



ORIGINAL

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

ESTATE of JOSEPH PATERNO;
AL CLEMENS, member of the Board of Trustees of
Pennsylvania State University;

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 Objections to the Estate
) of Joseph Paterno's Proposed
) Subpoenas
)
) **Filed on Behalf of:**
) National Collegiate Athletic
) Association, Mark Emmert,
) Edward Ray
)
) **Counsel of Record for this**
) **Party:**
) Thomas W. Scott, Esquire
) Killian & Gephart, LLP
) 218 Pine Street
) P.O. Box 886
) Harrisburg, PA 17108-0886
) TEL: (717) 232-1851
) FAX: (717) 238-0592
) tscott@killiangephart.com
) PA I.D. Number: 15681

2014 DEC 16 PM 3:59
DEBRA C. JENSEN
CLERK OF COURT
JUDICIAL BRANCH
CENTRE COUNTY, PA

ORIGINAL

IN THE COURT OF COMMON PLEAS OF CENTRE COUNTY, PENNSYLVANIA

The ESTATE of JOSEPH PATERNO;

AL CLEMENS, member of the
Board of Trustees of Pennsylvania State University;

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

PENNSYLVANIA STATE UNIVERSITY,

Defendant.

Civil Division

Docket No. 2013-
2082

DEBRA C. JONES
PROthonotary
Centre County, PA

2014 DEC 16 PM 3:59

**NCAA OBJECTIONS TO THE ESTATE OF JOSEPH PATERNO'S PROPOSED
SUBPOENAS**

Pursuant to Rule 4009.21(c) of the Pennsylvania Rules of Civil Procedure, Defendant, the National Collegiate Athletic Association (the “NCAA”), by its counsel, objects to the subpoenas proposed by the Estate of Joseph Paterno (the “Estate”) that are attached hereto as Exhibit A for the reasons stated herein.

1. The NCAA objects to the issuance of the five depositions subpoenas proposed by the Estate in its December 1, 2014 filing because it is clear, based on the Estate’s own words and actions, that the depositions will be overwhelmingly (if not completely) focused on information that is no longer “relevant to the subject matter involved in the pending action.” *See* Pa.R.C.P. 4003.1(a). Specifically, the Estate has made clear that the focus of its discovery strategy remains on its dismissed and legally deficient contract claim, rather than its surviving commercial disparagement claim. The Estate should not be permitted to impose burdensome discovery obligations on the parties as well as these proposed third-party witnesses in pursuit of information about a properly dismissed claim.

2. On September 11, 2014, this Court dismissed the Estate’s breach of contract claim, expressly concluding that “[a]s Coach Joe Paterno was not an involved individual prior to his death, ... he had no rights as an ‘involved individual’ at any time, and as a result, his estate has no rights as an ‘involved individual’ now.” Opinion & Order 8 (Sept. 11, 2014). On that basis, the Court unequivocally ruled that the “NCAA’s Preliminary Objections based on Incapacity

to Bring Count I and Demurrer to Count I is SUSTAINED with respect to the incapacity of the Estate of Joseph Paterno to bring suit.” *Id.* at 34.

3. This holding also forecloses the Estate from seeking relief that the Consent Decree be declared void *ab initio*. Such relief is, of course, a contract remedy, and the Estate’s Amended Complaint had sought that relief in relation to the breach of contract claim in Count I only; the Estate did not seek (nor could it) seek that relief in relation to its commercial disparagement claim. Thus, if the Estate lacks capacity to bring a claim under Count I, as this Court has held, it cannot possibly be entitled to a declaration that the Consent Decree is void (or any other relief sought in Count I).

4. On October 13, 2014, Plaintiffs filed a Second Amended Complaint in which the Estate purported to resurrect and amplify its previously-dismissed breach of contract claim. As explained in the NCAA’s Memorandum in Support of its Preliminary Objections to the Second Amended Complaint, the re-asserted breach of contract claim: (1) is procedurally improper because the Court did not grant the Estate leave to amend and restate its deficient contract claim; and (2) as a substantive matter, provides no basis to disturb this Court’s prior holding on this issue.

5. Thus, the current scope of the Estate’s case includes a commercial disparagement claim—focused on allegedly “false and defamatory” statements

contained in the Freeh Report (prepared and released by Pennsylvania State University's own agent, the Freeh Group) that the NCAA later repeated verbatim in the Consent Decree—and a conspiracy claim which itself, as a matter of law, must be entirely predicated on the commercial disparagement claim. *See* Opinion & Order 11 (holding that “‘absent a civil cause of action for a particular act, there can be no cause of action for civil conspiracy to commit that act’” (citing *Goldstein v. Phillip Morris, Inc.*, 2004 PA Super 260, 854 A.2d 585, 590 (Pa. Super. Ct. 2004))).

6. Nonetheless, the Estate has made clear that it has every intention of pursuing extensive discovery related to its dismissed and deficient contract claim. On October 15, 2014, the Estate served on the NCAA a second request for production of documents (the “second RFP”). *See* Second Reqs. for Prod. of Docs. by the Estate to Defendant NCAA (Oct. 15, 2014) (attached hereto as Exhibit B). The second RFP included eleven specific requests—none of which appear related to the Estate's commercial disparagement claim, except in perhaps the most tenuous and limited ways. Instead, much of the second RFPs appeared focused on the process by which the NCAA determined the sanctions to be included in the Consent Decree, and the NCAA's authority to enter into the Consent Decree. Put simply, the second RFP was aimed—almost in its entirety—at information related to a claim that is no longer part of the Estate's case.

7. On October 27, 2014, counsel for the Estate made explicit in an email to NCAA counsel its intention to pursue full discovery related to the dismissed contract claim. Counsel for the Estate claimed that notwithstanding the Court's unequivocal dismissal of the Estate from Count I, the Estate was free to pursue and challenge the validity of the Consent Decree and to seek a declaration that it is void *ab initio*. See Email from P. Maher to B. Kowalski (Oct. 27, 2014) (attached hereto as Ex. C); see also Letter from P. Maher to B. Kowalski (Oct. 24, 2014) (attached hereto as Ex. D). Counsel further contended that it had properly restated its contract claim in the Second Amended Complaint (notwithstanding the lack of any permission to do so) and that the restated claim included "factual averments that directly address any purported shortcoming in the Amended Complaint." *Id.* On that basis, counsel "urge[d] the NCAA to move forward with the discovery required to *develop a full factual record here.*" *Id.* (emphasis added).

8. Most recently, on December 8, 2014, the Estate participated in the deposition of former NCAA Executive Committee Chair Ed Ray in Corvallis, Oregon. Dr. Ray's deposition had been scheduled in connection with the *Corman* matter, and at Dr. Ray's request, a joint deposition was arranged in order to avoid inefficient and duplicative depositions concerning the Consent Decree and related matters. During the deposition, the overwhelming majority of the Estate's questions focused solely on the dismissed contract claim, including a lengthy

segment addressing the bylaws governing the NCAA's enforcement and infractions process and the process for addressing "involved individuals" in that context.¹

9. Against this backdrop, the Estate (and no other plaintiff) recently filed notices of intent to serve deposition subpoenas on five current or former members of the NCAA Executive Committee (now referred to as the "Board of Governors"): Dr. Stan Albrecht, Dr. William Harvey, Dr. Nathan Hatch, Dr. Harris Pastides, and Dr. Lou Anna Simon. *See* Ex. A. The proposed subpoenas did not identify the subject matter or topics of the requested depositions. But, given the Estate's course of conduct since the Court issued its September 11, 2014 order, it is clear that the Estate intends to use these depositions to seek information related to the dismissed contract claim—and perhaps only that topic.

10. While the scope of discovery is broad under Pennsylvania law, *see* Rule 4003.1(a), it is limited to information "relevant to the subject matter involved in the pending action." *Id.* The Estate's contract claim is no longer "the subject matter" of the "pending action," and therefore the Estate should not be permitted to subpoena non-parties and impose burdensome discovery obligations upon them in pursuit of information concerning a claim that has been ruled deficient as a matter of law.

¹ Counsel for Plaintiff Trustee Al Clemens did not participate in the deposition of Dr. Ray.

11. Of course, the September 11, 2014 order did not end this case. The Estate's surviving commercial disparagement claim presents a number of factual issues that are the proper subject of discovery by the Estate, including facts and information concerning its allegations that:

- “The Consent Decree published and relied on statements that disparaged Joe Paterno and the property of the Estate. It unfairly and improperly maligned Joe Paterno’s moral character and the fulfillment of his duties as Head Coach at Penn State, and concerned his business and property.” SAC ¶ 155.
- “Before the unlawful action of the NCAA Defendants imposing the Consent Decree on Penn State, Joe Paterno or his Estate possessed a property interest in his name and reputation, and there was a readily available, valuable commercial market concerning Joe Paterno’s commercial property.” *Id.* ¶ 156
- “The statements in the Consent Decree regarding Joe Paterno’s character and conduct as Head Coach and concerning the business and property of his Estate were false and defamatory.” *Id.* ¶ 157
- “The statements in the Consent Decree regarding Joe Paterno’s character and conduct were libel per se, because they imputed dishonest conduct to Joe Paterno.” *Id.* ¶ 158
- “These statements were widely disseminated by the NCAA, on its website and through numerous press outlets across the country.” *Id.* ¶ 159.
- “The NCAA Defendants either intended the publication of these statements to cause pecuniary loss or reasonably should have recognized that publication would result in pecuniary loss to the Estate of Joseph Paterno.” *Id.* ¶ 160
- “The Estate did in fact suffer pecuniary loss, reputational harm, and other damages as a result of the publication of these statements due to the actions of third persons relying on the statements. The commercial

interests and value of the Estate substantially and materially declined as a direct result of the NCAA Defendants' conduct." *Id.* ¶ 161

- "The NCAA Defendants either knew that the statements they made and published were false or acted in reckless disregard of their falsity." *Id.* ¶ 162.
- "The NCAA Defendants' conduct was malicious and outrageous and showed a reckless disregard for the rights of Joe Paterno and his Estate." *Id.* ¶ 163.

