



IN THE COURT OF COMMON PLEAS OF CENTRE COUNTY, PENNSYLVANIA

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

Plaintiffs,

v.

NATIONAL COLLEGIATE ATHLETIC
ASSOCIATION ("NCAA");

MARK EMMERT, individually and as
President of the NCAA;

and

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

Defendants.

)
) Civil Division

)
) Docket No. 2013-2082

) **Motion to Extend Discovery Cutoff and**
) **for Entry of Revised Scheduling Order**
) Filed on Behalf of Plaintiffs

) **EXPEDITED CONSIDERATION**
) **REQUESTED**

)
) Counsel of Record:
) Thomas J. Weber
) 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 (admitted *pro hac vice*)
) L. Joseph Loveland (admitted *pro hac vice*)
) Patricia L. Maher (admitted *pro hac vice*)
) Ashley C. Parrish (admitted *pro hac vice*)
) KING & SPALDING LLP
) 1700 Pennsylvania Avenue, NW
) Washington, DC 20006
) Telephone: (202) 737-0500
) Email: wsollers@kslaw.com
) jloveland@kslaw.com
) pmaher@kslaw.com
) aparrish@kslaw.com

FILED FOR RECORD
2016 JAN -4 AM 9:33
DEBRA C. HINDEL
PROTHONOTARY
CENTRE COUNTY, PA

**MOTION TO EXTEND DISCOVERY CUTOFF
AND FOR ENTRY OF REVISED SCHEDULING ORDER**

AND NOW COME Plaintiffs the Estate of Joseph Paterno, William Kenney and Joseph V. Jay Paterno, and (“Plaintiffs”), by and through their counsel, and move This Honorable Court for an order extending the deadlines for completion of fact discovery and all other deadlines in the current scheduling order by 60 days. An extension is warranted to allow Plaintiffs time to pursue discovery with the benefit of key documents that have just become available to them in the past month after a lengthy effort to obtain them. In support of this motion, Plaintiffs show the Court the following:

FILED FOR RECORD
2016 JAN -4 AM 9:33
DEPT. OF NOTARY
CENTRE COUNTY, PA

1. In response to this Court’s direction, on October 9, 2015, Plaintiffs and Defendants submitted a joint motion for entry of a scheduling order.

2. The Court granted the joint motion on October 12, 2015, and entered the scheduling order setting February 29, 2016, as the deadline for completion of fact discovery. It also set other deadlines through the briefing of dispositive motions by August 29, 2016, all of which remain in effect.

3. The entry of the scheduling order coincided with the Court’s ruling on a protracted discovery dispute between Plaintiffs and non-party Pepper Hamilton about its response to Plaintiffs’ subpoena seeking documents about the Freeh investigation and the Freeh Report. As the Court is aware, the NCAA repeatedly cited the Freeh investigation and Freeh Report in the July 23, 2012 Consent Decree, which the NCAA imposed on Pennsylvania State University. The Freeh investigation and the Freeh Report, and their relationship to the NCAA’s actions and Consent Decree are central to the claims in this case.

4. The Court is familiar with Plaintiffs’ efforts to obtain access to the Freeh documents, which Pepper Hamilton designated “Highly Confidential—Attorneys’ Eyes Only,”

thereby precluding Plaintiffs from reviewing the documents and consulting with their counsel about litigation and deposition strategy based on them.

5. On October 12, 2015, this Court held Pepper Hamilton's blanket designation improper and ordered it to review and re-designate the documents consistent with the terms of the protective order within 30 days.

6. Pepper Hamilton re-produced 22,399 documents on November 12, 2015 with revised confidentiality designations on many of the documents. However, approximately 8,000 of the documents maintained a designation of "Highly Confidential—Attorneys' Eyes Only"—most importantly the memoranda documenting the Freeh investigators' interviews with potential witnesses, including but not limited to Penn State personnel—even though these memoranda did not meet the protective order's criteria for such a restrictive confidentiality designation.

7. On November 25, 2015, following a teleconference held at Plaintiffs' request to consider the effects of Pepper Hamilton's still overbroad restrictions on Plaintiffs' ability to review relevant documents, the Court ordered the parties and Pepper Hamilton to meet and confer and try to resolve the dispute about the parties' access within 20 days.

8. The parties thereafter reached a compromise with Pepper Hamilton that allows the parties themselves to review almost all of the documents that had previously been designated "Highly Confidential—Attorneys' Eyes Only"—including the important interview memoranda. See Ex. 1.

