

ORIGINAL



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

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,

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:**
) NCAA’s Motion to Compel the
) Production of Documents from
) Plaintiffs Jay Paterno and
) William Kenney
)
) **Filed on Behalf of:**
) National Collegiate Athletic
) Association, Mark Emmert,
) Edward Ray
)
) **Counsel of Record for this
) Party:**
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)
)

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REGISTRAR
PROthonOTARY
CENTRE COUNTY, PA

IN THE COURT OF COMMON PLEAS OF CENTRE COUNTY,
PENNSYLVANIA

ESTATE of JOSEPH PATERNO, et al.,)
) Plaintiffs,)
)
) v.)
NATIONAL COLLEGIATE ATHLETIC)
ASSOCIATION, et al.,)
) Defendants,)
)
) and)
THE PENNSYLVANIA STATE UNIVERSITY,)
) Defendant.)
)

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CLERK OF COURT
CENTRE COUNTY, PA

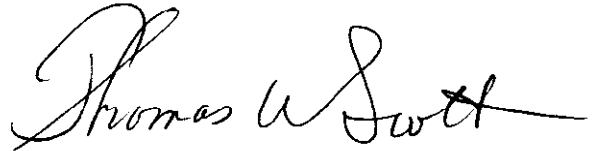
Civil Division
Docket No. 2013-
2082

**THE NATIONAL COLLEGIATE ATHLETIC ASSOCIATION'S MOTION
TO COMPEL THE PRODUCTION OF DOCUMENTS FROM PLAINTIFFS
JAY PATERNO AND WILLIAM KENNEY**

The National Collegiate Athletic Association (“NCAA”) respectfully submits this Motion to Compel the Production of Documents pursuant to Pennsylvania Rule of Civil Procedure 4019(a). In support of this Motion, the NCAA hereby incorporates by reference the attached Brief in Support of the

NCAA's Motion to Compel the Production of Documents from Plaintiffs Jay Paterno and William Kenney.

Respectfully submitted,



Dated: July 10, 2015

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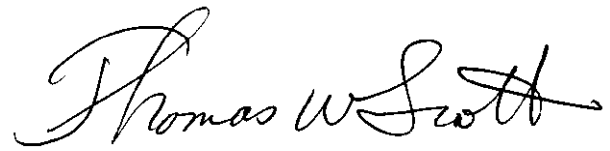
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*Counsel for the NCAA, Dr. Emmert,
and Dr. Ray*

CERTIFICATE OF NON-CONCURRENCE

Pursuant to L.R. 208.2(d), the NCAA has sought concurrence from all parties with regard to the NCAA's Motion to Compel the Production of Documents from Plaintiffs Jay Paterno and William Kenney. The NCAA sought the concurrence of Plaintiffs' counsel but was unable to receive a response prior to filing, but based upon the parties' unsuccessful attempts to resolve these issues through meet and confer teleconferences and written communications, the NCAA would not expect Plaintiffs' counsel to concur. The NCAA sought the Pennsylvania State University's concurrence but did not receive a response prior to filing.

Dated: July 10, 2015



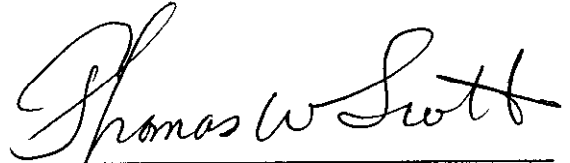
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*Counsel for the NCAA, Dr. Emmert,
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**CERTIFICATE OF COMPLIANCE WITH L.R. 208.2(e) – GOOD FAITH
ATTEMPTS TO RESOLVE THE ISSUES PRESENTED HEREIN**

Pursuant to L.R. 208.2(e), Counsel for the NCAA has sought to resolve the issues presented by this Motion by conferring with opposing counsel in a good faith effort to resolve the issues without the intervention of the Court. To that end, as set forth at length in the Brief accompanying this Motion, and specifically in the Declaration of Sarah Gragert, Esq., attached to the Motion as Ex. 1, despite numerous written entreaties and two meet and confer conferences to address discovery issues, Defendant NCAA has been unable to secure agreement from Jay Paterno or William Kenney that they will produce all requested documents.