12. There is much discovery to be taken on the above-identified allegations.² But since the Court issued its September 11, 2014 order, the Estate has shown little interest in pursuing its surviving commercial disparagement claim. Instead, the Estate has pressed hard to resurrect its deficient contract claim and to impose wide-ranging and burdensome discovery on the parties and non-parties alike in an effort to establish a claim that the Court has already dismissed as a matter of law.³

13. The Consent Decree was announced on July 23, 2012, and Plaintiffs filed the instant case on May 30, 2013. There has been extensive briefing and argument, and the Court issued a well-reasoned and correct opinion and order on

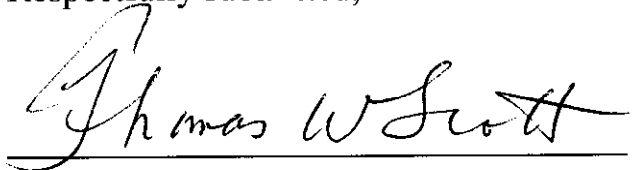
² Of course, much of the information relevant to the above allegations remains in the possession, custody, and control of the Estate itself, and will be the proper subject of discovery by the NCAA.

³ If the Estate sought these five depositions in support of its commercial disparagement rather than the dismissed contract claim (and there is no indication it does), it would need to demonstrate why depositions of these five current or former members of the NCAA Executive Committee are justified and relevant to that claim.

September 11, 2014 dismissing the Estate from Count I. It is now nearly 2015, and well-passed time to move forward with appropriately focused discovery on the claims that have actually survived in this matter. The Estate should not be permitted to pursue without end a claim that this Court has rejected.

For the foregoing reasons, the Court should decline to issue the proposed subpoenas to Dr. Stan Albrecht, Dr. William Harvey, Dr. Nathan Hatch, Dr. Harris Pastides, and Dr. Lou Anna Simon. At minimum, the Court should decline to issue the proposed subpoenas until after it rules on the NCAA's preliminary objections to the Second Amended Complaint.

Respectfully submitted,

A handwritten signature in black ink, reading "Thomas W. Scott". The signature is written in a cursive, flowing style. The first name "Thomas" is written with a large, stylized 'T' that loops around the 'h'. The last name "Scott" is written with a large, stylized 'S' that loops around the 'c'.

Date: December 16, 2014

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Vice, DC No. 358446)
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Brian.Kowalski@lw.com
Sarah.Gragert@lw.com

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

EXHIBIT A

IN THE COURT OF COMMON PLEAS OF CENTRE COUNTY, PENNSYLVANIA

The ESTATE of JOSEPH PATERNO;)	
	)	Civil Division
AL CLEMENS, member of)	
the Board of Trustees of Pennsylvania State	)	Docket No. 2013-2082
University; and)	
	)	NOTICE OF INTENT TO SERVE
WILLIAM KENNEY and JOSEPH V. ("JAY")	)	SUBPOENA
PATERNO,	)	Filed on Behalf of the Plaintiffs
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 President	)	Email: tjw@goldbergkatzman.com
of the NCAA;)	
	)	Wick Sollers (admitted <i>pro hac vice</i>)
And	)	L. Joseph Loveland (admitted <i>pro hac</i>
	)	<i>vice</i>)
EDWARD RAY, individually and as former	)	Mark A. Jensen (admitted <i>pro hac vice</i>)
Chairman of the	)	Patricia L. Maher (admitted <i>pro hac vice</i>)
Executive Committee of the NCAA,	)	Ashley C. Parrish (admitted <i>pro hac vice</i>)
	)	KING & SPALDING LLP
	)	1700 Pennsylvania Avenue, NW
Defendants,	)	Washington, DC 20006
	)	Telephone: (202) 737-0500
And	)	Email: wsollers@kslaw.com
PENNSYLVANIA STATE UNIVERSITY,	)	jloveland@kslaw.com
	)	mjensen@kslaw.com
Defendant.	)	pmaher@kslaw.com
	)	aparrish@kslaw.com
	)	Paul V. Kelly (admitted <i>pro hac vice</i>)
	)	John J. Commisso (admitted <i>pro hac vice</i>)
	)	JACKSON LEWIS, P.C.
	)	75 Park Plaza
	)	Boston, MA 02116
	)	Telephone: (617) 367-0025
	)	Email: paul.kelly@jacksonlewis.com
	)	john.commisso@jacksonlewis.com

NOTICE TO DEFENDANTS BY PLAINTIFF ESTATE OF JOSEPH PATERNO OF
INTENT TO SERVE A SUBPOENA TO STAN ALBRECHT

Plaintiff Estate of Joseph Paterno, by and through the undersigned counsel, intends to serve a subpoena identical to the one that is attached to this Notice. You have twenty (20) days from the date listed below in which to file of record and serve upon the undersigned an objection to the subpoena. If no objection is made, the subpoena may be served.

Date: November 26, 2014

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 Plaintiff Estate of Joseph
Paterno*

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

The ESTATE of JOSEPH PATERNO, et al : CIVIL ACTION – LAW

Plaintiffs	:	DOCKET NO.: 2013-2082
	:	
v.	:	
	:	
NATIONAL COLLEGIATE ATHLETIC	:	
ASSOCIATION ("NCAA"), et al.	:	
	:	
Defendants	:	

SUBPOENA TO ATTEND AND TESTIFY

To: President Stan Albrecht, Utah State University

You are Ordered by the Court to come to **Cache County Courthouse, 199 North Main Street Logan, UT 84321 at 9:00 A.M., on January 27, 2015 to testify** in the above case and to remain until excused.

If you fail to attend or to produce the documents or things required by the subpoena, you may be subject to the sanctions authorized by Rule 234.5 of the Pennsylvania Rules of Civil Procedure, including but not limited to costs, attorney fees and imprisonment.

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

Name:	<u>Thomas E. Weber, Esquire</u>
Address:	<u>Goldberg Katzman, P.C., 4250 Crums Mill Road, Suite 301</u>
	<u>Harrisburg, PA 17112</u>
Telephone:	<u>717-234-4161</u>
Supreme Court ID#	<u>58853</u>
Attorney for:	<u>Plaintiffs</u>

BY THE COURT:

DATE: _____

Prothonotary/Clerk, Civil Division

Deputy

Seal of the Court

RETURN OF SERVICE

On the _____ day of _____, 20____, I _____
served _____ with the foregoing subpoena by: _____

_____.

I verify that the statements in this return of service are true and correct. I understand that false statements herein made are subject to the penalties of 18 Pa. C.S.A. § 4904 relating to unsworn falsification to authorities.

Date: _____

(Signature)

CERTIFICATE OF SERVICE

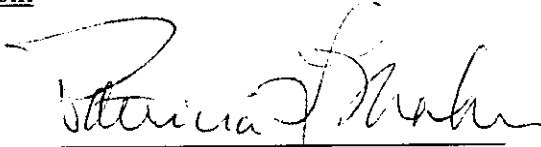
I HEREBY CERTIFY that a true and correct copy of the foregoing **NOTICE TO DEFENDANTS BY PLAINTIFF ESTATE OF JOSEPH PATERNO OF INTENT TO SERVE A SUBPOENA TO STAN ALBRECHT** was served this 26th day of November, 2014 by first class mail and email to the following:

Thomas W. Scott
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Harrisburg, PA 17108-0886
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Brian Kowalski
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KING & SPALDING LLP
1700 Pennsylvania Avenue, NW
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Telephone: (202) 737-0500

Counsel for Plaintiff Estate of Joseph Paterno

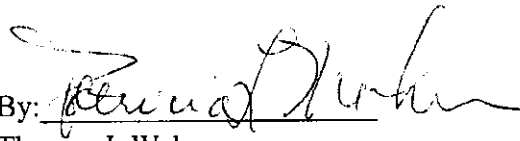
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The ESTATE of JOSEPH PATERNO;)	
)	Civil Division
AL CLEMENS, member of)	
the Board of Trustees of Pennsylvania State)	Docket No. 2013-2082
University; and)	
	)	NOTICE OF INTENT TO SERVE
WILLIAM KENNEY and JOSEPH V. ("JAY")	)	SUBPOENA
PATERNO,	)	Filed on Behalf of the Plaintiffs
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 President	)	Email: tjw@goldbergkatzman.com
of the NCAA;)	
	)	Wick Sollers (admitted <i>pro hac vice</i>)
And	)	L. Joseph Loveland (admitted <i>pro hac</i>
	)	<i>vice</i>)
EDWARD RAY, individually and as former	)	Mark A. Jensen (admitted <i>pro hac vice</i>)
Chairman of the	)	Patricia L. Maher (admitted <i>pro hac vice</i>)
Executive Committee of the NCAA,	)	Ashley C. Parrish (admitted <i>pro hac vice</i>)
	)	KING & SPALDING LLP
Defendants,	)	1700 Pennsylvania Avenue, NW
	)	Washington, DC 20006
And	)	Telephone: (202) 737-0500
	)	Email: wsollers@kslaw.com
PENNSYLVANIA STATE UNIVERSITY,	)	jloveland@kslaw.com
	)	mjensen@kslaw.com
Defendant.	)	pmaher@kslaw.com
)	aparrish@kslaw.com
)	Paul V. Kelly (admitted <i>pro hac vice</i>)
)	John J. Commisso (admitted <i>pro hac vice</i>)
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)	Email: paul.kelly@jacksonlewis.com
)	john.commisso@jacksonlewis.com

NOTICE TO DEFENDANTS BY PLAINTIFF ESTATE OF JOSEPH PATERNO OF
INTENT TO SERVE A SUBPOENA TO WILLIAM HARVEY

Plaintiff Estate of Joseph Paterno, by and through the undersigned counsel, intends to serve a subpoena identical to the one that is attached to this Notice. You have twenty (20) days from the date listed below in which to file of record and serve upon the undersigned an objection to the subpoena. If no objection is made, the subpoena may be served.

Date: November 26, 2014

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 Plaintiff Estate of Joseph
Paterno*

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

The ESTATE of JOSEPH PATERNO, et al : CIVIL ACTION – LAW

Plaintiffs : DOCKET NO.: 2013-2082

v.

**NATIONAL COLLEGIATE ATHLETIC
ASSOCIATION (“NCAA”), et al.**

Defendants

SUBPOENA TO ATTEND AND TESTIFY

To: President William Harvey, Hampton University

You are Ordered by the Court to come to **Embassy Suites Hampton Roads, 1700 Coliseum Drive, Hampton, VA 23666 at 9:00 A.M., on January 20, 2015 to testify** in the above case and to remain until excused.

If you fail to attend or to produce the documents or things required by the subpoena, you may be subject to the sanctions authorized by Rule 234.5 of the Pennsylvania Rules of Civil Procedure, including but not limited to costs, attorney fees and imprisonment.

