



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

**MOTION TO QUASH  
THIRD-PARTY SUBPOENA  
DUCES TECUM SEEKING  
DOCUMENTS  
CONCERNING 1971 AND  
1976 SANDUSKY  
INCIDENTS AND FOR  
PROTECTIVE ORDER**

Filed on Behalf of:  
Non-Party The Pennsylvania  
State University

Counsel of record for The  
Pennsylvania State University:

Daniel I. Booker, Esquire  
PA I.D. No. 10319  
Donna M. Doblick, Esquire  
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FILED FOR RECORD

2016 JUN 20 PM 4:00

DEBRA C. RINEY  
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CENTRE COUNTY, PA

) Bellefonte, PA 1623-0179  
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FILED FOR RECORD  
2016 JUN 20 PM 4:00  
DEBRA C. HANDEL  
PROTHODOTARY  
CENTRE OF DENTISTRY, PC

) CIVIL DIVISION  
)  
) Docket No. 2013-2082

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Pursuant to Rules 4011 and 4012 of the Pennsylvania Rules of Civil Procedure, the Pennsylvania State University (“Penn State” or “the University”), respectfully asks this Court to quash a subpoena whereby the National Collegiate Athletic Association (“NCAA”) seeks documents concerning individuals who allege they were sexually assaulted by Jerry Sandusky in 1971 and 1976, respectively (the “1971 Sandusky Incident” and the “1976 Sandusky Incident,” as defined in the Subpoena).

1

2. As explained more fully in the accompanying Memorandum of Law, individuals who came forth in mediated settlement discussions with allegations that they were sexually assaulted by Sandusky, including the individuals involved in the 1971 and 1976 Sandusky Incidents, were given significant assurances that their identities, their allegations, their medical records, and the ultimate settlements they reached with the University would be treated with the utmost confidentiality.

3. Complying with the subpoena would require the University to breach those assurances of confidentiality.

4. As described with more particularity in the accompanying Memorandum of Law, and by the facts set forth in the Declarations of Kenneth R. Feinberg (Exhibit 3 hereto), Michael K. Rozen (Exhibit 4 hereto), and Joseph F. O'Dea, Jr. (Exhibit 5 hereto), and Linda D. Kornfeld (Exhibit 6 hereto) the documents sought in the subpoena are protected from disclosure by, variously: Pennsylvania's mediation privilege, 42 Pa. C.S.A. § 5949; the Stipulation and Order Governing the Exchange of Confidential Information entered by the Court of Common Pleas of Philadelphia County (Glazer, J.), in *Pennsylvania Manufacturers' Association Insurance Co. v. The Pennsylvania State University*, Civil Action Nos. 04126, 03195, and 03197 (the "PMA Litigation"); and the Confidential Settlement Agreements and Releases the University executed with each of these individuals.

5. Neither the individual involved in the 1971 Sandusky Incident nor the individual involved in the 1976 Sandusky Incident has filed a lawsuit or otherwise voluntarily made his identity public. Nor has either individual authorized the University to waive the mediation privilege, the protections of the protective order in the PMA Litigation, or the protections of the Confidential Settlement Agreements.

6. The University cannot and should not be compelled to produce documents to the NCAA that are protected from disclosure as a matter of Pennsylvania law. Nor should the University be compelled to produce documents that are the subject of a protective order in other litigation.

7. And, lastly, to the extent any of the documents at issue are not protected from disclosure as a matter of law, given the extremely tenuous connection between those documents and the allegations that remain in this litigation, the Court should exercise its discretion to conclude that the embarrassment, oppression, and annoyance associated with compelling the University to produce intensely private documents about individuals who assert they were the victims of child sexual abuse outweighs the NCAA's interest in those documents.

For all of the reasons set forth in the accompanying Memorandum of Law, Penn State respectfully requests that this Court quash the subpoena duces tecum and issue a protective order providing that the parties may not seek the documents requested therein. A proposed Order is submitted herewith.

