



IN THE COURT OF COMMON PLEAS
OF CENTRE COUNTY, PENNSYLVANIA

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.

CIVIL DIVISION

Docket No. 2013-2082

JOINDER IN PEPPER
HAMILTON'S OPPOSITION
TO PLAINTIFFS' MOTION
TO STRIKE BLANKET
DESIGNATION OF ALL
PEPPER HAMILTON
DOCUMENTS AS "HIGHLY
CONFIDENTIAL -
ATTORNEYS EYES ONLY"

Filed on Behalf of:
The Pennsylvania State
University

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**IN THE COURT OF COMMON PLEAS
OF CENTRE COUNTY, PENNSYLVANIA**

The ESTATE of JOSEPH PATERNO; and)	CIVIL
WILLIAM KENNEY and JOSEPH V. (“JAY”))	DIVISION
PATERNO, former football coaches at)	
Pennsylvania State University,)	Docket No.
)	2013-2082
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.)	

FILED FOR RECORD
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 CENTRE COUNTY, PA

**THE PENNSYLVANIA STATE UNIVERSITY’S
JOINDER IN PEPPER HAMILTON’S OPPOSITION TO PLAINTIFFS’ MOTION TO
STRIKE BLANKET DESIGNATION OF ALL PEPPER HAMILTON DOCUMENTS AS
“HIGHLY CONFIDENTIAL – ATTORNEYS EYES ONLY”**

Non-party The Pennsylvania State University (“Penn State” or “the University”), hereby respectfully joins in the brief Pepper Hamilton LLP filed in opposition to Plaintiffs’ Motion to Strike Pepper Hamilton’s designation of documents for which the attorney-client privilege or the attorney work product are claimed as “Attorneys Eyes Only” (the “Motion”). As set forth *infra*, Penn State fully concurs with Pepper Hamilton in all respects.

First, in seeking to eliminate the “Attorneys Eyes Only” designation from all of Pepper Hamilton’s documents, plaintiffs profoundly misrepresent the terms of the Protective Order. It was never understood or agreed that the “Attorneys Eyes Only” category of documents described in the Protective Order would be limited to only those documents that contain personally identifiable information (of Sandusky’s victims or otherwise). Quite to the contrary, Pepper

Hamilton was entitled to designate as AEO any documents “the disclosure of which would create a substantial risk of serious irreparable injury to the designating party or another. . . .”

Pepper Hamilton consulted with Penn State before designating these materials as AEO, and it was jointly decided and agreed that the AEO designation was, indeed, warranted with respect to documents for which Penn State and Pepper have claimed one or more privileges. As Pepper Hamilton explains in its brief, many of the documents that are the subject of the Motion are non-verbatim notes the Freeh Firm lawyers and investigators made of interviews of hundreds of individuals – individuals, including University representatives at every level, which was undertaken, as expressly described in the Freeh report, “under the applicable attorney-client privilege and attorney work product doctrine, and with due regard for the privacy of the interviewees . . .” Plaintiffs’ Motion runs roughshod over those individuals’ very legitimate privacy interests.

Moreover, it is telling that plaintiffs have identified no way in which the continued litigation of their claims against the NCAA in this case will be hampered if access to these materials – as to which the application of the attorney-client privilege and the work product doctrine remain an open legal issue on appeal - is restricted to their counsel of record. Indeed, it bears noting in this regard that the vast majority of the documents that are the subject of the Motion *have no conceivable relevance to the plaintiffs’ remaining claims*. Indeed, plaintiffs offer no explanation as to how *any* of the internal documents generated by the Freeh Firm are relevant to their limited remaining claims against the NCAA, especially insofar as representatives of both the Freeh Firm and the NCAA have confirmed, time and again, that the Freeh Firm *did not share* any privileged or work product materials with the NCAA.

In sum, Penn State and Pepper Hamilton jointly and in good faith balanced the competing interests and considerations – including the privilege objections that are still before the Superior Court, the privacy interests of hundreds of individuals, and the lack of any demonstrated relevance of many of the materials in question - and determined in good faith that these documents warrant AEO treatment. Penn State respectfully requests that the Court respect that determination and deny the Motion. If there are *particular* AEO documents in the Pepper Hamilton productions that plaintiffs’ counsel of record believe they cannot understand without showing or describing them to their clients, Penn State and Pepper Hamilton are willing to discuss them on a document-by-document basis. Striking the AEO designations across the board, however, is not warranted or appropriate, and this Court should deny the plaintiffs’ invitation to do so.

Respectfully submitted,



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CERTIFICATE OF SERVICE

The undersigned counsel hereby certifies that on this 3d day of September, 2015, a true and correct copy of the foregoing THE PENNSYLVANIA STATE UNIVERSITY'S JOINDER IN PEPPER HAMILTON'S OPPOSITION TO PLAINTIFFS' MOTION TO STRIKE _____ was served upon the following counsel via United States mail, first class, postage prepaid:

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