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

Name:	<u>Thomas E. Weber, Esquire</u>
Address:	<u>Goldberg Katzman, P.C., 4250 Crums Mill Road, Suite 301</u> <u>Harrisburg, PA 17112</u>
Telephone:	<u>717-234-4161</u>
Supreme Court ID#	<u>58853</u>
Attorney for:	<u>Plaintiffs</u>

BY THE COURT:

Prothonotary/Clerk, Civil Division

DATE: _____

Deputy

Seal of the Court

RETURN OF SERVICE

On the _____ day of _____, 20____, I _____
served _____ with the foregoing subpoena by: _____

_____.

I verify that the statements in this return of service are true and correct. I understand that false statements herein made are subject to the penalties of 18 Pa. C.S.A. § 4904 relating to unsworn falsification to authorities.

Date: _____

(Signature)

CERTIFICATE OF SERVICE

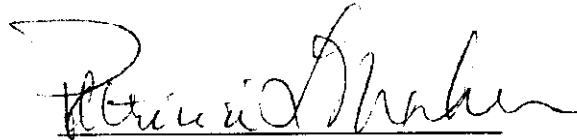
I HEREBY CERTIFY that a true and correct copy of the foregoing **NOTICE TO DEFENDANTS BY PLAINTIFF ESTATE OF JOSEPH PATERNO OF INTENT TO SERVE A SUBPOENA TO WILLIAM HARVEY** was served this 26th day of November, 2014 by first class mail and email to the following:

Thomas W. Scott
Killian & Gephart
218 Pine Street
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Harrisburg, PA 17108-0886
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Brian Kowalski
Sarah Gragert
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L. Joseph Loveland
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Counsel for Plaintiff Estate of Joseph Paterno

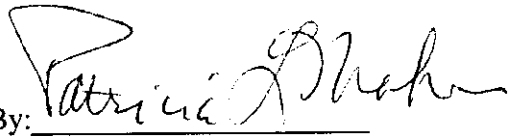
IN THE COURT OF COMMON PLEAS OF CENTRE COUNTY, PENNSYLVANIA

The ESTATE of JOSEPH PATERNO;)	
	)	Civil Division
AL CLEMENS, member of)	
the Board of Trustees of Pennsylvania State	)	Docket No. 2013-2082
University; and)	
	)	NOTICE OF INTENT TO SERVE
WILLIAM KENNEY and JOSEPH V. ("JAY")	)	SUBPOENA
PATERNO,	)	Filed on Behalf of the Plaintiffs
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 President	)	Email: tjw@goldbergkatzman.com
of the NCAA;)	
	)	Wick Sollers (admitted <i>pro hac vice</i>)
And	)	L. Joseph Loveland (admitted <i>pro hac</i>
	)	<i>vice</i>)
EDWARD RAY, individually and as former	)	Mark A. Jensen (admitted <i>pro hac vice</i>)
Chairman of the	)	Patricia L. Maher (admitted <i>pro hac vice</i>)
Executive Committee of the NCAA,	)	Ashley C. Parrish (admitted <i>pro hac vice</i>)
	)	KING & SPALDING LLP
	)	1700 Pennsylvania Avenue, NW
Defendants,	)	Washington, DC 20006
	)	Telephone: (202) 737-0500
And	)	Email: wsollers@kslaw.com
	)	jloveland@kslaw.com
PENNSYLVANIA STATE UNIVERSITY,	)	mjensen@kslaw.com
	)	pmaher@kslaw.com
Defendant.	)	aparrish@kslaw.com
	)	Paul V. Kelly (admitted <i>pro hac vice</i>)
	)	John J. Commisso (admitted <i>pro hac vice</i>)
	)	JACKSON LEWIS, P.C.
	)	75 Park Plaza
	)	Boston, MA 02116
	)	Telephone: (617) 367-0025
	)	Email: paul.kelly@jacksonlewis.com
	)	john.commisso@jacksonlewis.com

NOTICE TO DEFENDANTS BY PLAINTIFF ESTATE OF JOSEPH PATERNO OF
INTENT TO SERVE A SUBPOENA TO NATHAN HATCH

Plaintiff Estate of Joseph Paterno, by and through the undersigned counsel, intends to serve a subpoena identical to the one that is attached to this Notice. You have twenty (20) days from the date listed below in which to file of record and serve upon the undersigned an objection to the subpoena. If no objection is made, the subpoena may be served.

Date: November 26, 2014

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 Plaintiff Estate of Joseph
Paterno*

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

The ESTATE of JOSEPH PATERNO, et al : CIVIL ACTION – LAW

	:	
Plaintiffs	:	DOCKET NO.: 2013-2082
	:	
v.	:	
	:	
NATIONAL COLLEGIATE ATHLETIC	:	
ASSOCIATION ("NCAA"), et al.	:	
	:	
Defendants	:	

SUBPOENA TO ATTEND AND TESTIFY

To: President Nathan Hatch, Wake Forest University

You are Ordered by the Court to come to **Case Works/U.S. Legal Support, 1531-A
Westbrook Plaza Drive, Winston-Salem, NC at 9:00 A.M., on January 22, 2015 to
testify** in the above case and to remain until excused.

If you fail to attend or to produce the documents or things required by the subpoena, you may
be subject to the sanctions authorized by Rule 234.5 of the Pennsylvania Rules of Civil
Procedure, including but not limited to costs, attorney fees and imprisonment.

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

Name:	<u>Thomas E. Weber, Esquire</u>
Address:	<u>Goldberg Katzman, P.C., 4250 Crums Mill Road, Suite 301</u>
	<u>Harrisburg, PA 17112</u>
Telephone:	<u>717-234-4161</u>
Supreme Court ID#	<u>58853</u>
Attorney for:	<u>Plaintiffs</u>

BY THE COURT:

DATE: _____

Prothonotary/Clerk, Civil Division

Deputy

Seal of the Court

RETURN OF SERVICE

On the _____ day of _____, 20____, I _____
served _____ with the foregoing subpoena by: _____

_____.

I verify that the statements in this return of service are true and correct. I understand that false statements herein made are subject to the penalties of 18 Pa. C.S.A. § 4904 relating to unsworn falsification to authorities.

Date: _____

(Signature)

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing **NOTICE TO DEFENDANTS BY PLAINTIFF ESTATE OF JOSEPH PATERNO OF INTENT TO SERVE A SUBPOENA TO NATHAN HATCH** was served this 26th day of November, 2014 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 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

Daniel I. Booker
Jack Cobetto
Donna Doblick
Reed Smith LLP
225 Fifth Avenue
Suite 1200
Pittsburgh, PA 15222
Email: dbooker@reedsmith.com
[jacobetto@reedsmith.com](mailto:jcobetto@reedsmith.com)
ddoblick@reedsmith.com

Paul V. Kelly
John J. Commisso
Jackson Lewis LLP
75 Park Plaza
Boston, MA 02116
Email: paul.kelly@jacksonlewis.com
john.commisso@jacksonlewis.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 Plaintiff Estate of Joseph Paterno

IN THE COURT OF COMMON PLEAS OF CENTRE COUNTY, PENNSYLVANIA

The ESTATE of JOSEPH PATERNO;)	
	)	Civil Division
AL CLEMENS, member of)	
the Board of Trustees of Pennsylvania State	)	Docket No. 2013-2082
University; and)	
	)	NOTICE OF INTENT TO SERVE
WILLIAM KENNEY and JOSEPH V. ("JAY")	)	SUBPOENA
PATERNO,	)	Filed on Behalf of the Plaintiffs
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 President	)	Email: tjw@goldbergkatzman.com
of the NCAA;)	
	)	Wick Sollers (admitted <i>pro hac vice</i>)
And	)	L. Joseph Loveland (admitted <i>pro hac</i>
	)	<i>vice</i>)
EDWARD RAY, individually and as former	)	Mark A. Jensen (admitted <i>pro hac vice</i>)
Chairman of the	)	Patricia L. Maher (admitted <i>pro hac vice</i>)
Executive Committee of the NCAA,	)	Ashley C. Parrish (admitted <i>pro hac vice</i>)
	)	KING & SPALDING LLP
	)	1700 Pennsylvania Avenue, NW
Defendants,	)	Washington, DC 20006
	)	Telephone: (202) 737-0500
And	)	Email: wsollers@kslaw.com
	)	jloveland@kslaw.com
PENNSYLVANIA STATE UNIVERSITY,	)	mjensen@kslaw.com
	)	pmaher@kslaw.com
Defendant.	)	aparrish@kslaw.com
	)	Paul V. Kelly (admitted <i>pro hac vice</i>)
	)	John J. Commisso (admitted <i>pro hac vice</i>)
	)	JACKSON LEWIS, P.C.
	)	75 Park Plaza
	)	Boston, MA 02116
	)	Telephone: (617) 367-0025
	)	Email: paul.kelly@jacksonlewis.com
	)	john.commisso@jacksonlewis.com

NOTICE TO DEFENDANTS BY PLAINTIFF ESTATE OF JOSEPH PATERNO OF
INTENT TO SERVE A SUBPOENA TO HARRIS PASTIDES

Plaintiff Estate of Joseph Paterno, by and through the undersigned counsel, intends to serve a subpoena identical to the one that is attached to this Notice. You have twenty (20) days from the date listed below in which to file of record and serve upon the undersigned an objection to the subpoena. If no objection is made, the subpoena may be served.

Date: November 26, 2014

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 Plaintiff Estate of Joseph
Paterno*

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

The ESTATE of JOSEPH PATERNO, et al : CIVIL ACTION – LAW

	:	
Plaintiffs	:	DOCKET NO.: 2013-2082
	:	
v.	:	
	:	
NATIONAL COLLEGIATE ATHLETIC	:	
ASSOCIATION ("NCAA"), et al.	:	
	:	
Defendants	:	

SUBPOENA TO ATTEND AND TESTIFY

To: President Harris Pastides, University of South Carolina

You are Ordered by the Court to come to **A. William Roberts, Jr. & Associates/U.S. Legal Support, Capitol Center Towers, 1201 Main Street, Suite 1980, Columbia, SC 29201 at 9:00 A.M., on January 23, 2015 to testify** in the above case and to remain until excused.

If you fail to attend or to produce the documents or things required by the subpoena, you may be subject to the sanctions authorized by Rule 234.5 of the Pennsylvania Rules of Civil Procedure, including but not limited to costs, attorney fees and imprisonment.