9. Having now had an opportunity to review certain of these key documents from the Freeh investigation with Plaintiffs, and having had an opportunity to evaluate the documents in further detail, Plaintiffs' counsel have determined that additional depositions are necessary

from both party and non-party witnesses, including representatives of the Freeh firm, Penn State and the NCAA.¹

10. Defendants also have scheduled the deposition of the director of Penn State's Office of Trademark and Licensing, and are in the process of scheduling depositions of Plaintiffs Scott Paterno, as the representative of the Plaintiff Estate; Plaintiff Jay Paterno; and Suzanne Paterno, Coach Paterno's widow.

11. Plaintiffs now estimate that the parties will schedule between 15 and 20 depositions in the next two months. Plaintiffs will be prejudiced if they are required to schedule, prepare for, and take or defend up to 20 depositions before discovery closes on February 29, 2016, under the current schedule.

12. Plaintiffs believe that a limited extension of 60 days will allow them time to pursue discovery fully and fairly with the benefit of the recently available Pepper Hamilton documents, which they obtained only after a year and a half of contested proceedings.

13. Plaintiffs are unaware of any prejudice that Defendants would suffer from such an extension.

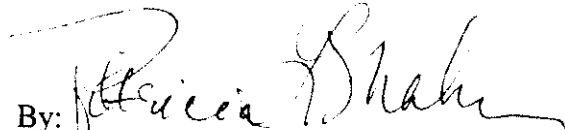
14. By letter dated December 21, 2015, Plaintiffs' counsel wrote to counsel for Defendants seeking their concurrence to the requested extension. On December 29, 2015, counsel for Defendants advised counsel for Plaintiffs that Defendants do not concur.

15. This is Plaintiffs' first request to extend the Scheduling Order.

¹ Plaintiffs have noticed the depositions of Amy Chisholm (one of the Freeh Group's investigators) for January 15, 2016, and of Defendant Mark Emmert (the President of the NCAA) for January 23, 2016. In early October, Plaintiffs deferred Dr. Emmert's deposition that had been noticed for October 23, pending a ruling that might allow them to use the Freeh documents at his deposition. Despite Plaintiffs' requests for a date to depose Dr. Emmert between November 15 and December 15, the NCAA provided *no* response until December 10, 2015, when it finally offered January 26 as an available date for his deposition.

WHEREFORE Plaintiffs respectfully request that the Court consider this Motion on an expedited basis in light of the impending discovery cutoff, and enter an Order extending the deadlines in this case by two months pursuant to the proposed Revised Scheduling Order submitted with this motion.

Date: December 31, 2015

By: 

Thomas J. Weber
GOLDBERG KATZMAN, P.C.
4250 Crums Mill Road, Suite 201
P.O. Box 6991
Harrisburg, PA 17112

Wick Sollers
L. Joseph Loveland
Ashley C. Parrish
Patricia L. Maher
KING & SPALDING LLP
1700 Pennsylvania Avenue, NW
Washington, DC 20006

Counsel for Plaintiffs

EXHIBIT 1

KING & SPALDING

King & Spalding LLP
1700 Pennsylvania Ave, NW
Suite 200
Washington, D.C. 20006-4707
Tel: +1 202 737 0500
Fax: +1 202 626 3737
www.kslaw.com

Patricia L. Maher
Direct Dial: +1 202 626 5504
Direct Fax: +1 202 626 3737
pmaher@kslaw.com

VIA E-MAIL AND FIRST CLASS MAIL

December 21, 2015

Brian E. Kowalski, Esq.
Latham & Watkins LLP
555 Eleventh Street, N.W.
Suite 1000
Washington, D.C. 20004-1304

Re: Estate of Paterno v NCAA, et al.

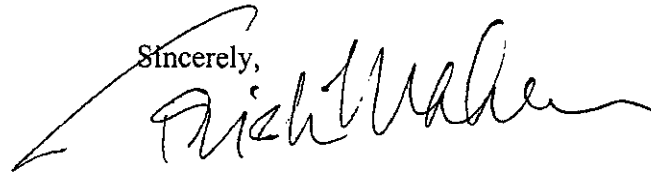
Dear Brian,

I am writing to let you know that we will be issuing deposition notices in the next week or so for a number of NCAA personnel, for Judge Freeh and members of his investigative team, and for several current or former Penn State personnel. These depositions will be in addition to the depositions of Dr. Emmert and Amy Chisholm that we have already noticed for January. You recently asked us for dates to depose Sue Paterno, Jay Paterno and Scott Paterno. As a result, there could be 15-20 depositions in the next two months. That leaves all of us very little time to assess the deposition testimony or to pursue information developed during the depositions. This compressed schedule is largely due to the fact that the plaintiffs have only begun to have meaningful access to key evidence within the last month.

