information with them that would in any 13:49:32

9 way be deemed attorney work product. And we 13:49:34

10 agreed that we would have regular calls, and 13:49:42

11 I think that was the sum and substance. 13:49:47

12 Q. Tell me about the independence 13:49:49

13 issue discussed, what was the conversation 13:49:52

14 about on that topic? 13:49:55

15 A. I don't remember the details. 13:49:56

16 I know generally it was, as I mentioned 13:49:59

17 earlier, Freeh, Sporkin & Sullivan was 13:50:02

18 brought in to do an independent investigation 13:50:05

19 and we would not do anything that would in 13:50:08

20 any way suggest otherwise. 13:50:13

21 Q. Now, at this point was one of 13:50:13

22 the charges of Freeh, Sporkin & Sullivan to 13:50:16

23 review whether Penn State had violated any 13:50:19

24 NCAA bylaws? 13:50:23

25 A. If you're talking about, when 13:50:24

1 recall about the nature of those 16:03:36  
2 communications? 16:03:38

3 A. Certainly to anyone that was an 16:03:38  
4 employee of the university we provided the 16:03:40  
5 typical Upjohn warnings, if you will, for 16:03:50  
6 those who are familiar with those, essentially 16:03:51  
7 letting them know that the investigation was 16:03:52  
8 being conducted at the request of the 16:03:55  
9 university under the privilege that the 16:03:57  
10 university had the right to maintain or waive 16:03:59  
11 at any time and, therefore, they were to act 16:04:02  
12 accordingly. 16:04:06

13 Q. To the best of your knowledge, 16:04:06  
14 did anybody from the university ever 16:04:08  
15 authorize the Freeh firm or the Freeh Group 16:04:10  
16 to waive the attorney-client privilege? 16:04:13

17 A. They certainly permitted us to 16:04:15  
18 make the report public. But beyond that, no. 16:04:20

19 Q. To the best of your knowledge, 16:04:22  
20 did the Freeh firm ever waive the protections 16:04:28  
21 of the attorney work product doctrine? 16:04:31

22 A. No. 16:04:33

23 MS. DOBLICK: I have no further 16:04:49  
24 questions. 16:04:51  
25