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

Name:	<u>Thomas E. Weber, Esquire</u>
Address:	<u>Goldberg Katzman, P.C., 4250 Crums Mill Road, Suite 301</u>
	<u>Harrisburg, PA 17112</u>
Telephone:	<u>717-234-4161</u>
Supreme Court ID#	<u>58853</u>
Attorney for:	<u>Plaintiffs</u>

BY THE COURT:

DATE: _____

Prothonotary/Clerk, Civil Division

Deputy

Seal of the Court

RETURN OF SERVICE

On the _____ day of _____, 20____, I _____
served _____ with the foregoing subpoena by: _____

_____.

I verify that the statements in this return of service are true and correct. I understand that false statements herein made are subject to the penalties of 18 Pa. C.S.A. § 4904 relating to unsworn falsification to authorities.

Date: _____

(Signature)

CERTIFICATE OF SERVICE

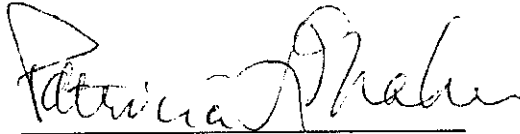
I HEREBY CERTIFY that a true and correct copy of the foregoing **NOTICE TO DEFENDANTS BY PLAINTIFF ESTATE OF JOSEPH PATERNO OF INTENT TO SERVE A SUBPOENA TO HARRIS PASTIDES** was served this 26th day of November, 2014 by first class mail and email to the following:

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 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

Daniel I. Booker
Jack Cobetto
Donna Doblick
Reed Smith LLP
225 Fifth Avenue
Suite 1200
Pittsburgh, PA 15222
Email: dbooker@reedsmith.com
jcobetto@reedsmith.com
ddoblick@reedsmith.com

Paul V. Kelly
John J. Commisso
Jackson Lewis LLP
75 Park Plaza
Boston, MA 02116
Email: paul.kelly@jacksonlewis.com
john.commisso@jacksonlewis.com

A handwritten signature in cursive script, appearing to read "Thomas J. Weber", written in black ink.

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 Plaintiff Estate of Joseph Paterno

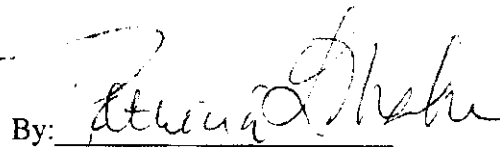
IN THE COURT OF COMMON PLEAS OF CENTRE COUNTY, PENNSYLVANIA

The ESTATE of JOSEPH PATERNO;)	
	)	Civil Division
AL CLEMENS, member of)	
the Board of Trustees of Pennsylvania State	)	Docket No. 2013-2082
University; and)	
	)	NOTICE OF INTENT TO SERVE
WILLIAM KENNEY and JOSEPH V. ("JAY")	)	SUBPOENA
PATERNO,	)	Filed on Behalf of the Plaintiffs
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 President	)	Email: tjw@goldbergkatzman.com
of the NCAA;)	
	)	Wick Sollers (admitted <i>pro hac vice</i>)
And	)	L. Joseph Loveland (admitted <i>pro hac</i>
	)	<i>vice</i>)
EDWARD RAY, individually and as former	)	Mark A. Jensen (admitted <i>pro hac vice</i>)
Chairman of the	)	Patricia L. Maher (admitted <i>pro hac vice</i>)
Executive Committee of the NCAA,	)	Ashley C. Parrish (admitted <i>pro hac vice</i>)
	)	KING & SPALDING LLP
	)	1700 Pennsylvania Avenue, NW
Defendants,	)	Washington, DC 20006
	)	Telephone: (202) 737-0500
And	)	Email: wsollers@kslaw.com
	)	jloveland@kslaw.com
PENNSYLVANIA STATE UNIVERSITY,	)	mjensen@kslaw.com
	)	pmaher@kslaw.com
Defendant.	)	aparrish@kslaw.com
	)	Paul V. Kelly (admitted <i>pro hac vice</i>)
	)	John J. Commisso (admitted <i>pro hac vice</i>)
	)	JACKSON LEWIS, P.C.
	)	75 Park Plaza
	)	Boston, MA 02116
	)	Telephone: (617) 367-0025
	)	Email: paul.kelly@jacksonlewis.com
	)	john.commisso@jacksonlewis.com

NOTICE TO DEFENDANTS BY PLAINTIFF ESTATE OF JOSEPH PATERNO OF
INTENT TO SERVE A SUBPOENA TO LOU ANNA SIMON

Plaintiff Estate of Joseph Paterno, by and through the undersigned counsel, intends to serve a subpoena identical to the one that is attached to this Notice. You have twenty (20) days from the date listed below in which to file of record and serve upon the undersigned an objection to the subpoena. If no objection is made, the subpoena may be served.

Date: November 26, 2014

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 Plaintiff Estate of Joseph
Paterno*

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

The ESTATE of JOSEPH PATERNO, et al : CIVIL ACTION – LAW

Plaintiffs : DOCKET NO.: 2013-2082

v.

**NATIONAL COLLEGIATE ATHLETIC
ASSOCIATION (“NCAA”), et al.**

Defendants

SUBPOENA TO ATTEND AND TESTIFY

To: President Lou Anna Simon, Michigan State University

You are Ordered by the Court to come to **Metropolitan Reporting Inc./ US Legal Support,
831 N Washington Avenue, Lansing, MI 48906 at 9:00 A.M., on January 29, 2015 to
testify** in the above case and to remain until excused.

If you fail to attend or to produce the documents or things required by the subpoena, you may be subject to the sanctions authorized by Rule 234.5 of the Pennsylvania Rules of Civil Procedure, including but not limited to costs, attorney fees and imprisonment.

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

Name:	<u>Thomas E. Weber, Esquire</u>
Address:	<u>Goldberg Katzman, P.C., 4250 Crums Mill Road, Suite 301</u> <u>Harrisburg, PA 17112</u>
Telephone:	<u>717-234-4161</u>
Supreme Court ID#	<u>58853</u>
Attorney for:	<u>Plaintiffs</u>

BY THE COURT:

Prothonotary/Clerk, Civil Division

DATE: _____

Deputy

Seal of the Court

RETURN OF SERVICE

On the _____ day of _____, 20____, I _____
served _____ with the foregoing subpoena by: _____

_____.

I verify that the statements in this return of service are true and correct. I understand that false statements herein made are subject to the penalties of 18 Pa. C.S.A. § 4904 relating to unsworn falsification to authorities.

Date: _____

(Signature)

CERTIFICATE OF SERVICE

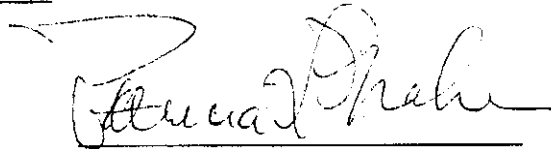
I HEREBY CERTIFY that a true and correct copy of the foregoing **NOTICE TO DEFENDANTS BY PLAINTIFF ESTATE OF JOSEPH PATERNO OF INTENT TO SERVE A SUBPOENA TO LOU ANNA SIMON** was served this 26th day of November, 2014 by first class mail and email to the following:

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 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

Daniel I. Booker
Jack Cobetto
Donna Doblick
Reed Smith LLP
225 Fifth Avenue
Suite 1200
Pittsburgh, PA 15222
Email: dbooker@reedsmith.com
[jacobetto@reedsmith.com](mailto:jcobetto@reedsmith.com)
ddoblick@reedsmith.com

Paul V. Kelly
John J. Commisso
Jackson Lewis LLP
75 Park Plaza
Boston, MA 02116
Email: paul.kelly@jacksonlewis.com
john.commisso@jacksonlewis.com

A handwritten signature in black ink, appearing to read "Thomas J. Weber", 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 Plaintiff Estate of Joseph Paterno

EXHIBIT B

IN THE COURT OF COMMON PLEAS OF CENTRE COUNTY, PENNSYLVANIA

The ESTATE of JOSEPH PATERNO;)	
)	
AL CLEMENS, member of	)	Civil Division
the Board of Trustees of Pennsylvania State University; and)	
	)	Docket No.
WILLIAM KENNEY and JOSEPH V. ("JAY") PATERNO,	)	2013-2082
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)	
)	
PENNSYLVANIA STATE UNIVERSITY,)	
)	
Defendant.)	
)	

**SECOND REQUESTS FOR PRODUCTION OF DOCUMENTS BY PLAINTIFF ESTATE
OF JOSEPH PATERNO TO DEFENDANT NCAA**

Plaintiff Estate of Joseph Paterno ("Paterno"), by and through its counsel, hereby requests, pursuant to Pa. R.C.P. No. 4009.11, that Defendant National Collegiate Athletic Association ("NCAA") respond to this Second Request for Production of Documents within thirty (30) days of service, in accordance with the Instructions and Definitions set forth herein, and produce the following documents for inspection and copying at the offices of Goldberg Katzman, P.C., 4250 Crums Mill Road, Suite 301, P.O. Box 6991, Harrisburg, PA 17112.

INSTRUCTIONS

The following instructions are applicable throughout these Requests and are incorporated into each individual Request:

1. These instructions and definitions should be construed to require responses based upon the knowledge of, and information available to, the responding party, the Defendant NCAA, as well as its agents, representatives, and, unless privileged, attorneys and accountants, including but not limited to Latham & Watkins, LLP and Killian & Gephart, LLP.

2. These Requests are continuing in character, so as to require that supplemental responses be served promptly if additional or different information is obtained with respect to any Request.

3. No part of a Request should be left unanswered merely because an objection is interposed to another part of the Request. If a partial or incomplete response is provided, the responding party shall state that the response is partial or incomplete.

4. All objections shall be set forth with specificity and shall include a brief statement of the grounds for such objections.

5. Each Request shall be read to be inclusive rather than exclusive. Accordingly, the words "and" as well as "or" shall be construed disjunctively or conjunctively as necessary, in order to bring within the scope of each Request all information that might otherwise be construed to be outside its scope. "Including" shall be construed to mean "including, without any limitation." The word "all" includes "any" and vice versa. The past tense shall include the present tense so as to make the request inclusive rather than exclusive. The singular shall include the plural and vice versa. The masculine includes the feminine and vice versa.