Respectfully submitted,

  
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*Attorneys for The Pennsylvania State  
University*

**CERTIFICATE OF SERVICE**

The undersigned counsel hereby certifies that on this 20<sup>th</sup> day of June, 2016, a true and correct copy of the foregoing MOTION TO QUASH THIRD-PARTY SUBPOENA DUCES TECUM SEEKING DOCUMENTS CONCERNING THE 1971 AND 1976 SANDUSKY INCIDENTS AND FOR PROTECTIVE ORDER, was served upon the following counsel via United States mail, first class, postage prepaid:

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Goldberg Katzman, P.C.  
4250 Crums Mill Road, Suite 301  
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Harrisburg, PA 17112

Joseph Sedwick Sollers, III  
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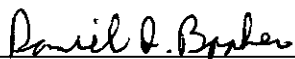
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218 Pine Street, P.O. Box 886  
Harrisburg, PA 17108-0886

*Counsel for NCAA, Mark Emmert  
and Edward Ray*

Hon. John B. Leete, S.J.  
Specially Presiding  
Court of Common Pleas of Centre County  
102 South Allegheny Street  
Bellefonte, PA 16823

  
\_\_\_\_\_  
One of the Attorneys for  
The Pennsylvania State University

COMMONWEALTH OF PENNSYLVANIA  
COUNTY OF CENTRE

ESTATE OF JOSEPH PATERNO, EL AL

VS

NATIONAL COLLEGIATE ATHLETIC  
ASSOCIATION (NCAA), ET AL

File No. 2013-2082

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

TO: THE PENNSYLVANIA STATE UNIVERSITY

(Name of Person or Entity)

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

at Killian & Gephart, LLP, 218 Pine Street, P.O. Box 886, Harrisburg, PA 17108-0886

(Address)

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

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

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

NAME: Thomas W. Scott, Esquire

Killian & Gephart, LLP  
ADDRESS: 218 Pine Street, P.O. Box 886  
Harrisburg, PA 17108-0886

TELEPHONE: (717) 232-1851

SUPREME COURT ID # 15681

ATTORNEY FOR: The National Collegiate Athletic Association

BY THE COURT:

Debra C. Starnes  
Prothonotary/Clerk, Civil Division

DATE: \_\_\_\_\_  
Seal of the Court

Deputy



## **EXHIBIT A**

### **DEFINITIONS**

1. "You," "Your," "Yours," "PSU," and "Penn State" shall mean The Pennsylvania State University, and all other persons acting on behalf of The Pennsylvania State University, including but not limited to, attorneys and their associates, investigators, agents, directors, officers, employees, representatives, and others who may have obtained information for or on behalf of The Pennsylvania State University.
2. The "NCAA" shall mean the National Collegiate Athletic Association.
3. "Defendants" shall mean the NCAA, Mark Emmert, and Edward Ray.
4. "Plaintiffs" shall mean each of the individuals identified in the caption of this matter, any representative of those individuals, and any representatives of the Estate of Joseph Paterno.
5. "All" or "any" shall mean "each and every."
6. "And" and "or" shall mean either disjunctively or conjunctively as necessary to bring within the scope of discovery request all responses that might otherwise be construed outside of its scope.
7. "Document" or "documents" is defined as broadly as possible, and is defined to include originals and copies (including all non-identical copies or photocopies) as well as all draft and final versions of, without limitation: (a) All writings of any kind (including the originals and all non-identical copies, whether different from the originals by reason of any notation made on such copies or otherwise), including, without limitation, correspondence, notes, statements, transcripts, books, diaries, intra-office communications, notations of any sort of conversations or interviews; (b) All graphic

representations of any kind, including, without limitation, photographs, charts, graphs, plans, drawings, videos, and recordings; and (c) All electronically generated and/or stored correspondence, memoranda, communications, data compilations, or records of any sort.