As a result, we think it makes sense to adjust the scheduling order by moving all pertinent dates back two months. That would mean the close of discovery would be Friday, April 29 rather than February 29, and the latest date in the schedule for briefs in support of dispositive motions would move from August 19 to October 19. We would like to know whether the NCAA will oppose such a modification of the Scheduling Order.

Brian E. Kowalski, Esquire
December 21, 2015
Page 2

With the impending holidays, we wanted to raise this with you now so we can confer as soon as possible. Please let me know if we can discuss this during the week of December 28.

Sincerely,


Patricia L. Maher

cc: Everett C. Johnson, Esq.
Sarah M. Gragert, Esq.
Thomas W. Scott, Esq.

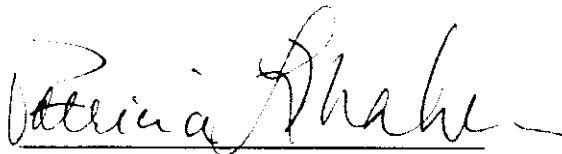
IN THE COURT OF COMMON PLEAS OF CENTRE COUNTY, PENNSYLVANIA

The ESTATE of JOSEPH PATERNO; and)	
	)	Civil Division
WILLIAM KENNEY and JOSEPH V. (“JAY”))	
PATERNO,	)	Docket No. 2013-2082
former football coaches at Pennsylvania State)	
University,)	
)	
Plaintiffs,	)	Counsel of Record:
	)	Thomas J. Weber
v.	)	GOLDBERG KATZMAN, P.C.
	)	4250 Crums Mill Road, Suite 301
NATIONAL COLLEGIATE ATHLETIC	)	P.O. Box 6991
ASSOCIATION (“NCAA”);	)	Harrisburg, PA 17112
	)	Telephone: (717) 234-4161
MARK EMMERT, individually and as	)	Email: tjw@goldbergkatzman.com
President of the NCAA;)	
	)	Wick Sollers (admitted <i>pro hac vice</i>)
and	)	L. Joseph Loveland (admitted <i>pro hac vice</i>)
	)	Patricia L. Maher (admitted <i>pro hac vice</i>)
EDWARD RAY, individually and as former	)	Ashley C. Parrish (admitted <i>pro hac vice</i>)
Chairman of the Executive Committee of the	)	KING & SPALDING LLP
NCAA,	)	1700 Pennsylvania Avenue, NW
	)	Washington, DC 20006
	)	Telephone: (202) 737-0500
Defendants.	)	Email: wsollers@kslaw.com
	)	jloveland@kslaw.com
	)	pmaher@kslaw.com
	)	aparrish@kslaw.com
)	
)	
)	
)	
)	
)	

STATEMENT OF CONFERENCE PURSUANT TO LOCAL RULE 208.2(e)

Pursuant to Local Rule 208.2(e), the undersigned counsel for movants, the Estate of Joseph Paterno, William Kenney and Joseph V. (“Jay”) Paterno, hereby certifies that on December 29, 2015, a good faith conference was conducted by telephone with counsel for Defendant the National Collegiate Athletic Association in an effort to resolve the issues raised by

the Motion to Extend Discovery Cutoff and For Entry of Revised Scheduling Order without the need for intervention by the Court. Counsel were unable to reach agreement on the issues raised in the motion.

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

Thomas J. Weber
GOLDBERG KATZMAN, P.C.
4250 Crums Mill Road, Suite 301
P.O. Box 6991
Harrisburg, PA 17112

Wick Sollers
L. Joseph Loveland
Ashley C. Parrish
Patricia L. Maher
KING & SPALDING LLP
1700 Pennsylvania Avenue, NW
Washington, DC 20006
Telephone: (202) 737-0500

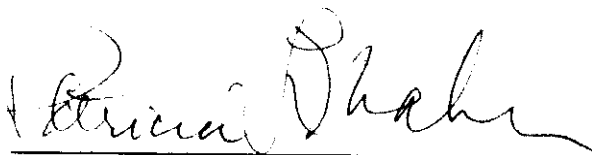
Counsel for Plaintiffs

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing **MOTION TO EXTEND DISCOVERY CUTOFF AND FOR ENTRY OF REVISED SCHEDULING ORDER** was served this 31st day of December, 2015 by first class mail and email to the following:

Thomas W. Scott
Killian & Gephart
218 Pine Street
P.O. Box 886
Harrisburg, PA 17108-0886
Email: tscott@killiangephart.com

Everett C. Johnson, Jr.
Brian E. Kowalski
Sarah Gragert
Latham & Watkins LLP
555-11th Street, N.W.
Suite 1000
Washington, D.C. 20004-1304
Email: everett.johnson@lw.com
brian.kowalski@lw.com
sarah.gragert@lw.com