6. Where a claim of privilege is asserted in objecting to any Request or part thereof, and documents or information is not provided on the basis of such assertion:

- A. In asserting the privilege, the responding party shall, in the objection to the Request, or part thereof, identify with specificity the nature of the privilege (including work product) that is being claimed; and
- B. The following information should be provided in the objection, if known or reasonably available, unless divulging such information would cause disclosure of the allegedly privileged information:
 - (1) For documents:
 - a. the type of document;
 - b. the general subject matter of the document;
 - c. the date of the document; and such other information as is sufficient to identify the document, including, where appropriate, the author, addressee, custodian, and any other recipient of the document, and where not apparent, the relationship of the author, addressee, custodian, and any other recipient to each other.

7. If, in responding to these Requests, you encounter any ambiguity when construing a Request, instruction, or definition, your response shall set forth the matter deemed ambiguous and the construction used in answering.

8. All documents that are responsive, in whole or in part, to any portion or clause of any paragraph of any Request shall be produced in their entirety.

9. Where any item contains marking(s) not appearing in the original, or drafts are altered from the original, then all such items must be considered as separate documents and identified and produced as such.

10. Unless otherwise specified in a particular Request, the time period covered by these Requests is January 1, 2011 through the present.

DEFINITIONS

Notwithstanding any definition set forth below, each word, term, or phrase used in these Requests is intended to have the broadest meaning permitted under Pa. R.C.P. No. 4003.1. As used in these Requests, the following terms are to be interpreted in accordance with these definitions:

1. "You," "your," "yours," "Defendant," and "NCAA" shall refer to Defendant NCAA, to whom these Requests are directed, as well as any attorney, assignee, agent, representative, or any other person acting, authorized to act, or purporting to act on behalf of the NCAA.
2. "Plaintiff," "Joe Paterno," or "Paterno" shall refer to former Penn State head football coach Joseph ("Joe") V. Paterno or his Estate, or any other person authorized to act on behalf of Joe Paterno or his Estate.
3. "Communication" means the transmittal of information by any means, and shall mean and be deemed to refer to any writing or oral conversation, including, but not limited to, telephone conversations, conversations in meetings, letters, memoranda, notes, or electronic communications.
4. "Document" is defined as broadly as possible to include anything stored in any medium, including but not limited to, all written, recorded, transcribed, punched, taped, filmed, or graphic matter, however produced or reproduced, of every type and description that is in your possession, control, or custody, or of which you have knowledge, including but not limited to, correspondence; memoranda; transcriptions of any conversation or testimony; tapes; stenographic or hand-written notes; studies; publications; books; diaries; phone records; logs; instant messaging (public and private IM); electronic mail (email), including but not limited to, server-based email, web-based email (i.e. gmail.com, yahoo.com, hotmail.com), dial up email, email attachments, deleted email, and email stored on hard drives or portable media; voicemail; information stored on social media and social networking sites; information created or received with the use of PDAs or

smartphones; information stored in a cloud environment; text messages; information stored on removable hard drives, thumb drives, flash drives, CDs, DVDs, disks and other portable media; pamphlets; pictures (drawings and photographs); films; images; microfilms; recordings (including any analog, digital, electromagnetic, optical, phonographic, or other media of audio and/or visual recordings); maps; reports; recommendations; surveys; appraisals; charts; minutes; statistical computations; spreadsheets; telegrams; telex messages; listings of telephone calls; calendars; datebooks; books of account; ledgers; expense records; accounts payable; accounts receivable; presentations; analyses; computer records, data compilations and/or databases; every draft of each such document; every copy of each such document where the original is not in your possession, custody or control; and every copy of each such document where such copy is not an identical copy of an original, or other copy, or where such copy contains any commentary or notation whatsoever that does not appear on the original or other copy. "Document" includes any electronically stored information ("ESI").

5. "Evidence, reflect, or relate to" means in the broadest sense and includes documents and things alluding to, responding to, concerning, connected with, commenting on, in respect of, about, regarding, discussing, evidencing, contradicting, showing, describing, reflecting, analyzing and/or constituting the subject matter of the request.

6. "Person" means any natural person or any business, corporation, public corporation, municipal corporation, state government, local government, agency, partnership, group, association, or other organization, and also includes all of the person's representatives.

7. "Penn State" shall refer to employees, administrators, and personnel of The Pennsylvania State University, as well as any attorney, assignee, agent, representative, or any other person acting, authorized to act, or purporting to act on behalf of Penn State.

8. “Jerry Sandusky” or “Sandusky” shall refer to former Penn State assistant football coach Gerald A. Sandusky, as well as any attorney, assignee, agent, representative, or any other person acting, authorized to act, or purporting to act on behalf of Gerald A. Sandusky.

9. “Mark Emmert” or “Emmert” shall refer to the President of the NCAA, Mark Emmert, as well as any attorney, assignee, agent, representative, or any other person acting, authorized to act, or purporting to act on behalf of Mark Emmert.

10. “Edward Ray” or “Ray” shall refer to the former Chairman of the NCAA’s Executive Committee, Edward Ray, as well as any attorney, assignee, agent, representative, or any other person acting, authorized to act, or purporting to act on behalf of Edward Ray.

11. The “Freeh Firm” refers to the law firm of Freeh, Sporkin & Sullivan, LLP (and any successor entity), as well as attorneys, investigators, or employees that aided or worked with the Freeh Firm on the Freeh investigation, as defined *infra*, including the Freeh Group International Solutions (“FGIS”).

12. The “Freeh investigation” shall refer to the investigation conducted by the Freeh Firm into the alleged failure of certain Penn State personnel to respond to and report certain allegations against Sandusky.

13. The “Freeh Report” shall refer to the report issued by the Freeh Firm on July 12, 2012, including all footnotes, exhibits, drafts, or other notes related to that Report.

14. The “NCAA investigation” shall refer to any investigation or evaluation of Penn State undertaken by the NCAA following Defendant Emmert’s assertion of NCAA jurisdiction over matters related to Sandusky and Penn State in November 2011.

15. The “Consent Decree” shall refer to the document titled the “Binding Consent Decree Imposed by the National Collegiate Athletic Association and Accepted by The Pennsylvania State

University,” released on July 23, 2012, as well as all footnotes, exhibits, drafts, and other notes related to the Consent Decree.

16. The “NCAA’s Operating Bylaws and Administrative Bylaws,” “Operating Bylaws,” or “Administrative Bylaws,” shall refer to the operating policies, procedures, guidelines, and rules set forth in the 2011-2012 NCAA Division I Manual, Second Am. Compl. Ex. A.

17. The “NCAA enforcement process” shall refer to the operating policies, procedures, and investigative guidelines with which the NCAA and the NCAA Committee on Infractions are required to comply in conducting an investigation, as set out in the NCAA’s Operating Bylaws and Administrative Bylaws.

18. The “NCAA appeals process” shall refer to the operating policies, procedures, and investigative guidelines with which the NCAA and NCAA Infractions Appeals Committee are required to comply with respect to appeals from the Committee on Infractions as set out in the NCAA’s Operating Bylaws and Administrative Bylaws.

19. “Involved individual” shall refer to any individual staff or student who is named in or alleged to be significantly involved in an alleged NCAA rules violation.

DOCUMENT REQUESTS

Request No. 1:

Please produce all documents that evidence, reflect, or refer to the agenda for the meeting or retreat convened by NCAA President Emmert in August 2011 for university presidents and chancellors, athletic administrators and conference commissioners.

Request No. 2:

Please produce all minutes or notes that evidence or reflect resolutions made, votes taken or decisions reached at the August 2011 retreat.

Request No. 3:

Please produce all documents that evidence, reflect, or refer to the formation of working groups or committees for further action on issues raised or addressed at the retreat.

Request No. 4:

Please produce all documents that evidence, reflect, or relate to the “careful analysis of the [NCAA’s] institutional control and ethics policies” referenced in the NCAA statement issued on or about November 18, 2011, a copy of which is attached hereto as Exhibit A.

Request No. 5:

Please produce all documents that evidence, reflect, or constitute “the entirety of the situation [that] was examined” as stated by Emmert during a July 23, 2012 press conference, the transcript of which is attached hereto as Exhibit B.

Request No. 6:

Please produce all documents that evidence, refer, or relate to motions made and/or votes taken by the Executive Committee or the Division-I Board of Directors of the NCAA regarding the possible imposition of sanctions on Penn State based on findings and conclusions of the Freeh Report.

Request No. 7:

Please produce all documents that evidence, refer, or relate to motions made and/or votes taken by the Executive Committee or the Division-I Board of Directors of the NCAA regarding the possible imposition of a total ban on football at Penn State (the “death penalty”), and any communication of the results of such a vote.

Request No. 8:

Please produce all documents that evidence or reflect the direction by the Division I Board of Directors and/or the Executive Committee to President Emmert to examine the circumstances surrounding the Penn State tragedy and make recommendations regarding punitive and corrective measures.

Request No. 9:

Please produce all documents that evidence, reflect, or refer to the “historical examples” where the NCAA Executive Committee has found a situation so extraordinary that the Executive Committee dealt with it rather than NCAA personnel or processes, as cited by Ray in Exhibit B.

Request No. 10:

Please produce all documents that evidence or refer to or relate to the August 3, 2012 letter to Mark Emmert and the NCAA Infractions Appeals Committee from J. Sedwick Sollers III, a copy of which is attached hereto as Exhibit C.

Request No. 11:

Please produce all documents sent or received by President Emmert on any email account other than “memmert@ncaa.org,” including but not limited to “73trvi@gmail.com,” relating to Plaintiff, Sandusky, the Freeh investigation, the Freeh Report, the NCAA investigation, or the Consent Decree.

Dated this 15th day of October, 2014.



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CERTIFICATE OF SERVICE

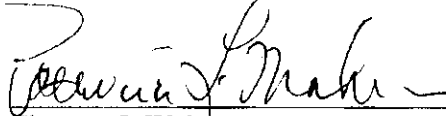
I HEREBY CERTIFY that a true and correct copy of the foregoing **SECOND REQUESTS FOR PRODUCTION OF DOCUMENTS BY PLAINTIFF ESTATE OF JOSEPH PATERNO TO DEFENDANT NCAA** was served this 15th day of October, 2014 by first class mail and email to the following:

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Counsel for Plaintiff Estate of Joseph Paterno

EXHIBIT A

Message

From: Berst, David [/O=NCAA/OU=NCAA/CN=RECIPIENTS/CN=DBERST]
Sent: 11/18/2011 8:11:53 PM
To: Campbell, Jackie [jgcampbell@ncaa.org]
Subject: FW: Letter to Penn State

Fyi and I talked with John today. Good conversation, but I'd say he is looking to see who he is most comfortable with. I'd say you and Brad are ahead of Lynn even though he hasn't seen Brad.