8. "Communications(s)" means any act, action, oral speech, written correspondence, contact, expression of words, thoughts, ideas or transmission or exchange of data or other information to another person, whether orally, person-to-person, in a group, by telephone, letter, personal delivery, telex, facsimile, or any other process, electric, electronic or otherwise.
9. "Concerning" shall mean, without limitation, comprising, containing, embodying, referring to, relating to, regarding, alluding to, responding to, ~~in connection with~~, commenting on, in response to, about, announcing, explaining, discussing, showing, describing, studying, supporting, reflecting, analyzing, or constituting.
10. "The 1976 Sandusky Incident" shall refer to the acts involved in and circumstances surrounding the allegation included in the May 4, 2016 Court of Common Pleas of Philadelphia County Order in *Pennsylvania State University v. Pennsylvania Manufacturers' Association Insurance Co.* that "in 1976, a child... reported to PSU's Head Football Coach Joseph Paterno, that he (the child) was sexually molested by Sandusky...", and any other related instances.
11. "The 1971 Sandusky Incident" shall refer to the acts involved in and circumstances surrounding the allegation included in the May 8, 2016 CNN article titled "Sandusky Victim: Joe Paterno Told Me to Drop Abuse Allegation" that a child reported that he was sexually molested by Sandusky in 1971 to several Penn State officials, including Coach Paterno, and any other related instances.

### INSTRUCTIONS

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

may be redacted, provided that the redacted portion is identified and described consistently according to the requirements listed herein.

5. Except as otherwise noted, this Request seeks the production of Documents ~~created, used, sent, or received~~ during the period from January 1, 2011 through present.
6. Any request for "Communications" shall be construed to include written or tangible Communications, as well as Documents referencing or reflecting oral or person-to-person Communications.
7. Pursuant to Pennsylvania Rules of Civil Procedure No. 4009.21, 4009.23, and 4009.24, You must fully respond to each Request. Objections to any part of these requests shall be stated in full with a brief statement setting forth the grounds for such objections.
8. The fact that another witness or party produces a Document, or the availability or production of similar or identical Documents from another source, does not relieve You of Your obligation to produce Your copy of the same Document, even if the two Documents are identical.
9. Any Document that cannot be produced in full shall be produced to the fullest extent possible.
10. Each paragraph, subparagraph, clause, and word herein should be construed independently and not by reference to any other paragraph, subparagraph, clause or word herein for purposes of limitation.
11. Except as specifically provided herein, words imparting the singular shall include the plural and vice versa, where appropriate.

## **REQUESTS FOR PRODUCTION**

### **REQUEST NO. 1:**

All testimony, statements, and accounts of any actual or alleged victim or victims, or their agents, representatives, or any persons on their behalf, Concerning (a) the 1971 Sandusky Incident or (b) the 1976 Sandusky Incident, and any non-privileged Documents or Communications related thereto, including any settlement agreement or agreements.

### **REQUEST NO. 2:**

To the extent not included in Request No. 1, Documents sufficient to identify the name and address of any victim or victims, and their counsel, involved in the 1971 Sandusky Incident or the 1976 Sandusky Incident.

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  
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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

**THE PENNSYLVANIA  
STATE UNIVERSITY'S  
OBJECTIONS AND  
RESPONSE TO SUBPOENA  
DUCES TECUM**

On Behalf of The Pennsylvania  
State University

Counsel of record:

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Donna M. Doblick, Esquire  
PA I.D. No. 75394

William J. Sheridan, Esquire  
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EXHIBIT

2

) (814) 355-4769  
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**IN THE COURT OF COMMON PLEAS OF CENTRE COUNTY, PENNSYLVANIA**

The ESTATE of JOSEPH PATERNO;	)	CIVIL DIVISION
	)	
and	)	Docket No. 2013-2082
	)	
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.	)	

**THE PENNSYLVANIA STATE UNIVERSITY'S OBJECTIONS  
AND RESPONSE TO SUBPOENA DUCES TECUM**

The Pennsylvania State University ("Penn State" or "the University") submits these objections and responses to the Subpoena Duces Tecum served by the National Collegiate Athletic Association ("NCAA") on May 24, 2016 (the "Subpoena").