Thomas J. Weber
GOLDBERG KATZMAN, P.C.
4250 Crums Mill Road, Suite 301
P.O. Box 6991
Harrisburg, PA 17112

Wick Sollers
L. Joseph Loveland
Ashley C. Parrish
Patricia L. Maher
KING & SPALDING LLP
1700 Pennsylvania Avenue, NW
Washington, DC 20006
Telephone: (202) 737-0500

Counsel for Plaintiffs

IN THE COURT OF COMMON PLEAS OF CENTRE COUNTY, PENNSYLVANIA

The ESTATE of JOSEPH PATERNO; and)	
	)	Civil Division
WILLIAM KENNEY and JOSEPH V. ("JAY"))	
PATERNO,	)	Docket No. 2013-2082
former football coaches at Pennsylvania State)	
University,	)	Memorandum In Support of Motion to
	)	Extend Discovery Cutoff and for Entry
Plaintiffs,	)	of Revised Scheduling Order
	)	Filed on Behalf of Plaintiffs
v.)	
	)	EXPEDITED CONSIDERATION
NATIONAL COLLEGIATE ATHLETIC	)	REQUESTED
ASSOCIATION ("NCAA");)	
)	
MARK EMMERT, individually and as	)	Counsel of Record:
President of the NCAA;	)	Thomas J. Weber
	)	GOLDBERG KATZMAN, P.C.
and	)	4250 Crums Mill Road, Suite 301
	)	P.O. Box 6991
EDWARD RAY, individually and as former	)	Harrisburg, PA 17112
Chairman of the Executive Committee of the	)	Telephone: (717) 234-4161
NCAA,	)	Email: tjw@goldbergkatzman.com
)	
Defendants.	)	Wick Sollers (admitted <i>pro hac vice</i>)
	)	L. Joseph Loveland (admitted <i>pro hac vice</i>)
	)	Patricia L. Maher (admitted <i>pro hac vice</i>)
	)	Ashley C. Parrish (admitted <i>pro hac vice</i>)
	)	KING & SPALDING LLP
	)	1700 Pennsylvania Avenue, NW
	)	Washington, DC 20006
	)	Telephone: (202) 737-0500
	)	Email: wsollers@kslaw.com
	)	jloveland@kslaw.com
	)	pmaher@kslaw.com
	)	aparrish@kslaw.com

**MEMORANDUM IN SUPPORT OF MOTION TO EXTEND DISCOVERY CUTOFF
AND FOR ENTRY OF REVISED SCHEDULING ORDER**

Plaintiffs the Estate of Joseph Paterno, William Kenney and Joseph V. Jay Paterno, and ("Plaintiffs") respectfully request that the Court extend the deadlines in the Scheduling Order by

60 days to allow them a full and fair opportunity to take depositions and pursue further discovery following their long-delayed review of Pepper Hamilton's voluminous documents relating to the Freeh investigation. For the reasons explained below, the requested extension is both reasonable and proper and will not result in prejudice to Defendants.

As the Court is well aware, Pepper Hamilton's refusal to allow Plaintiffs' access to relevant, non-privileged documents related to the Freeh investigation and Report stymied Plaintiffs' efforts to pursue discovery for months. The documents ultimately produced by the Freeh firm are key to many aspects of Plaintiffs' claims. Pepper Hamilton indiscriminately designated all of those documents as "Highly Confidential—Attorneys Eyes Only," thereby preventing Plaintiffs from reviewing them or discussing them with Plaintiffs' counsel for the purpose of litigation and discovery planning. Only after an emergency telephone conference with the Court on November 25, 2015, were the restrictions modified for many of the most important documents.

Promptly thereafter, Plaintiffs consulted with their counsel about litigation and discovery planning in light of these documents and subsequently decided to notice at least 12 depositions, including depositions of current and former NCAA staff, investigators for the Freeh firm, and current and former Penn State personnel. Plaintiffs had already scheduled and noticed two other pending depositions (of Defendant Mark Emmert and Freeh investigator Amy Chisholm) and Defendants have noticed or are in the process of scheduling four more depositions (for the Director of Penn State's Office of Trademark and Licensing and three members of the Paterno family).

While this case has been pending for more than 30 months, much of that time has been spent addressing preliminary objections filed by the Defendants (and former nominal party Penn

State) and in dealing with Pepper Hamilton's refusals to produce documents despite repeated instructions from the Court to do so. The pleadings in this case have only been closed as of July 28, 2015. Plaintiffs are prepared to move forward with depositions expeditiously, and have in fact already pursued depositions of a number of individuals, but it is unreasonable to force the parties to now conduct between 15 and 20 depositions all over the country in the two months remaining in the current discovery schedule, which ends on February 29, 2016. The requested 60-day extension will allow Plaintiffs to fully prepare using the voluminous documents that have become available, and to pursue reasonable follow-up discovery based on information learned from those depositions.