From: Emmert, Mark
Sent: Friday, November 18, 2011 2:48 PM
To: Ann Millner; David Hopkins; David Schmidly; David Skorton; Drew Bogner; E. William Beauchamp; Edward Ray; Guy H. Bailey; Harris Pastides; J. Patrick O'Brien; James Bultman; James Schmotter; John Peters; Judy Genshaft; Lou Anna Simon; Nathan Hatch; Stan Albrecht; Steadman Upham; Sydney McPhee; Timothy White; William A. Meehan; William R. Harvey
Cc: Franklin, Bernard; Berst, David
Subject: Letter to Penn State

Board of Directors and Executive Committee:

Per our discussion, attached is the letter I sent to President Erickson yesterday.

Here is the statement that will be released by my staff:

Like everyone who has read the grand jury report, we are all deeply disturbed by the alleged sexual abuse of children as well as the alleged response by Penn State officials. After careful analysis of the Association's institutional control and ethics policies, Dr. Emmert has sent a letter to Penn State President Erickson stating this unprecedented situation demands the NCAA evaluate the university's accountability with regard to those policies and directing specific questions to the university about its application of NCAA bylaws. While the criminal justice process clearly takes precedence over any NCAA actions, the Association is closely monitoring the situation. Dr. Emmert has also spoken by phone with President Erickson, who has pledged Penn State's full cooperation with the NCAA review.

All the best,
Mark

EXHIBIT B



Student-Athletes

Division I

Division II

Division III

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Press Conference Q&A

July 23, 2012 12:00am

Q. The Paterno family issued a statement yesterday calling the Freeh Report pretty much an indictment, a charging document, not necessarily a verdict. Don't you usually conduct your own investigation, and why did you rely so heavily on the Freeh Report?

MARK EMMERT: The Freeh Report, as well as the data that came out of the criminal trial, provided extensive information in this case. The report has been accepted by the University itself. It was the result of more than 450 individual interviews, an examination of more than 3 million emails and other documents. It is vastly more involved and thorough than any investigation we've ever conducted.

Q. Does this, as speculated, open up some sort of Pandora's box to future cases, or is this unique in and of itself?

MARK EMMERT: This case is obviously incredibly unprecedented in every aspect of it, as are these actions that we're taking today, and we do not see them as opening Pandora's box at all. This is a very distinct and very unique circumstance.

Q. How much communication have you had with Penn State about this, and do you expect them to appeal in any way?

MARK EMMERT: We have informed Penn State of the findings, the adoption of the findings coming from the Freeh Report, and also of our penalties. We have crafted this in the form of a consent decree, which the University has signed as well as we have.

Q. Classify the seriousness of these sanctions for me. Do you consider this more serious than the death penalty?

MARK EMMERT: Well, I leave those kind of judgments to all of you. Obviously, these are very, very serious sanctions. We certainly hope, and I know President Ray and the Executive Committee hope, that the fine that's being imposed will allow some very serious good to be done out of the circumstance.

The imposition of the both -- the corrective measures and the punitive actions will most certainly have a significant impact on the University. That's their intention. I leave it to all of you to speculate whether that's better or worse.

I think one of the mischaracterizations that is out there that these penalties are coming somehow instead of the death penalty. I think that would be a false assumption. If the death penalty were to be imposed, I'm quite sure that the Executive Committee and I may ask President Ray to speak to this. The Executive Committee and I most certainly would not have agreed to just the death penalty. It would have included other penalties as well. President Ray?

ED RAY: Let me just briefly say in our discussion in the Executive Committee and the Division I Board, we were very clear that in talking about options, we were always, if the death penalty were to be considered or a suspension of play really is appropriate, that that in and of itself, would not be the only penalty. That other elements would be there, not just punitive, but corrective, the kind that President Emmert talked about.

There was discussion. There was, I think, some preliminary sense, and I can only tell you that overwhelmingly, the Executive Committee and the Division I Board did not feel that the suspension of play would be appropriate.

And for the measures that you've just heard about, those that were able to participate in the conversation, both the Executive Committee and the Division I Board of Presidents and Chancellors unanimously supported the actions that you've heard about this morning.

Q. Might I ask a quick follow-up. Did you take a lot of pressure from the Penn State community, businesses, things like that?

MARK EMMERT: No.

Q. Are you considering the possibility of any future sanctions for coaches who were at Penn State during the years this abuse occurred and who may be looking to coach again?

MARK EMMERT: As I said in my opening statement, we are reserving the right, after the conclusion of all of the criminal charges and proceedings that will go forward, to look into any potential investigations or penalties that may need to be imposed on individuals. But for the time being, we're not doing anything with individuals.

Q. What is the lesson for other universities right now? What should these universities be doing right now that perhaps they haven't been doing in a long time?

MARK EMMERT: Well, then-- and again, I'll ask President Ray to speak to that point. Certainly, the lesson here is one of maintaining the appropriate balance of our values. Why do we play sports in the first place, and does that culture ever get to a point where it overwhelms the values of the academy, those things that we all hold dear?

And if you find yourself in a position where the athletic culture is taking precedent over the academic culture, then a variety of bad things can occur.

One would obviously hope that we would never, ever see anything of this magnitude or egregiousness again in our lives, but we do have to make sure that the cautionary tale of athletics overwhelming the core values of an institution and losing sight of why we're really participating in these activities can occur, and that's the balance that every university needs to strike.

Q. Is there anything that Penn State can do in the future to lessen these penalties, or is there nothing to be done before this is over?

MARK EMMERT: As I said, Penn State has signed a consent decree to these fact findings and to these penalties, and they are established as fact.

What we, of course, expect and what's intended by the corrective measures, in particular the athletic integrity agreement and the athletic integrity monitor, is to work with them to make sure that they implement the terms of that agreement.

That agreement has not been struck. It will take a number of weeks for us to craft that agreement with them. But much like occurs with a corporate integrity agreement in a corporate world, we have full expectation that all of the terms of that agreement will be implemented. Should they not be, we reserve the right to reopen this case.

Q. You mentioned the \$60 million is equivalent to a year's worth of revenue from the football program. Does this also require that that money come from the athletic department or any particular source?

MARK EMMERT: It does not require a specific source. In universities like most

businesses. Money is fungible. But we are insisting that this not come at the cost of reduced programs in the athletic department and other student scholarships.

Q. From the, I guess, the macro perspective here, you and your organization have been criticized the last few years for being toothless and not having power and such during rules cases. Do you think this is a statement by the NCAA that it is in charge of college athletics?

MARK EMMERT: This is a statement about this case. It is a reflection of the resolve of the Executive Committee and the Division I Board and the overall membership of the Association that the facts of this case are utterly unacceptable. And interpretations beyond that, I'll leave to others.

ED RAY: I would like to add, you know, we had a meeting of Presidents and Chancellors a year ago that Mark very wisely called together. Basically, as a group, the Presidents and Chancellors said we've had enough. This has to stop. We have to reassert our responsibilities and charge to oversee intercollegiate athletics.

So the first question you asked is does this send a message? The message is the Presidents and the Chancellors are in charge.

Somebody asked what's the-- is there a deeper meaning here? And I think it's important for all of you to realize-- and Mark said it, these are extraordinary circumstances. The Executive Committee has the authority to act on behalf of the entire Association in extraordinary circumstances, and we've chosen to exercise that authority. I think all of us hope we're never here again.

The second element-- and Mark talked about it is-- the cautionary tale here is I think that every major college and university needs to do a gut-check and ask where are we on the appropriate balance between the culture in athletics and the broader culture of the university and make certain that they've got the balance right. And if not, that they take corrective action.

Q. Can you speak to the decision to vacate the wins from '98 to 2011, and what does that say about Coach Paterno as being the winningest coach?

MARK EMMERT: Well, obviously, the 1998 date was selected because that's when the first reported incidents of abuse occurred and that's when the failure to respond appropriately began. And that was the point of time from which one could make an argument, of course, that the failures began inside the institution.

So it seemed to both me and to the Executive Committee that that was the appropriate beginning date. Again, I'll leave what it says about individuals to others to speculate on. The University's failures, in this case, began at that point in time and that's why that date was selected.

Q. The traditional infractions process involves a hearing where all relevant parties get to state their case and really bring their own defense. How do you reconcile that, although Penn State has signed the consent agreement, there weren't all the relevant parties represented to offer defensively to their own reputation?

MARK EMMERT: In this particular case, first of all, it's important to separate this from a traditional enforcement case. That's not what this is. This was and is action by the Executive Committee exercising their authority, working with me to correct what was seen as a horrifically egregious situation in intercollegiate athletics.

The University agreed with us that the findings of the Freeh Report provided more than ample information to sustain and support the allegations we were making. And it was simply a case that here was the date in front of us from-- again, more than 450 interviews where people did, of course, have an opportunity to state the case, and the

examination of millions of documents.

And so the need to move to a speedy resolution of that was self-evident, and one should not conclude that this was an abridged enforcement process. It was completely different than an enforcement process.

Q. Is there any way, with all the other investigations coming out, that if something were to change, that the NCAA might consider leniency if anything were to change in Penn State's favor?

MARK EMMERT: I don't know that it's useful to speculate about hypothetical circumstances. We'll always deal with the facts in front of us and respond to them accordingly.

Q. In your roles through the years, you work closely with Graham Spanier and other people at Penn State on various issues. On a personal level, as you were working through this case over the last several months, what were some of your emotions? How would you describe your emotions, and how do you feel about those individuals now, particularly Spanier?

MARK EMMERT: I want to be really clear, there's nothing in this situation that anyone should feel good about. This is an awful place to be. It is not-- it's not good for anyone. You look at the situation of the victims and their families here, and you always have to go back to that and say what predicament did they find themselves in? What circumstances did they have to suffer through?

You look at what's going on at the University right now. You look at the actions we're imposing here today. The right actions on our part, and we feel confident that we're doing the right thing. But no one feels good about this. No one feels like this is a positive situation in any sense, and I'm sure that includes all the individuals involved here.

I'm not going to comment on how I personally feel about individuals here. This is just an unprecedented, painful chapter in the history of intercollegiate athletics.

ED RAY: I want to point out that quite honestly, if the University culture had been as open, transparent, forthcoming, collaborative, cooperative as Rod Erickson and the Board of Trustees at Penn State have been over the last year, we wouldn't be having this conversation.

Q. Mark, after the death penalty in '87, the -- quantitatively, the number of football violations did go down. The risks did outweigh the reward. Do you expect that same result from this?