**GENERAL OBJECTIONS**

1. Penn State objects to Instruction No. 1 to the extent it requires Penn State to produce documents in the possession of persons or entities "purporting to" act on Penn State's behalf.
2. Penn State objects to Instruction 4 as purporting to impose on Penn State obligations different from, and more extensive than, those imposed by the Pennsylvania Rules of Civil Procedure.



3. Penn State objects to the Requests to the extent they seek documents protected by the mediation privilege, 42 Pa. C.S.A. § 5949.

4. Penn State objects to the Requests to the extent they seek documents protected from disclosure by the Stipulation and Order Governing the Exchange of Confidential Information entered by the Court of Common Pleas of Philadelphia County (Glazer, J.), on April 9, 2014, in *Pennsylvania Manufacturers Association Insurance v. The Pennsylvania State University*, Civil Action Nos. 04126, 03195, and 03197.

5. Penn State objects to the Requests to the extent they seek documents protected from disclosure by the Confidential Settlement Agreements and Releases Penn State entered into with the individuals involved in the 1971 Sandusky Incident and the 1976 Sandusky Incident.

6. Penn State objects to the Requests to the extent they seek documents protected by the attorney-client privilege.

7. Penn State objects to the Requests to the extent they seek documents protected by the attorney work product doctrine.

8. Penn State objects to the Requests as causing unreasonable annoyance, embarrassment, oppression, burden, and/or expense.

9. Penn State objects to the Requests as intruding upon the privacy interests of persons who have identified themselves as being victims of childhood sexual abuse.

10. Penn State objects to the Requests as seeking documents and information that are neither relevant to the subject matter of this lawsuit nor reasonably calculated to lead to the discovery of admissible evidence.

11. Penn State reserves the right to supplement or modify these objections and responses as appropriate.

12. Penn State incorporates each of these General Objections into its Responses to Document Requests set forth below.

**SPECIFIC OBJECTIONS AND RESPONSES TO DOCUMENT REQUESTS**

**Request No. 1:** All testimony, statements, and accounts of any actual or alleged victim or victims, or their agents, representatives, or any persons on their behalf, Concerning (a) the 1971 Sandusky Incident or (b) the 1976 Sandusky Incident, and any non-privileged Documents or Communications related thereto, including any settlement agreement or agreements.

**Response to Request No. 1:** Penn State incorporates by reference all of its General Objections. This request seeks documents that would require the University to breach confidentiality duties it owes to others, including in particular victims or claimed victims of Jerry Sandusky's conduct.

**Request No. 2:** To the extent not included in Request No. 1, Documents sufficient to identify the name and address of any victim or victims, and their counsel, involved in the 1971 Sandusky Incident or the 1976 Sandusky Incident.

**Response to Request No. 2:** Penn State incorporates by reference its General Objections. This request seeks documents that would require the University to breach confidentiality duties it owes to others, including in particular, victims or claimed victims of Jerry Sandusky's conduct.

Respectfully submitted,



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*Attorneys for Defendant  
The Pennsylvania State University*

**CERTIFICATE OF SERVICE**

The undersigned counsel hereby certifies that on this 20<sup>th</sup> day of June 2016, a true and correct copy of the foregoing **The Pennsylvania State University's Objections and Response to Subpoena Duces Tecum** was served upon the following counsel via email and via U.S. mail, first class, postage prepaid:

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and Edward Ray*

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*Local Counsel for The Pennsylvania State University*



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

I, Kenneth R. Feinberg, submit this declaration pursuant to penalties of perjury under 18 Pa. C.S. § 4904.

2. The Pennsylvania State University ("Penn State") retained my firm, and me and my partner Michael K. Rozen, in particular, to facilitate settlement discussions with individuals who claimed to have been sexually abused by Gerald Sandusky ("Sandusky").