Plaintiffs therefore request that each of the deadlines in the Scheduling Order be continued by 60 days—keeping the same day for each except the March 30 deadline for expert disclosures would move to Tuesday, May 31 because May 30, 2016 is Memorial Day. Accordingly, the proposed new schedule would be as follows:

1. The parties shall complete all fact discovery by **April 29, 2016**.
2. Defendants Emmert and Ray shall file supplemental briefs in support of their preliminary objections concerning personal jurisdiction by **April 29, 2016**; Plaintiffs shall file oppositions to such preliminary objections by **June 6, 2016**; and all reply briefs in support of such preliminary objections shall be filed by **June 20, 2016**.
3. Plaintiffs shall make their expert witness disclosures by **May 31, 2016**, and Defendants shall do the same by **June 29, 2016**.
4. Plaintiffs will provide any supplemental expert disclosures by **July 13, 2016**; Defendants will provide any supplemental expert disclosures by **July 27, 2016**.
5. The parties shall file all dispositive motion and supporting briefs on or before **September 8, 2016**.

6. All responsive briefs to dispositive motions will be filed on or before **October 5, 2016**.

7. All reply briefs in support of dispositive motions will be filed on or before **October 19, 2016**.

Plaintiffs are unaware of any prejudice Defendants would suffer from this scheduling change, and this is Plaintiffs' first request for an extension of the schedule. In fact, while the Plaintiffs have had to toil with Penn State and Pepper Hamilton over the proper classification of essential documents, the Defendants have enjoyed the opportunity of proceeding with their discovery by taking numerous depositions of former Penn State football players and coaches and administrators at various institutions.

Promptly after realizing the need for such a limited extension, counsel for Plaintiffs wrote to counsel for Defendants on December 21, 2015, requesting their consent to an extension. On December 29, 2015, Defendants' counsel informed counsel for Plaintiffs that Defendants would not consent, but offered no further explanation of that position.²

² Throughout the pendency of this case, Plaintiffs have consistently consented to requests for extensions from other parties and non-parties, including the NCAA's requests for an extension of time to respond to discovery and to answer the Second Amended Complaint.

CONCLUSION

For the foregoing reasons, Plaintiffs respectfully request that the Court modify the Scheduling Order to extend the deadlines by 60 days, as calculated in the proposed Revised Scheduling Order submitted with this motion.

Date: December 31, 2015

By: 

Thomas J. Weber
GOLDBERG KATZMAN, P.C.
4250 Crums Mill Road, Suite 201
P.O. Box 6991
Harrisburg, PA 17112

Wick Sollers
L. Joseph Loveland
Ashley C. Parrish
Patricia L. Maher
KING & SPALDING LLP
1700 Pennsylvania Avenue, NW
Washington, DC 20006

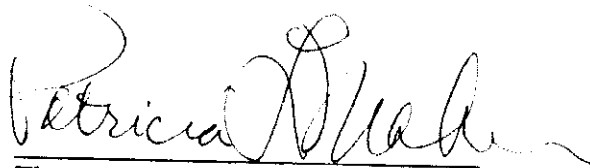
Counsel for Plaintiffs

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing **MEMORANDUM IN SUPPORT OF MOTION TO EXTEND DISCOVERY CUTOFF AND FOR ENTRY OF REVISED SCHEDULING ORDER** was served this 31st day of December, 2015 by first class mail and email to the following:

Thomas W. Scott
Killian & Gephart
218 Pine Street
P.O. Box 886
Harrisburg, PA 17108-0886
Email: tscott@killiangephart.com

Everett C. Johnson, Jr.
Brian E. Kowalski
Sarah Gragert
Latham & Watkins LLP
555-11th Street, N.W.
Suite 1000
Washington, D.C. 20004-1304
Email: everett.johnson@lw.com
brian.kowalski@lw.com
sarah.gragert@lw.com



Thomas J. Weber
GOLDBERG KATZMAN, P.C.
4250 Crums Mill Road, Suite 301
P.O. Box 6991
Harrisburg, PA 17112

Wick Sollers
L. Joseph Loveland
Ashley C. Parrish
Patricia L. Maher
KING & SPALDING LLP
1700 Pennsylvania Avenue, NW
Washington, DC 20006
Telephone: (202) 737-0500

Counsel for Plaintiffs