MARK EMMERT: Well, as President Ray just said, the fundamental message here, the gut-check message is do we have the right balance in our culture? Do we have, first and foremost, the academic values of integrity and honesty and responsibility as the drivers of our University, or are we in a position where hero worship and winning at all costs has subordinated those core values?

If that's the case, then you need to address that, and you need to address that as quickly as you can. That's the lesson here.

I hope that's what we see.

Q. We all know what Penn State's record and reputation and Joe Paterno's were before this happened. Given that this was horrific and egregious, was any consideration given of that record and the fact that, legally speaking, they were first-time offenders?

MARK EMMERT: The entirety of the situation was examined. All of the facts, including those, were on the table and looked at. I don't think there was an element of this case

that we didn't explore exhaustively and discuss very thoroughly in multiple conversations with the Executive Committee and its leadership.

Q. Dr. Emmert, when the Executive Committee decided to give you the power to act in this way, how would you describe the hesitancy or, perhaps in some cases, opposition to proceeding in this matter?

MARK EMMERT: Well, I'll let President Ray add comments as well, but I think it's accurate to describe the conversations that we were engaged in as remarkably in agreement. That the NCAA needed to act in this case was never seriously debated.

Everyone understood that this case strikes at the very heart of what intercollegiate athletics is about. And while there's been much speculation about whether this fits a specific bylaw or that specific bylaw, it certainly fits the notion, the fundamental notions of what athletics are supposed to be doing in the context of higher education.

And all of the Presidents that I talked to, all of them immediately said, of course. That's exactly what's going on here.

So from that point on, it was simply a matter of how do we proceed, not whether or not to proceed.

ED RAY: And I'll just add, really, echoing the same thing on behalf of the Executive Committee and the Division I Board. I think there was unanimous consent that what we were dealing with here was a horrific experience that struck at the very heart of the values of intercollegiate athletics and the NCAA.

I heard not a single voice in the Executive Committee or the Division I Board that wanted to step back and not take action now. It was a unanimous sense we needed to act and we needed to act quickly and effectively.

MARK EMMERT: I think I can add one more piece. Recall the great challenge that we spent most of our time on was how do you craft sanctions that have the intended effect? Clearly, this calls for a punitive action. Clearly, also, it calls for corrective action to enable and also ensure that the kind of culture change occurs that's necessary at Penn State University, and at the same time has a minimal impact on innocent parties on people who had nothing to do with this.

That's always a challenge with NCAA sanctions. We all know that. In this particular case we crafted sanctions that we have confidence are the best we can do in this particular case to have the punitive and corrective impact and force the university to go forward from this point on.

Q. How much was taken into consideration, not giving the death penalty, of the opponents who had games scheduled with Penn State and the effect that would have on them?

MARK EMMERT: Well, it's certainly one of the many considerations on the impact of the death penalty, but I wouldn't want to emphasize that particular point.

When you think about a suspension of play, it's not just about the opponents you're going to play. It's about the band. It's about all the people that are involved in the athletic events. It's about all the people who make a living around athletic events. It's about, obviously, all the student-athletes that are there, but that whole enterprise.

So one of the considerations, as I said, was what's the collateral damage, if you will, on the innocent. At the same time, we were very impressed by the actions of the President Rod Erickson, and his new CFA team, and the forthrightness with which they've approached this.

The Freeh Report is the product of an amazing-- I keep using the word unprecedented, but I think it's an apt word here-- an unprecedented degree of openness for any University that I've ever seen. They were given free access to, pardon the pun, everything in the University to a level that is extraordinary. And then the University made that available to the public. Both actions quite remarkable.

And their willingness to provide us with that information and accept that information was also a very important factor in all of this.

Q. I wonder if you could elaborate on the independent compliance monitor. What specific steps or benchmarks will that person be watching for that would reflect a culture change?

MARK EMMERT: Yeah, great question. So we will, in the next ten weeks, work with Penn State and the Big Ten Conference. We will develop an athletic integrity agreement which will provide a road map for changing the culture inside athletics and putting in place a more formal control structure to assure that institutional control is properly in hand.

As that agreement is developed, we will then appoint, at the University's expense, an external monitor-- someone-- we've not identified the individual, but someone who is not part of the NCAA or, obviously, part of the University. An independent third party who will, with staff support, monitor the progress of the University on each step of that roadmap and report back to us, to the trustees of Penn State, and to the Big Ten Conference office on progress.

Should we see that they are failing to maintain appropriate progress with that roadmap, then we have reserved the right to take other corrective steps.

Q. I wondered if you could explain a little bit more about the mechanism of the scholarship reduction, in terms of 10 initial, 20 total, what that will do to Penn State's football scholarships over the next four years.

MARK EMMERT: I have Kevin Lennon here of my staff. I may ask Kevin to step up to the podium also and discuss that in more detail. But the mode is not an unfamiliar one. It is one where the total number, as you know, the new initial grants and aids are always limited to 25 in football. This will drop that limit to 15, and it will cap the total number of scholarships on the football program at 65.

But if you have other questions, Kevin can follow up.

Q. Are you worried that the \$60 million fine will lead to sports being cut at Penn State, and what impact you think this will have on some of the non revenue sports?

MARK EMMERT: We've expressly said this cannot come at the expense of the non-revenue sports or student-athlete scholarships. The University is going to have to come up with a different way of managing these expenses.

That's not to say we, of course, that we immediately want it cut from the academic side of the enterprise either. That's not the appropriate solution. But the university will have to determine how to manage those challenges.

Q. Wondering if Penn State offered any sort of self-sanctions in this process, including the possibility of not playing a season? Or was it just you guys, in terms of the penalty, imposing that?

MARK EMMERT: We just imposed these penalties.

Q. Mark, obviously, understanding the breadth and scope of the Freeh Report, was there still any questioning or did you have any discussions with your enforcement staff and with committee on infractions people about why they would not be involved in

this process? Secondly, was there anything personally for you in terms of frustration dealing with the pace of sanctions being given that spurred you to be interested in this-- in doing this in an expedited way?

MARK EMMERT: The point of this process that we've engaged in-- and again I'll ask Ed to address this-- is a reflection of the magnitude of this case and the nature of the broad-based failures of integrity in this particular case, not of any lack of confidence in our enforcement process.

Quite the contrary. I feel very good about our enforcement process and especially the changes that are under way in that process right now.

The unusual nature of this resolution speaks more to the case itself than it does anything else. Ed?

ED RAY: I'll just say quickly, and I think staff can provide you with historical examples where the Executive Committee has found a situation that was so extraordinary, it required the Executive Committee, that has the authority to step up and exercise its right to deal with individual instances, to do so in this case.

So it is not without precedent, but it's only because of the extraordinary nature of this situation that we have-- in fact-- chosen to exercise that authority.

Q. Mark, what put this outside the investigative realm initially was the letter to Dr. Erickson in November. Since then, have you written a letter? There have been several other criminal cases around the country that may have come under this jurisdiction.

MARK EMMERT: No, I have not.

Q. I was just curious as to whether there was some sort of sense of urgency to get this done before the fall semester started, before football season started. And if there was, were you worried about any sort of reaction from Penn State students if there wasn't a decision made before then?

MARK EMMERT: There was clearly and remains a sense of urgency in resolving this case, period. It wasn't driven by the fall semester or upcoming football season. The timing was simply that, following the extensive work of both the criminal investigators and the Freeh Report, the information was there, and there was no compelling reason to delay the process.

MODERATOR: Next question, please.

Q. Mark, just one clarification on two things. One, it sounds like your communication with Penn State-- and just correct me if I'm wrong here-- was that you approached them with these penalties and they accepted them and that was it? There was no dialogue and no back and forth?

MARK EMMERT: That's right.

Q. The second thing is you haven't addressed Joe Paterno specifically yet. I'm just wondering, when you reviewed what he did, what you felt about his actions?

MARK EMMERT: Well, again, we expressly have, in these sanctions and findings, withheld judgment on individuals and will continue to do so until all of the criminal investigations have concluded. And until then, we won't have any comment on individuals.

Q. Actually, that gets to my question. The Freeh Report being as comprehensive as it's been, why? Why hold back in dealing with the individuals until after the criminal proceedings if you have enough information based on the Freeh Report?

proceedings if you have enough information based on the Green Report?

MARK EMMERT: We don't want in any fashion to have our work become confused with or have any impact on the criminal investigations. They need to do their work. We, of course, have nothing to do with criminal investigations, and that process has to play out, as it's going to in the coming months, and then we can come in and deal with individual issues, should there be any.

Thank you very much.

Tags: News • Division I • Penn State University • Football

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EXHIBIT C

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August 3, 2012

VIA FACSIMILE/EMAIL & OVERNIGHT DELIVERY

Mark A. Emmert, President
The National Collegiate Athletic Association
Office of the President
1802 Alonzo Watford Sr. Drive
Indianapolis, Indiana 46202

*(on behalf of himself, the Executive Committee
& the Division I Board of Directors)*

The National Collegiate Athletic Association
Infractions Appeals Committee
Attention: Wendy Walters
1802 Alonzo Watford Sr. Drive
Indianapolis, Indiana 46202

**Re: Notice of Intent to Appeal Consent Decree Imposed by the NCAA on The
Pennsylvania State University**

To Whom It May Concern:

On behalf of my clients, the Paterno family, who are the living representatives of Joseph V. Paterno and his estate, we file this notice of intent to appeal the NCAA's consent decree entered against The Pennsylvania State University. Pursuant to NCAA Bylaw 32.10.1, the Paterno Family notes that the consent decree was publicly released on July 23, 2012. Pursuant to NCAA Bylaws 32.1.5 and 32.10.1.2, Mr. Paterno qualifies as an involved individual because he is named in the NCAA's consent decree and in the Freeh Report, which provided the factual basis for the consent decree. Finally, pursuant to NCAA Bylaw 32.10.1, or any other source of authority the NCAA claims to have invoked to impose these sanctions, the Paterno Family requests the opportunity to submit its appeal in writing, and requests an in-person oral argument before the Infractions Appeals Committee, the Executive Committee, the Division I Board of Directors, and/or other appropriate audience within the NCAA.

The estate undertakes this appeal to redress the enormous damage done to Penn State, the State College community, former, current and future student and student athletes, Joe Paterno and certain others involved, as a result of the unprecedented actions taken by the NCAA.