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- “[a]ny and all meetings” between or among the participants in the facilitation sessions “will be deemed to be confidential;”
- “any documents or other pertinent materials submitted to the facilitators will similarly be deemed confidential and will not be disclosed without permission to any other participants;”
- “all oral and written communications between and among the participants and the facilitators in connection with the facilitation shall be treated and considered as having been made in the course of compromise negotiations and shall be deemed inadmissible at any subsequent proceeding or trial;”
- the participants agree that “confidential information shared during the course of the facilitation process shall not be used for any purpose outside the scope of the facilitation process,” and
- “[a]ll documents or other information supplied to an opposing participant during the course of the facilitation (as well as any copies, reproductions or summaries of such documents), shall not be made public nor shared with any person not involved in the facilitation between the participants.”

4. I have reviewed the Subpoena Duces Tecum the National Collegiate Athletic Association (“NCAA”) served on Penn State on or about May 24, 2016 (the “Subpoena”).

5. I facilitated Penn State’s settlement discussions with the individual who is the subject of the 1976 Sandusky Incident that is described in the Subpoena.

6. I assured the attorney for that individuals that those settlement discussions would be conducted in complete accord with the confidentiality provisions set forth in the Engagement Letter, and the settlement discussions with that individual were in fact conducted on those terms.

FURTHER DECLARANT SAYETH NOT.

Kth R. FS

Kenneth R. Feinberg

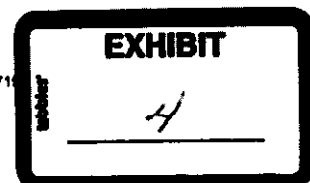
Dated: June 10, 2016, in Washington, D.C.

The ESTATE of JOSEPH PATERNO; and  
WILLIAM KENNEY and JOSEPH V. ("JAY")  
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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.

I, Michael K. Rozen, submit this declaration pursuant to penalties of perjury under 18 Pa.  
C.S. § 4904.

2. On October 10, 2012, The Pennsylvania State University ("Penn State") retained my firm, and me and my partner, Kenneth R. Feinberg, in particular, to facilitate settlement discussions with individuals who claimed to have been sexually abused by Gerald Sandusky ("Sandusky").

US\_ACTIVE-1271





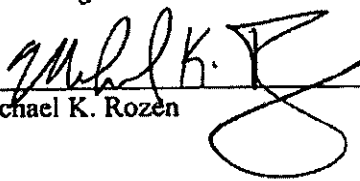
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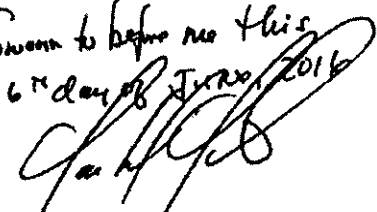
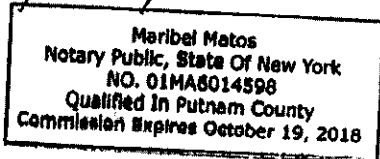
5. I facilitated Penn State’s settlement discussions with the individual who is the subject of the 1971 Sandusky Incident that is described in the Subpoena.

6. I assured the attorney for that individual that those settlement discussions would be conducted in complete accord with the confidentiality provisions set forth in the Engagement Letter, and the settlement discussions with that individual were in fact conducted on those terms.

FURTHER DECLARANT SAYETH NOT.

  
Michael K. Rozen

Dated: June 16, 2016, in New York, NY.

*Suomen to before me this  
16<sup>th</sup> day of June, 2016*  
  


**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, former football coaches at Pennsylvania	)	Docket No. 2013-2082
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.	)	

**DECLARATION OF JOSEPH F. O'DEA, JR.**

I, Joseph F. O'Dea, Jr., submit this declaration pursuant to penalties of perjury under 18 Pa. C.S. § 4904.

1. I am a partner in the law firm Saul Ewing, LLP, and have represented The Pennsylvania State University ("Penn State") in settlement discussions with individuals who claimed to have been sexually abused by Gerald Sandusky ("Sandusky"), including the individuals involved in the 1971 Sandusky Incident and the 1976 Sandusky Incident (as those terms are defined in the subpoena duces tecum the National Collegiate Athletic Association ("NCAA") served on Penn State on May 24, 2016).