Dated: July 10, 2015



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

EXHIBIT 1

**DECLARATION OF SARAH M. GRAGERT ACCOMPANYING THE
NATIONAL COLLEGIATE ATHLETIC ASSOCIATION'S
MOTION TO COMPEL**

I, Sarah M. Gragert, do hereby declare:

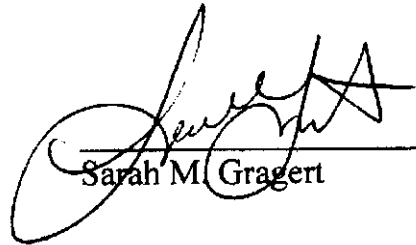
1. I am over the age of eighteen years, and I have personal knowledge of the facts set forth in this declaration.
2. I am an attorney licensed to practice and a member in good standing of the bar of the District of Columbia (membership no. 977097) and the state of Maryland (membership no. 12-11-2007).
3. On October 25, 2013, I was admitted *pro hac vice* in this case as counsel for the National Collegiate Athletic Association ("NCAA"), Dr. Mark Emmert, and Dr. Edward Ray.
4. On May 21, 2014, the NCAA served requests for the production of documents ("Requests") on Jay Paterno and William Kenney ("Plaintiffs"). On June 19, 2014, as their responses were coming due, Plaintiffs requested extra time to respond. On July 11, 2014, Plaintiffs served the NCAA with their responses and objections to the Requests. For many of the Requests, Plaintiffs stated certain objections but nevertheless agreed to produce non-privileged documents in response. For some Requests, they stated objections and did not consent to produce responsive materials. They produced no documents at that time.
5. By December 11, 2014, the NCAA's production of documents and materials in this case was substantially complete. At this time, the NCAA had produced approximately 16,001 documents, comprising 50,261 pages.
6. On May 15, 2015, the NCAA completed its production of documents in this case by producing 29 new documents (bearing Bates-stamps NCAA00050262 – NCAA00050327). The NCAA also produced 81 documents that were previously produced in redacted form and were being reproduced in full or with less content redacted.
7. On April 6, 2015, Jay Paterno made his first production of documents in this case. He produced 21 documents to the NCAA. On May 21, 2015, Mr. Paterno produced an additional 21 documents.

8. On May 19, 2015, the NCAA served a notice for Mr. Kenney's deposition, to occur on June 30, 2015. Two weeks later, on June 3, 2015, counsel for Mr. Kenney said that he would not be available on June 30, 2015. Counsel for Mr. Kenney has yet to provide another date that he is available for a deposition.
9. On May 20, 2015, the NCAA served Mr. Kenney with interrogatories, but on the day they were due (June 19, 2015), Mr. Kenney's counsel informed counsel for the NCAA that he would not respond for another 30 days. Mr. Kenney's counsel did not ask for consent to this extension or give prior notice of the delay. The NCAA has yet to receive Mr. Kenney's responses.
10. On May 21, 2015, William Kenney made his first production of documents containing three "documents." However, one of those documents was a compilation of 23 employment applications (or 21 when not counting the two duplicates) and some related communications.. This production also contained two emails.
11. On July 6, 2015, Mr. Kenney produced an additional 14 documents.
12. To date, Mr. Paterno has produced approximately 525 documents in this case.
13. The NCAA has produced 16,030 documents in this case, comprising 50,327 pages, through twelve rolling productions
14. Pursuant to L.R. 208.2(e), Counsel for the NCAA has sought to resolve the issues presented by its Motion to Compel by conferring with opposing counsel in a good faith effort to resolve the issues by agreement, without the intervention of the Court.
15. The NCAA has engaged in at least two meet-and-confer teleconferences with these Plaintiffs to help facilitate discovery in this case and resolve areas of disagreement. On January 30, 2015, the parties attempted to discuss Plaintiffs' objections and responses, but their counsel requested more time as they had recently assumed sole representation of these Plaintiffs. On March 27, 2015, counsel met and conferred regarding Plaintiffs' objections and responses to the NCAA's discovery requests.
16. The NCAA has also attempted to address Plaintiffs' responses to its Requests through written correspondence. Through the exchange of

correspondence and the meet and confer process, the parties have successfully narrowed their areas of dispute, but have been unable to resolve all issues.

I declare, under penalty of perjury subject to the penalties of 18 Pa. C.S. § 4904, that the foregoing is true and correct to the best of my knowledge.

Executed on July 10, 2015.



Sarah M. Gragert

CERTIFICATE OF SERVICE

I, Thomas W. Scott, hereby certify that I am serving *The National Collegiate Athletic Association's Motion to Compel the Production of Documents* on the following by First Class Mail and email:

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Counsel for Plaintiffs

Via FedEx Overnight Delivery
The Honorable John B. Leete
Senior Judge, Specially Presiding
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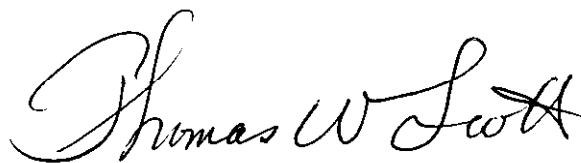
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*Counsel for The Pennsylvania State
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Dated: July 10, 2015

A handwritten signature in black ink that reads "Thomas W. Scott". The signature is written in a cursive style with a horizontal line underneath it.

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