As will become evident in a thorough and impartial review, the NCAA acted hastily and without any regard for due process. Furthermore, the NCAA and Penn State's Board Chair and President entirely ignored the fact that the Freeh Report, on which these extraordinary penalties are based, is deeply flawed because it is incomplete, rife with unsupported opinions and unquestionably one-sided. The NCAA and Penn State's leadership, by accepting and adopting the conclusions of the Freeh report, have maligned all of the above without soliciting contrary opinions or challenging a single finding of the Freeh report. Given the extraordinary penalty handed out, prudence and justice require that scrupulous adherence to due process be observed and not completely ignored.

Both the University leadership and the NCAA have said that they had to take extreme and immediate measures to demonstrate respect for the victims and minimize the chance of any similar misconduct from occurring again. These goals are the right ones, and they embody objectives we fully endorse. But those objectives cannot be achieved by a truncated process that wrongly assigns blame by substituting opinion for fact.

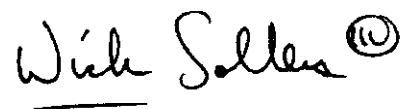
If there is culpability in this case, a hearing will help expose it. Due process will not hide the truth and will only illuminate the facts and allow for thoughtful, substantiated conclusions, not extreme and unfounded opinions, such as those offered in the Freeh Report and relied upon by the NCAA.

This matter may be the most important disciplinary action in the history of the NCAA, and it has been handled in a fundamentally inappropriate and unprecedented manner. To severely punish a University and its community and to condemn a great educator, philanthropist and coach without any public review or hearing is unfair on its face and a violation of NCAA guidelines.

Accordingly, we submit this appeal in pursuit, finally, of due process. A fair hearing on the merits is in the interests of justice and fairness for all involved.

We look forward to your acknowledgement of receipt of this timely appeal. In your acknowledgement, we would appreciate confirmation of the exact date triggering the 30-day period for us to submit a written response in support of our appeal.

Respectfully,

A handwritten signature in black ink, reading "J. Sedwick Sollers III" with a circled "III" at the end.

J. Sedwick Sollers III

Appeal Notice re The Penn State University
August 3, 2012
Page 3 of 3

cc: Mark A. Jensen
Alan R. Dial

EXHIBIT C

From: [Maher, Trish](#)
To: [Kowalski, Brian \(DC\)](#)
Cc: [Doran, Samuel](#); [Johnson, Everett \(DC\)](#); [Gragert, Sarah \(DC\)](#)
Subject: RE: Estate of Paterno v. NCAA, Penn State
Date: Monday, October 27, 2014 1:02:56 PM

Brian,

We disagree with your assessment of Judge Leete's Order of September 11, as well as your reading of our right to conduct full discovery. You focus on the aspect of Judge Leete's Order discussing whether the Estate has the capacity to assert Coach Joe Paterno's rights as an "involved individual," but you do not address the portion of Judge Leete's Order holding that both the Estate and Al Clemens have the capacity to challenge the Consent Decree under *Pearsoll v. Chapin*. At page 5 of the Order, Judge Leete expressly found that the "Court must accept that the Plaintiffs' averment that the Consent Decree was imposed through an illegal and unauthorized exercise of the NCAA's authority is true for the instant Motion, making the Consent Decree void. As a result, under *Pearsoll*, Plaintiffs have standing to challenge the Consent Decree."

In addition, your email overlooks the Second Amended Complaint's factual averments that directly address any purported shortcoming in the Amended Complaint with regard to Coach Paterno being a subject of the NCAA's investigation. Specifically, the Second Amended Complaint includes allegations that by November 2011 — before Coach Paterno's death — the NCAA had focused on Coach Paterno as a subject of the investigation.

Instead of filing another round of meritless objections, this litigation should move forward and the NCAA should answer the entire complaint. In any event, because the Court has held that both the Estate and Al Clemens have standing to challenge the Consent Decree, we urge the NCAA to move forward with the discovery required to develop a full factual record here.

Finally, we note that the NCAA is participating in discovery on many of these issues in the *Corman* case and has urged that we consider coordinating on certain discovery. We do not believe that the NCAA can have its cake and eat it too on this issue: If discovery is to be conducted on any of these issues on a joint basis, we need the NCAA's responses to our discovery requests.

Trish

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

From: Brian.Kowalski@lw.com [mailto:Brian.Kowalski@lw.com]
Sent: Sunday, October 26, 2014 6:15 PM
To: Maher, Trish
Cc: Doran, Samuel; EVERETT.JOHNSON@LW.com; Sarah.Gragert@lw.com
Subject: Estate of Paterno v. NCAA, Penn State

Trish –

Hope you had a nice weekend. I just wanted to follow up on a couple of points from our discussion from Thursday:

First, I wanted to confirm our position that we object to any discovery requests from the Paterno Estate related solely to the Estate's dismissed contract claim. As you know, we view Requests 25-30 of the Estate's original discovery requests as related solely to the Estate's contract claim, set forth in Count I of the Amended Complaint. We have understood you to agree with that assessment. We had previously taken the position that because Requests 25-30 were burdensome and implicated highly sensitive information involving other member institutions and individuals, discovery should be staged such that the NCAA would not produce any documents responsive to Requests 25-30 until after the Court had passed on the NCAA's preliminary objections to the Estate's contract claim. We agreed that in the meantime, we would produce documents responsive to Requests 1-24 of the Estate's original discovery requests, and we have produced several thousands of such documents.

On September 11, 2014, Judge Leete ruled that "NCAA's Preliminary Objection based on Incapacity to Bring Count I and Demurrer to Count I is SUSTAINED with respect to the incapacity of the Estate of Joseph Paterno to bring suit..." September 11, 2014 Opinion & Order at 34. In so ruling, Judge Leete specifically held: "[a]s Coach Joe Paterno was not an 'involved individual' prior to his death, and he cannot, as a matter of law, be an 'involved individual' after his death, he had no rights as an 'involved individual' at any time, and as a result, his estate has no rights as an 'involved individual' now." *Id.* at 8. With the Estate now dismissed from Count I, we cannot agree to produce documents in response to Requests 25-30, which are relevant only to a claim that is no longer part of the case. (I should also note that you confirmed on our call that you do not represent Trustee Clemens, and that Requests 25-30 are on behalf of the Estate only). We will continue to produce documents in response to Requests 1-24, as well as the second set of discovery requests you recently served on the NCAA.

Second, as I mentioned, we plan to file preliminary objection(s) to the Second Amended Complaint by November 3, 2014. Such preliminary objections will satisfy fully the NCAA's obligation to respond to the Second Amended Complaint. However, we are considering answering Counts II through V, with respect to which the Court has overruled the NCAA's preliminary objections. Although providing such a partial answer is not at all required, we are considering whether it would be useful in advancing the case. If we proceed in this manner, we would like to serve the partial answer at some point after November 3—for example, by Monday, November 24. The Second Amended Complaint is lengthy, and it will naturally take some time to prepare an answer. And since such a partial answer isn't even required, we thought you would be amenable to this approach. We discussed this issue on Thursday, and wanted to see whether you'd been able to reach consensus on your end. Please let us know at your earliest convenience.

Best regards,

Brian

Brian E. Kowalski

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Latham & Watkins LLP

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EXHIBIT D

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October 24, 2014

Via Email and First Class Mail

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

*Re: Estate of Joseph Paterno v. NCAA, et al., Case No. 2013-2082 (Centre County
Common Pleas)*

Dear Brian,

I am writing as a follow up to our discussions on October 20 and 23 regarding outstanding discovery requests, including Requests Nos. 25-30 from the Estate's First Request for Production of Documents to the NCAA. At the end of our discussions about proposed responses, you indicated that the NCAA would still not produce documents responsive to those six requests because, in your view, the Estate was dismissed as a plaintiff on Count I of the First Amended Complaint, the breach of contract claim. We disagree with your reading of the Court's September 11, 2014 Order. In any event, a Second Amended Complaint has been filed, and the Estate *is* a plaintiff on Count I alleging Breach of Contract against the NCAA Defendants and Penn State.

Your position that the Estate is not entitled to this discovery based on your reading of the Court's ruling with respect to the First Amended Complaint is not justified. As you know, the Court denied our earlier motion to compel with respect to these same requests, without prejudice, as premature on the grounds that you had advised that you would produce documents once a protective order was entered; *not* on the grounds that you had preliminary objections pending, as you now argue. Similarly, with respect to the Second Amended Complaint, the NCAA is not entitled to continue to refuse to respond to discovery requests that have been outstanding for more than nine months and are relevant to the Estate's claims in the Second Amended Complaint until you file another preliminary objection and that is resolved. *See McKissock & Hoffman v. Polymer Dynamics*, 17 Pa. D. & C. 5th 541 (2010) (defendant ordered to respond to discovery requests before court ruled on preliminary objections to amended complaint); *Conner v. Tom*, 811 A.2d 6, 8 (Pa. Super. Ct. 2002) (discovery requests served while preliminary objection

Brian E. Kowalski
October 24, 2014
Page 2

pending). Under Pennsylvania law, the filing of preliminary objections does not preclude discovery.

Please reconsider your position so we can finalize our discussions regarding the NCAA's responses. If not, we will have to renew our motion to compel.

Sincerely,

A handwritten signature in black ink, appearing to read "Patricia L. Maher", written over a horizontal line.

Patricia L. Maher

Enclosures

cc: Everett C. Johnson, Jr.
Thomas J. Weber
Paul V. Kelly

CERTIFICATE OF SERVICE

I, Thomas W. Scott, hereby certify that I am serving the NCAA Objections to the Estate of Joseph Paterno's Proposed Subpoenas, by First Class Mail and email to:

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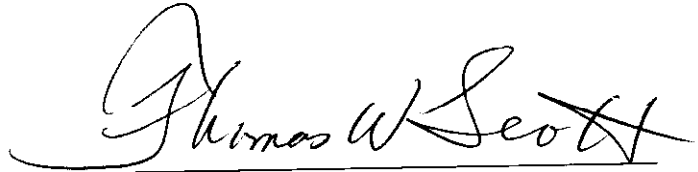
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*Counsel for The Pennsylvania State
University*

Via FedEx Overnight Delivery
The Honorable John B. Leete
Senior Judge, Specially Presiding
Potter County Courthouse, Room 30
One East Second Street
Coudersport, PA 16915

Dated: December 16, 2014

A handwritten signature in black ink, reading "Thomas W. Scott". The signature is fluid and cursive, with a long horizontal line extending from the end of the name.

Thomas W. Scott
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*Counsel for Defendants the NCAA,
Dr. Emmert, and Dr. Ray*