2. Penn State retained the firm of Feinberg Rozen, LLP, namely, Kenneth Feinberg and Michael Rozen, to liaise with representatives of individuals who came forward with accusations that they were victims of Mr. Sandusky, and to mediate those disputes.



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3. I learned the identities of the individuals involved in the 1971 Sandusky Incident and the 1976 Sandusky Incident from Messrs. Feinberg and Rozen, who, in turn, had received that information from the individuals' lawyers as part of the mediation process. I then communicated the information to Penn State.

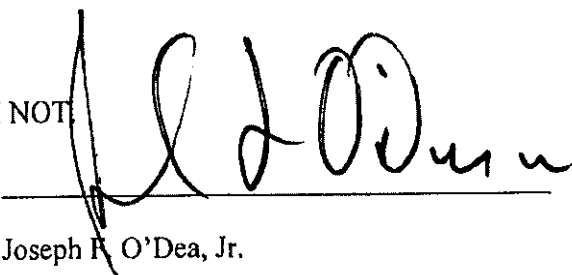
4. Penn State entered into Confidential Settlement Agreements with the individuals involved in the 1971 Sandusky Incident and the 1976 Sandusky Incident. Both Confidential Settlement Agreements provide, *inter alia*, that the University shall not "discuss with or disclose to anyone who is not a party . . . any information, correspondence, or documents related to: (1) the specific terms of [the agreement]; (2) the amount of this particular Payment; or (3) any financial information regarding the amount of any offers or counteroffers made during the course of the mediation of this particular Dispute" (collectively defined as "Confidential Information").

5. The Confidential Settlement Agreements do not contain any representations or recitals about the specifics of the incident or the nature and extent of either individual's claimed damages.

6. The Confidential Settlement Agreements further provide that where, as here, one of the parties thereto receives a subpoena requesting the Confidential Information, the recipient thereof is required to notify the other of the demand, and "may seek, if he/it chooses, a protective order or other remedy."

7. In the Confidential Settlement Agreements with the individuals involved in the 1971 and 1976 Sandusky Incidents, the victims acknowledged that the University may need to share certain information the victim had provided with the University's insurers, in order for the University to pursue the recovery of insurance proceeds. Each of the victims expressly granted the University permission to make those limited disclosures.

FURTHER DECLARANT SAYETH NOT



Joseph R. O'Dea, Jr.

Dated: June 20<sup>th</sup>, 2016, in Philadelphia, PA.

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

I, Linda D. Kornfeld, submit this declaration pursuant to penalties of perjury under 18 Pa.  
C.S. § 4904.

1. I am a partner in the law firm Kasowitz, Benson, Torres & Friedman LLP, and have represented The Pennsylvania State University ("Penn State") in insurance coverage litigation with one of its insurers, Pennsylvania Manufacturers Association Insurance Company ("PMA").

2. I submit this declaration in support of Penn State's Motion for a protective order with respect to the subpoena duces tecum served by the National Collegiate Athletic Association ("NCAA") that seeks information about individuals who assert they were sexually abused by Gerald Sandusky in 1971 and 1976 ("the "1971 Sandusky Incident" and the "1976 Sandusky Incident," respectively).



3. Penn State's coverage action is pending in the Court of Common Pleas of Philadelphia County as *Pennsylvania Manufacturers' Association Insurance Company v. The Pennsylvania State University*, Civil Action Nos. 04126, 03195, 03197 (the "PMA Litigation").

4. On April 9, 2014, Judge Glazer, the judge overseeing the PMA Litigation, entered a Stipulation and Order Governing the Exchange of Confidential Information (the "PMA Protective Order"). That order provides, *inter alia*, that a person (whether or not a party to the litigation) discloses information or documents it contends is confidential, it may designate the material accordingly, thereby triggering an obligation by the persons receiving the information or documents to abide by the terms of the PMA Protective Order.

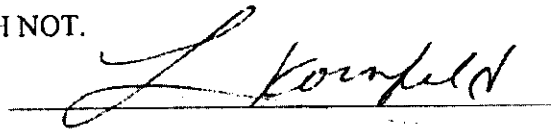
5. Consistent with the permissions provided by the victims in their respective Confidential Settlement Agreements with Penn State, Penn State divulged to counsel for PMA the names of the individuals involved in the 1971 and 1976 Sandusky Incidents, as well as certain information and documentation those victims' representatives had submitted in the mediated discussions with Feinberg Rozen LLP. Penn State designated that information, and those documents, as "Confidential" under the PMA Protective Order.

6. Counsel for PMA then issued a subpoena to, and deposed, the individual involved in the 1976 Sandusky Incident. The witness' attorney made clear at the outset of the deposition that the testimony was being given on the express understanding that it would be treated as Confidential under the PMA Protective Order.

7. The PMA Protective Order provides that, if the University receives a subpoena for documents designated as Confidential, it: (i) shall give written notice to the person who designated the material as Confidential; (ii) shall refrain from producing the documents in question until the earlier of (a) receipt of a written notice from the disclosing party that he does

not object to the production of the documents in question, or (b) a court with jurisdiction over the objection of the disclosing party resolves his objections. I am informed that, pursuant to the Protective Order, counsel for Penn State gave the attorney for the individual involved in the 1976 Sandusky Incident written notice that the NCAA's subpoena calls for the production of, *inter alia*, the transcript of his deposition testimony in the PMA Litigation. The attorney for the 1976 Victim has not consented to the University producing that transcript.

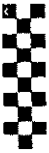
FURTHER DECLARANT SAYETH NOT.

A handwritten signature in cursive script, appearing to read "L Kornfeld", written over a horizontal line.

Linda D. Kornfeld

Dated: June 20, 2016, in Los Angeles, CA





IN THE COURT OF COMMON PLEAS OF PHILADELPHIA COUNTY  
FIRST JUDICIAL DISTRICT OF PENNSYLVANIA  
TRIAL DIVISION - CIVIL

THE PENNSYLVANIA STATE  
UNIVERSITY,

Plaintiff,

v.

PENNSYLVANIA MANUFACTURERS'  
ASSOCIATION INSURANCE CO.

Defendant.

NOVEMBER TERM, 2013

NO. 03195

COMMERCE PROGRAM

Control No.: 16051885

Pennsylvania State Univ-ORDER

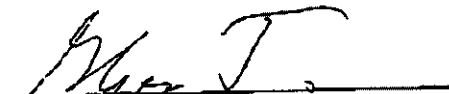


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ORDER

AND NOW, this 9<sup>th</sup> day of June, 2016, upon consideration of the Motion to Unseal the Record filed by PA Media Group, The Associated Press, Pittsburgh Post-Gazette, Philadelphia Media Network, PBC, and the Centre Daily Times,<sup>1</sup> and the responses thereto, and all other matters of record, and after oral argument on the Motion, it is **ORDERED** that the Motion to Unseal the Record is **GRANTED**<sup>2</sup> and, thirty-one days after the date of entry of this Order, the court will add to the public record of this case appropriately redacted copies of the documents currently under seal in this action.

BY THE COURT:

  
GLAZER, J.

<sup>1</sup> Pursuant to a Stipulation of the parties, the Centre Daily Times has been added as an additional intervenor in this matter. Due to the limitations of the court's public docketing system, the intervenors will not be added as named parties on the docket at this time.

<sup>2</sup> Under the state and federal Constitutions and the common law, the public's right of access to civil court records, and the public's continued concern regarding the unfortunate events underlying this coverage action, weigh heavily in favor of unsealing the record.

The presumption of openness has not been rebutted by the Pennsylvania State University. The mediation privilege does not protect materials prepared for and submitted in these consolidated civil cases. The victims' privacy can and will be protected by redaction of their names and other identifying information.

